STATE OF FLORIDA

JAMES UTHMEIER
ATTORNEY GENERAL

October 2, 2025

Nicholas J. Schilling, Jr.
Supervisory Official, Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Re: Request for Information on State Laws Having Significant Adverse Effects on the National Economy or Significant Adverse Effects on Interstate Commerce
Docket No. OLP182/DOJ-OLP-2025-0169

In response to your Request for Information, the State of Florida has identified a handful of unconstitutional or preempted laws and policies that the State of California is using to commandeer our Nation's energy policy and harm interstate commerce. As the Trump Administration has made clear, and as Florida unconditionally supports, the United States must not only be energy independent, but energy *dominant*. *See* Unleashing American Energy, Exec. Order No. 14154, 90 Fed. Reg. 8353 (Jan. 20, 2025). Dominating the field of energy production will not only lower costs for American consumers but keep us safe from our enemies abroad.

California desires a different path. It wants to hold America's interests hostage to the "foreign adversaries" that control the "supply chains" required to produce "unaffordable and unreliable 'green' energy." Ending Market Distorting Subsidies for Unreliable, Foreign Controlled Energy Sources, Exec. Order No. 14315, 90 Fed. Reg. 30821 (July 7, 2025). To promote this radical (and unpopular) Green New Deal agenda, California has attempted to stymie the production of traditional fuels like oil, coal, and natural gas. But the Constitution assigns the federal government, not a wayward State, as the regulator of interstate air pollution. For good reason: States are not competent to set the rules governing emissions outside of their own borders, and doing so would infringe on the sovereignty of their sister States. California will not even permit its citizens to rebuild their homes after its own horrendous

environmental mismanagement sparked a record-setting conflagration in the Los Angeles area—proving that it is the *least* qualified State to make national environmental policy.

California's ill-conceived energy policies that harm interstate commerce are too numerous to count. But for the purposes of this comment, Florida draws the federal government's attention to four sets of California policies that are especially harmful.

- California Senate Bills 253 and 261 create an onerous emissions-disclosure regime that applies nationwide. All large companies doing business in California must disclose not only their own greenhouse-gas emissions, but all the emissions in their entire supply chain. The result is that anyone who does business with a large corporation will be forced to take expensive measures to track greenhouse-gas emissions, even if that business itself has no connection with California.

- California and other liberal States have filed novel tort lawsuits against producers of traditional fuels that seek to attach billions of dollars in liability to actions that were lawful when taken.

- In a direct challenge to the supremacy of federal law, California is attempting to force electrification of our nation's passenger automobiles and heavy-duty trucks despite Congress' use of the Congressional Review Act to repeal California's preemption waiver.

- Although not yet enacted into law, the California legislature is considering a climate "superfund" bill like those passed by New York and Vermont. These laws retroactively impose strict liability on the producers of traditional fuels and run afoul of our Constitutional structure, the Clean Air Act, and the constitutional rights of the targeted entities.

I. California's Onerous and Extraterritorial Emissions-Disclosure Regime.

California has appointed itself as the regulator of corporate emissions disclosures. In 2023, the legislature passed, and Governor Newsom signed, two onerous disclosure statutes with the goal of pressuring companies from coast to coast into reducing their carbon emissions.

Senate Bill 253 requires the California Air Resources Board (CARB) to "develop and adopt" emissions-disclosure regulations for businesses with total annual revenues over $1 billion "that do[] business in California," Cal. Health & Safety Code §§ 38532(b)(2), (c)(1). Remarkably, the law requires covered companies to disclose all the emissions in their entire supply chain, even those not directly caused by the company. *Id.* § 38532(b)(5). Thus, for example, if a large retailer wishes to do any business in California, it must require the supplier of each product it sells to track the greenhouse-gas emissions associated with production. It does not matter if the supplier has no contacts whatsoever with California. If the supplier

wants to sell its products to a retailer that does business in California, it will need to track its emissions so that the retailer can report them.[1]

In addition to requiring companies to report their supply chain's greenhouse-gas emissions, Senate Bill 253 creates requirements for how companies report their emissions. Specially, they must follow California's "Greenhouse Gas protocol standards and guidance," Cal. Health & Safety Code § 38532(c)(2)(A)(ii), and third parties must examine the data to assure "the quality and accuracy of the reported emissions," *Id.* § 38532(c)(2)(F). Once verified, these disclosures are then released to the public, with the goal of pressuring companies to reduce their emissions. Cal. Health & Safety Code §§ 38532(d)(1), (e); Statement of Sen. Scott Wiener (Sept. 17, 2023), https://perma.cc/544Y-ES6R (asserting that the legislature's goal is to "create accountability" for emitters).

