The Congressional Review Act (CRA) provides a tool for majorities in the House and Senate, along with the President, to overturn a recently promulgated agency regulation, and to legislatively prohibit promulgation of a "substantially the same" regulation in the future. By its nature – since it requires Presidential approval of the relevant joint Congressional resolution – the CRA primarily applies when a new President wishes to overturn recent regulatory actions by the prior President. (Generally, a President isn't in the business of signing resolutions that overturn regulations issued by their own Administration.) The CRA has a few characteristics that make it appealing in terms of overturning past Administration actions: because it can be done through Congressional action, it is much speedier (and avoids the risk of judicial review), than using the regulatory process to overturn the past regulation; it can prevent similar subsequent administrative rules by an agency; and the CRA by its terms exempts resolutions from the Senate filibuster, which means that CRA resolutions can be enacted by a simple Senate majority. Thus, in the current legislative context, when Democrats control 47 Senate seats, and thus can block legislation outside of reconciliation, the CRA provides an appealing path to at least do something to produce some sort of policy change.

Because the CRA only applies to regulations issued within a certain window of time, an Administration can immunize its regulations from the CRA by issuing them far enough in advance of any possible change in Administration and Congressional control. Thus, the Biden Administration worked hard to get its major regulatory actions done by the summer of 2024 to avoid any CRA risks. However, Congressional Republicans have identified one important set of targets for the CRA that they think are still available: the waivers issued by EPA to California under the Clean Air Act, authorizing California to issue emissions standards for vehicles (not just cars, but also other motor vehicles) that are stricter than the relevant federal standards. Under the Clean Air Act, other states can then adopt California standards themselves. The Biden Administration granted a number of California requests for those waivers in January 2025, just before the transition. Now Congressional Republicans are trying to use the CRA to overturn those waivers, with potentially major impacts on California's efforts to reduce tailpipe emissions from cars and advance electric vehicle use.

The key question here is whether those California waivers constitute "rules" such that they are subject to the CRA. The Government Accountability Office (GAO), which is an agency within Congress that conducts audits and investigations on behalf of Congress, has twice concluded that the waivers are "orders" that, under

the Administrative Procedure Act (APA), do not count as “rules.” Nonetheless, the CRA repeal effort proceeds.

In this series of blog posts, we want to explore the implications of expanding the CRA in this way – in particular we will highlight two issues: one, the possibility that the CRA might be broadly expanded to all sorts of permits in the future; and two, the possibility that an effort by Congressional Republicans to use the CRA in this way might lead to the end of the filibuster in the Senate.