If the Trump EPA successfully repeals the endangerment findings for vehicles and stationary sources, states will be the only resort for climate action. A key question is how the repeals would impact state power relating to carbon emissions. The bottom line answers are: (1) the impact on state power to regulate tailpipe emissions seems unclear but could be positive; (2) there would be no effect on state power to regulate stationary sources like power plants; (3) plaintiffs suing oil companies would probably benefit. The detailed analysis is below.

What happens to federal preemption of state tailpipe standards for greenhouse gases? Would California still need an EPA waiver?

Prior to the repeal of the Endangerment Finding, the situation was clear: EPA regulated tailpipe emissions of GHGs from vehicles, while states couldn't unless EPA gave California a waiver. The question now is: Since repeal of the endangerment finding means that EPA can't regulate these emissions, does California still need a waiver?

The answer isn't clear.

Here's the governing provision in the Clean Air Act:

> "No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part."

The Trump Administration takes the position that "emissions" includes emissions of substances that they say EPA itself lacks the power to regulate. The counter-argument is basically that Congress meant the preemption provision to cover only things that EPA would regulate. Under that interpretation, the preemption provision wouldn't apply at all to GHGs, so California would no longer need the waiver.

Today, other states can piggyback on a California waiver by adopting California's standards. But that wasn't true in 1970, when the preemption provision was passed. I don't think that Congress ever imagined that there would be harmful emissions that EPA lacked the power to regulate, but that's exactly the situation the Trump Administration is attempting to create by repeal of the Endangerment Finding. Thus, we're asking what Congress would have intended in 1970 in a situation where: EPA couldn't regulate, California could (with a waiver), and no one at all could regulate in the other 49 states.

You can see the preemption provision as part of a grand bargain: States gave up their right to regulate vehicle emissions (except for California), while the industry agreed to EPA regulation. That bargain breaks down if there are substances that EPA can't regulate, because states would be getting nothing back in return for giving up their own regulatory powers.

We're trying to apply text to a situation that the drafters probably never thought possible. I can think of textual arguments both ways, but I'm not sure what a court would do.

What happens to state regulations of greenhouse gases from everything else (power plants, factories, refineries, etc.)?

I might be missing something, but I can't see any impact on state power to regulate carbon emissions from these stationary sources. Unlike the Clean Air Act provisions governing mobile source, there's no preemption provisions for state regulation of stationary sources. State regulations of greenhouse gases can't conflict with federal regulations if there are no federal regulations. And the Clean Air Act clearly wasn't meant to oust states from emission regulation, because there's a savings clause that covers state regulations of stationary sources. The conclusion is that the legality of state regulations such as cap-and-trade schemes would be unaffected by repealing the endangerment findings.

What happens to lawsuits against oil companies or utilities based on their carbon emissions?

These lawsuits should be helped. The Supreme Court previously held that climate lawsuits against utilities could not be brought under federal law because Congress had taken over the business of regulating these emissions. Repealing the endangerment finding would eliminate that argument, so the lawsuits would come back to life. They might then be squashed by the Supreme Court on other grounds, but in any event the repeal wouldn't hurt them.

The oil companies are currently making a similar argument to block lawsuits against them for climate damages. Without the endangerment finding, that argument would also evaporate. In short, repealing the endangerment finding would probably benefit the plaintiffs suing fossil fuel emitters or polluters.

Overall, it seems to me that repeal of the endangerment finding is likely to leave

the states’ powers the same as they were before, or perhaps a little stronger.