Senate Bill 253 is complimented by Senate Bill 261. The latter applies to any company with total annual revenues over $500 million "that does business in California," no matter how little. Cal. Health & Safety Code § 38533(a)(4). Senate Bill 261 requires covered companies to disclose on their websites two categories of climate-related financial-risk information. The first is the company's climate-related financial risk, which must be disclosed in accordance with the recommended framework and disclosures contained in the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures. *See Id.* § 38533(b)(1)(A)(i). The second disclosure is the steps the company has taken to reduce climate-related financial risk. *Id.* § 38533(b)(1)(A)(ii). If a company fails to make a disclosure or makes an inaccurate disclosure, the company will face a fine up to $50,000. *Id.* § 38533(f)(2).

Senate Bills 253 and 261 violate federal law and will harm interstate commerce. First, they constitute impermissible extraterritorial regulations under the dormant Commerce Clause and basic federalism principles because they require disclosures for conduct that has no plausible relationship to California. *Bonaparte v. Appeal Tax Court of Baltimore*, 104 U.S. 592, 594 (1881); *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023). In a system of government where each State is equally sovereign, *Shelby County v. Holder*, 570 U.S. 529, 544 (2013), one State cannot reach beyond its borders and directly regulate conduct exclusively occurring in another, *see N.Y. Life Ins. Co. v. Head*, 234 U.S. 149, 161 (1914); *Franchise Tax Bd. of Cal. v. Hyatt*, 139 S. Ct. 1485, 1497 (2019). Although the statutes require the covered company to do business in California, Cal. Health & Safety Code § 38533(a)(4); *id.* §§ 38532(b)(2), (c)(1), they do not require the relevant emissions to be related to that line of business or have any relation to California. And because the laws' drastic scope, they will force businesses with zero connection to California to comply or cease doing business with any company that does. Indeed, that is their precise design.

[1] The way this will work in the real world is quite absurd. If a family-owned craft store in rural Florida wishes for the local Walmart to carry the family's crafts on its shelves, the family-owned craft store must (somehow) tracks its emissions and report them to Walmart so that Walmart can report them as part of its emissions disclosures to California. All this—despite the fact that no part of the transaction had anything to do with California.

Because the purpose and effect of these laws is to regulate greenhouse-gas emissions, they are also preempted by the Clean Air Act. *See City of New York v. Chevron Corp.*, 993 F.3d 81, 91–99 (2d Cir. 2021). The purpose of California's emission-disclosure laws could not be more obvious. In the words of far-left State Senator Scott Wiener, companies are "going to be embarrassed by" their disclosures and forced to curtail the carbon emissions by their investors. Remarks of Sen. Wiener, Sen. Env'l Quality Comm. Hearing on S.B. 253 (Mar. 25, 2023) http://tinyurl.com/yf66mbdn (at 2:30:33–2:23:50). If embarrassment does not work, coercion will. Emissions disclosures allow left-wing funds and investors to pressure management into adopting a partisan ESG agenda. This ESG blackmail threatens to thwart this Administration's goal of energy dominance and often forces companies to violate their legal obligations owed to shareholders.

Regulation of interstate emissions, however, belongs to federal law. The Clean Air Act, Pub. L. No. 91-604, 84 Stat. 1676, in addition to the federal common law of interstate air pollution, prohibits States from applying their own laws to reduce interstate pollution, *see City of New York*, 993 F.3d at 91-99. Yet California's law is intentionally crafted not only to disincentivize emissions within California but nationwide, even worldwide. Although California is not directly regulating emissions, it cannot do in "an indirect and roundabout manner" what it cannot do directly. *See id.* at 93; *cf. also Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023) ("The Constitution deals with substance, not shadows." (quoting *Cummings v. Missouri*, 71 U.S. 277, 325 (1867)).

