

WisDOJ: AG Kaul Joins lawsuit challenging attempt to trample states' authority to adopt and enforce environmental standards

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MADISON, Wis. – Attorney General Josh Kaul today joined a coalition of 24 attorneys general in a lawsuit against the National Highway Traffic Safety Administration (NHTSA) to challenge the Trump Administration's unlawful regulation designed to preempt 13 states' emission standards. In the lawsuit, the coalition asserts that this Preemption Rule is unlawful and should be set aside.

“The Trump administration is now not only abdicating its role in fighting climate change, it's also attempting to undermine states' ability to keep our air clean. The federal government shouldn't be standing in the way of states that are taking action to protect our health and the environment,” said Attorney General Kaul.

The lawsuit challenges a new rule from the NHTSA, designed to preempt California and 12 other states' greenhouse gas emissions and Zero-Emission Vehicle (ZEV) standards. Under the federal Clean Air Act, California may apply for a waiver from the Environmental Protection Agency (EPA) to set its own vehicle emissions standards that are at least as protective as the federal government's standards, and EPA must approve the waiver, unless it makes certain findings. These standards — authorized in 2013 by a waiver from the EPA and followed in part or whole by 12 other states and the District of Columbia – are a key part of state efforts to protect public health and the environment. In the lawsuit, the coalition asserts that this Preemption Rule is unlawful and should be set aside.

In January 2012, California adopted its comprehensive Advanced Clean Cars

Program for cars and light duty trucks in model years 2017 through 2025. The program combines the control of smog-causing pollutants and greenhouse gas emissions into a single coordinated package. The program improves air quality and curbs greenhouse gases. On its own, the California program would reduce carbon dioxide emissions in the state by approximately 14.4 million metric tons a year by 2025 and 25.2 million metric tons a year by 2030. When accounting for emissions savings from other states that have adopted California's standards, these emission reductions nearly double.

Through its unlawful Preemption Regulation, NHTSA is attempting to declare the greenhouse gas and ZEV standards preempted under the Energy Policy and Conservation Act (EPCA), based on arguments repeatedly rejected by multiple courts. In doing so, NHTSA oversteps the authority granted to it by Congress and ignores Congress's careful and repeated preservation of states' authority.

In the lawsuit, Wisconsin asks the court to strike down the regulation as unlawful on the basis that NHTSA:

- Purports to exercise authority that Congress has not granted the agency; namely, to decree what EPCA does or does not preempt;
- Imagines an inherent conflict between two sets of rules, California's GHG and ZEV standards and NHTSA's fuel economy standards, that have co-existed for years;
- Willfully misreads EPCA as preempting state emission standards it explicitly directed NHTSA to account for, and as implicitly repealing portions of the Clean Air Act;
- Ignores the authority and intent of Congress, which has repeatedly reaffirmed and embraced California's authority over the last four decades;
- Flouts the National Environmental Policy Act by failing to assess or analyze the damage that the agency's Preemption Rule will inflict on the environment and public health;
- Acts arbitrarily and capriciously by failing to explain about-faces from its previous positions or its reasons for acting;
- Fails to respect states' authority to protect public health and welfare; and
- Disregards the role these standards play in helping California and other states meet National Ambient Air Quality Standards.

<https://www.doj.state.wi.us/news-releases/ag-kaul-joins-lawsuit-challenging-attempt-trample-states%E2%80%99-authority-adopt-and-enforce>