The Department of Justice can play a pivotal role in stopping California's attempt to force nationwide emissions disclosures. As of today, there is a single lawsuit challenging these statutes, *see Chamber of Commerce v. Cal. Air Resources Bd.*, 763 F.Supp.3d 1005 (C.D. Cal. 2025), but it has hit roadblocks that a suit by the United States could potentially avoid. Most prominently, the district court held that the Chamber of Commerce's challenge to Senate Bill 253 was unripe because the California Air Resources Board had not yet issued implementing regulations under that bill, and the Chamber "failed to show a concrete plan to violate SB 253 where the law, on its own, does not obligate Plaintiffs' members to take any action." *Id.* at 1019. The federal government would likely be able to avoid such a dismissal. Instead of suing to vindicate a private interest to not disclose information, the United States would sue to vindicate federal law itself. It could thus show that *any* regulations adopted under Senate Bill 253 would be impermissible without needing to show an impending enforcement action. *See Union Pac. R.R. Co. v. Cal. Pub. Utils. Comm'n*, 346 F.3d 851, 870 n.20, 872 n.22 (9th Cir. 2003).

In similar situations, the Department of Justice has stepped up to defend the supremacy of federal law. Just recently, when Vermont and New York attempted roundabout regulations of greenhouse-gas emissions, President Trump directed the Department to sue, which it promptly did. *See* Protecting American Energy from State Overreach, Exec. Order No. 14260, 90 Fed. Reg. 15513 (May 1, 2025). For similar reasons, the Department of Justice

should consider taking action against California for its attempt to regulate interstate greenhouse-gas emissions.

In addition to the Department of Justice suing California to stop its circuitous attempt to regulate nationwide greenhouse-gas emissions, President Trump should also consider signing an executive order making it the official policy of the executive branch to oppose such disclosure regimes. *Cf.* Protecting American Energy from State Overreach, Exec. Order No. 14260, 90 Fed. Reg. 15513 (May 1, 2025) (executive order on energy more generally). The Trump Administration has already done excellent work in this area, such as halting its defense of the Securities and Exchange Commission's unlawful attempt to force publicly traded companies to disclose their emissions and ostensible climate-related risks. Letter from Tracey A. Hardin, Solicitor, Sec. & Exch. Comm'n, to Maureen W. Gornik, Acting Clerk of Court, U.S. Court of Appeals for the Eighth Cir. (Mar. 27, 2025). It would be regrettable if rogue States like California could leverage their economies to enact the exact kind of disclosure regime that this Administration has declined to defend. The President should put his foot down and make clear to all States that they cannot avoid federal scrutiny simply by dressing up their unlawful regulatory regimes under the guise of disclosure.

II. State and Municipal Litigation Seeking Damages for Conduct that was Legal and Subject to Federal Regulation.

In addition to using its legislative powers to commandeer nationwide regulation of greenhouse-gas emissions, California and several other States[2] are seeking to do the same through unprecedented expansions of their tort law. Bringing complaints in their own liberal State-court systems, these lawsuits seek to extract billions of dollars from a select group of energy companies for harms supposedly attributable to global greenhouse-gas emissions, including for harms attributable to wholly out-of-state conduct. Through these lawsuits, States like California are asking their own courts to expand state tort liability into a means to regulate emissions and climate change. *See* Second Amended Complaint, *In re Fuel Industry Climate Cases*, No. CJC-24-005310 (Cal. Super. Ct. Mar. 19, 2024). But such complex issues require a uniform federal response, rather than subjection of energy companies to an inconsistent patchwork of State tort regimes. *See City of New York*, 993 F.3d at 97.

Florida proudly supports American energy dominance, and the people of Florida did not vote for California (or any other non-federal governmental entity) to balance the benefits of cheap, plentiful, and reliable fuel against the burdens of interstate air pollution. *Id.* at 93. California should not be allowed to dictate energy policy for any other State, let alone the

[2] *See, e.g.*, *California v. Exxon Mobil*, No. CGC-23-609134 (filed Sept. 15, 2023); *In re Fuel Industry Climate Cases*, No. CJC-24-005310 (filed Mar. 19, 2024); *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*, No. 25-170 (filed Aug. 8, 2025); *Sunoco LP v. City and County of Honolulu, Hawaii*, Nos. 23-947, 23-952 (filed Feb. 28, 2024); *State v. Exxon Mobil Corp.* (Conn. Super. Ct. July 23, 2024) 24 WL 3580377; *State ex rel. Jennings v. BP America Inc.*, 2024 WL 98888 (Del. Super. Ct. Jan. 9, 2024); *American Petroleum Institute v. Minnesota*, No. 62-CV-20-3837 (filed June 24, 2020).

entire country. *See id.* at 85 (finding that State tort law is the improper vehicle for alleging harm from climate change).

In the time since President Trump's second inauguration, the Department of Justice has been on the front lines fighting against the attempts, like California's, to commandeer greenhouse-gas regulation. The President has ordered the Department to preemptively sue States that are about to bring these kinds of claims in State court, resulting in the cases being heard in federal court in front of a neutral judge instead of the backyard of a leftist State. *See* Complaint, *United States v. Hawaii*, No. 1:25-cv-00179 (D. Haw. Apr. 30, 2025); *see also* Complaint, *United States v. Michigan*, No. 1:25-cv-496 (W.D. Mich. April 30, 2025). The Department should consider expanding this effort to also include suing municipalities who are preparing to bring State-court suits against traditional-fuel producers.

In addition to taking on States before they can initiate a suit in their own home court, the Solicitor General has made the laudable move of filing an amicus brief at the Supreme Court in support of certiorari after the Colorado Supreme Court greenlit one of these suits. *See* Amicus Brief of the United States, *Suncor Energy U.S.A., Inc. v. County Commissioners of Boulder Cnty.*, No. 25-170 (U.S. Sept. 11, 2025). States like California are not going to stop attempting to evade federal law until they are affirmatively rebuffed by the highest court in the land (and maybe not even then if the past decade-and-a-half of Second Amendment litigation teaches us anything). This Administration should do all it can to ensure that the Supreme Court puts an end to these suits. To that extent, the Solicitor General should continue to file briefs in support of petitioners when politically motivated State courts fail to follow federal law. It should also seriously consider filing statements of interest in the various climate cases pending in State court, such as California's. It is important that the United States make clear that it will not tolerate State-court interference in areas that should be governed exclusively by federal law.

In addition to these efforts, Florida suggests that the Department of Justice work carefully with the Environmental Protection Agency to ensure that both agencies are on the same page with respect to greenhouse-gas regulation in the future. Specifically, the EPA is currently taking comments on a proposed rule to repeal its finding that it had jurisdiction to regulate greenhouse-gas emissions from new motor vehicles. *See* Proposed Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, 90 Fed. Reg. 36288 (Aug. 1, 2025). Florida fully supports this effort because proper textual and contextual methods of statutory interpretation show that the phrase "air pollutant" in the Clean Air Act excludes greenhouse-gas emissions. *But see Massachusetts v. EPA*, 549 U.S. 497 (2007). And even if greenhouse gases are considered "air pollutants," EPA still has the discretion not to regulate them, 42 U.S.C. § 7521(a)(1).

The EPA, in conjunction with the Department of Justice, should ensure that the final rule does not provide any ammunition to the States and municipalities who seek to harm our energy industry through the "roundabout" regulation of greenhouse gases. *City of New York*, 993 F.3d at 93. Avoiding this issue should not be difficult because (1) in an area that is

traditionally governed exclusively by Congress, the federal government's conspicuous decision not to regulate is still preemptive, *see Ray v. Atl. Richfield Co.*, 435 U.S. 151, 178 (1978), and (2) if the Clean Air Act does not cover greenhouse-gas emissions at all, the common law of interstate air pollution would still preempt these tort suits, *see City of New York*, 993 F.3d at 91-99.

In addition to making clear that undoing the endangerment finding does not give a green light to climate activists who seek to harm the energy industry, EPA could go on offense and use its rulemaking authority to prevent these kinds of suits in the first place. EPA should consider clarifying that the Clean Air Act and the rules promulgated thereunder preempt States from seeking damages based on the emission of greenhouse gases. *City of New York*, 993 F.3d at 98-100. At a bare minimum, EPA should explain in the preamble of its regulations establishing emissions standards for stationary and mobile sources of pollution that the Clean Air Act preempts State tort suits of this kind.

The Supreme Court has previously given agency positions set forth in regulations, even those that lack the force of law, weight when determining the preemptive scope of a Congressional statute. *See Geier v. American Honda Motor Co.*, 529 U.S. 861, 883 (2000); *Wyeth v. Levine*, 555 U.S. 555, 577 (2009). EPA would have a strong case that a detailed explanation in the preamble of regulations that set emissions standards would be entitled to weight by the federal courts in determining the preemptive scope of the Clean Air Act. The Clean Air Act is an incredibly nuanced statute that balances the need for clear air, technological innovation, cheap energy, and a variety of other competing goals. *City of New York*, 993 F.3d at 93. That is the exact kind of statute where the views of an agency have been useful to a federal court in an obstacle-preemption analysis. As the Supreme Court has explained, agencies that administer complicated statutory schemes "have a unique understanding of the statutes they administer and an attendant ability to make informed determinations about how state requirements may pose an 'obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'"[3] *Wyeth*, 555 U.S. at 577 (quoting *Hines, Hines v. Davidowitz,* 312 U.S. 52, 67 (1941)).

The Supreme Court's overruling of *Chevron v. NRDC*, 467 U.S. 837 (1984), in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), does not compel a contrary conclusion. Reliance on preemption statements in regulatory preambles is akin to *Skidmore* deference, *Wyeth*, 555 U.S. at 577, which *Loper Bright* explicitly endorsed, *see* 603 U.S. at 394 ("In exercising such judgment, though, courts may—as they have from the start—seek aid from the interpretations of those responsible for implementing particular statutes."). Federal courts do not use the agency's view necessarily to determine the meaning of the statute but to

[3] EPA should also seriously consider expressly preempting the use of interstate greenhouse-gas emissions for the purposes of State tort law through the preemptive force of a legislative rule. The Supreme Court has "repeatedly that state laws can be pre-empted by federal regulations as well as by federal statutes." *Hillsborough County v. Automated Medical Laboratories, Inc.,* 471 U.S. 707, 713 (1985).

understand the extent to which the regulatory scheme will be frustrated by State interference. *Wyeth*, 555 U.S. at 577.

Finally, if States and municipalities refuse to obey federal law and continue to bring preempted suits in State court, EPA could consider this fact when determining who is eligible for EPA's grants. The EPA may "terminate" awards "made on or after April 3, 2025" "in part or [ ] entirety" if they "no longer effectuate the program goals or agency priorities." EPA, General Terms and Conditions (last updated Apr. 26, 2025), https://perma.cc/7JDV-P7PD. And it is not difficult to conclude that entities who spend resources on an effort to defy federal law are not "effectuat[ing]" EPA's "priorities." *Id.* EPA has already exercised its recission authority for many grants. *See, e.g.*, EPA, *EPA Administrator Lee Zeldin Cancels 400+ Grants in 4th Round of Cuts with DOGE, Saving Americans More than $1.7B*, EPA Press Office (Mar. 10, 2025), https://perma.cc/RM5W-SBPD. It could consider exercising that authority in the future on grants issued to States that sued fossil-fuel producers on theories that are preempted under federal law.[4] There is no reason that EPA needs to fund entities that are actively fighting it.

III. CARB Advanced Clean Trucks Program, Clean Truck Partnership, Advanced Clean Cars II Program

Perhaps California's boldest attempt to regulate nationwide greenhouse-gas emissions is its effort to enforce a ban on internal-combustion engines in consumer cars and heavy-duty trucks. Congress explicitly repealed California's Clean Air Act preemption waiver through the Congressional Review Act, yet California is nonetheless pushing ahead with its plan to ban internal-combustion engines. California's rejection of federal-law supremacy and Congress' decision to keep gas-powered vehicles on the road evinces a disrespect for the rule of law itself.

Because California had historically bad levels of smog in the 1960s and 70s, the Clean Air Act contains an unusual provision that allows California, under some circumstances, to regulate the emissions from vehicles more strictly than EPA does. 42 U.S.C. § 7543(b)(1). If California received permission from EPA to enact stricter regulations, other States can also apply those same regulations. 42 U.S.C. § 7507. Under the Biden Administration, EPA granted California waivers for three relevant sets of rules: Advanced Clean Trucks, Advanced Clean Cars II, and the "Omnibus" Low NO_x Regulation. The Advanced Clean Trucks Program

[4] Examples might include Climate Pollution Reduction Grants, Grid Resilience and Innovation Partnerships (GRIP) Program Projects, or Transmission Siting and Economic Development Grants Program. *See* Env't Prot. Agency, *General Competition Selected Applications Table*, https://perma.cc/2MGV-KS64; Env't Prot. Agency, *Grid Resilience and Innovation Partnerships (GRIP) Program Projects*, https://perma.cc/26HL-UH8J; Env't Prot. Agency, *Transmission Siting and Economic Development Grants Program*, https://perma.cc/G2YZ-AQQT. Many grants were awarded before the April 3, 2025, cutoff, but the administration may of course choose to award grants and take them away in the future.

seeks to phase out combustion engines in heavy-duty trucks[5] within the next few decades. The Advanced Clean Cars II Program seeks to extinguish the sale of combustion-engine consumer vehicles in California by 2035. Cal. Code Regs., tit. 13, § 1962.4(c), (e)(1)(C). The "Omnibus" Low NO_x Regulation sets stricter NO_x and particulate matter emissions regulations for heavy-duty engines. *Id.* § tit 13, §1956.8.

Because the Trump Administration believes in lowering automobile costs for the American people and not placing our nation at the mercy of foreign adversaries, it immediately sought to undo these harmful programs. Congress agreed, passing three resolutions under the Congressional Review Act that revoked California's preemption waivers for its Advanced Clean Trucks, Advanced Clean Cars II, and Low NO_x programs. H.J. Res. 87, Pub. L. No. 119-15, 139 Stat. 65 (2025); H.J. Res. 88, Pub. L. No. 119-16, 139 Stat. 66 (2025); H.J. Res. 89, Pub. L. No. 119-17, 139 Stat. 67 (2025). The President, of course, signed the resolutions, making them the law of the land. *See Diamond Alternative Energy, LLC v. EPA*, 145 S. Ct. 2121, 2131 n.1 (2025) ("Acting under the Congressional Review Act, Congress recently passed and the President signed legislation to block . . . California regulations"). Congress' disapproval should have been the end of things, but California has continued to attempt to enforce these programs because it believes the CRA resolution was invalid and because California entered into a coercive contract with heavy-truck manufacturers, called the Clean Truck Partnership, Manufacturers Advisory Correspondence ECCD-2025-3, CARB (May 23, 2025), to create a quasi-private Clean Trucks Program despite the Clean Air Act explicitly preempting such State regulations without a waiver, 42 U.S.C. § 7543(a).

As this Administration has already recognized, California's actions are utterly lawless. As are those of the States who are attempting to adopt California's unenforceable regulations. The Clean Air Act allows California a special exemption from its usual broad preemptive effect, 42 U.S.C. § 7543(b)(1), and with Congress disapproving that waiver, California does not have a leg to stand on. Moreover, the Congressional Review Act explicitly states that resolutions disapproving of regulations are not "subject to judicial review." 5 U.SC. § 805; *Kansas Nat. Res. Coal. v. United States Dep't of Interior*, 971 F.3d 1222, 1236 (10th Cir. 2020) (barring review of whether administrative agencies complied with the CRA procedures because "the CRA unambiguously prohibits judicial review of any omission by any of the specified actors"). Litigation is currently ongoing, with the Department of Justice intervening in the relevant cases.[6]

In addition to defeating California's unlawful attempt to circumvent the Congressional Review Act in federal court, the Trump Administration could consider whether the

---

[5] "Heavy-duty" vehicles are those with a gross vehicle weight rating (the loaded weight of a single vehicle) of more than 8,500 lbs. 40 C.F.R. § 1037.801.

[6] *California v. United States*, No. 4:25-cv-04966 (N.D. Cal. Jun 12, 2025); *American Free Enterprise Chamber of Commerce v. Engine Manufacturers Association*, No. 3:24-cv-50504 (N.D. Ill. Dec 16, 2024) (DOJ and EPA filed motion to intervene Aug. 13, 2025); *Daimler Truck North America LLC v. CA Air Resources Board*, No. 2:25-cv-02255 (E.D. Cal. Aug 11, 2025) (DOJ and EPA filed motion to intervene Aug. 13, 2025).

States who have gone along with California are still entitled to EPA grants. As discussed above, there is no need for EPA to allocate discretionary funds to States and municipalities that spend money attempting to deny the supremacy of federal law.

IV. Proposed California Climate Superfund Legislation

In addition to the laws that California has already enacted, the Department of Justice should also be vigilant against future attempts by the California legislature to take control of interstate-energy policy. Most notably, California has been considering legislation modeled after New York and Vermont's superfund laws. These so-called climate-superfund laws require companies that have produced significant amounts of coal, oil, or natural gas over the past decades to pay billions of dollars in retroactive damages for the alleged climate-related harms caused by their emissions. *See*, e.g. 2024 Vt. Acts & Resolves No. 122, *as amended by* 2025 Vt. Act & Resolves No. 47, Secs. 20-25, codified at Vt. Stat. Ann. tit. 10, ch. 24A; N.Y. ENV'T CONSERV. LAW § 76-0103(3)(b). The billions taken from the traditional-fuel companies (and their shareholders) will then be recycled back to various left-wing causes under the guise of climate-infrastructure projects. *See*, e.g., N.Y. ENV'T CONSERV. LAW §§ 76-0101(3)(a), 76-0103(9); *id.* §§ 75-0111(1)(c)(ii), 76-0103(2)(g) (ensuring that 35% of the money will be given based on DEI metrics).

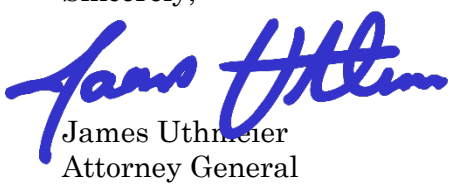
As one would expect, such a naked attempt to bilk America's most successful companies for their lawful activities runs into numerous provisions of federal law. On the structural side, these laws violate the Constitutional prohibition on extraterritorial regulation and the federal common law of interstate air pollution. *Hoyt v. Sprague*, 103 U.S. 613, 630 (1880); *Nat'l Pork Prods. Council v. Ross*, 598 U.S. 356, 364 (2023); *City of New York*, 993 F.3d at 91-99. They also violate the Clean Air Act's allocation of interstate air-pollution regulation to EPA and not the States. *City of New York*, 993 F.3d at 99. Finally, these laws violate provisions of the Bill of Rights such as the Due Process Clause, Excessive Fines Clause, Takings Clause, and more because they are establishing billions of dollars in retroactive liability for actions that were either lawful or encouraged at the time. *Nebbia v. New York*, 291 U.S. 502, 525 (1934); *Austin v. United States*, 509 U.S. 602, 609-10 (1993); *E. Enters. v. Apfel*, 524 U.S. 498, 526 (1998) (plurality opinion); *id.* at 549-50 (Kennedy, J., concurring in the judgment and dissenting in part). Pursuant to President Trump's Executive Order Protecting American Energy from State Overreach, Exec. Order No. 14260, 90 Fed. Reg. 15513 (May 1, 2025), the Department of Justice has already initiated lawsuits against New York and Vermont to cease their unlawful attempts to commandeer this nation's energy policy.

California is considering two climate superfund statutes, California Senate Bill 684 and Assembly Bill 1243,[7] that are even worse than those enacted in New York and Vermont. Not only do the bills introduced in the California House and Senate seek to establish strict liability that stretches back to 1990, but they also explicitly state that making the billions of

[7] Sen. B. 684, 2025-2026 Leg., Reg. Sess. (Cal. 2025); Assem. B. 1243, 2025–2026 Leg., Reg. Sess. (Cal. 2025).

dollars of payments under California's proposed climate superfund act will not alleviate any damages award that is entered under California law. In other words, the statute explicitly allows for double payment at the expense of the traditional-fuel manufacturers. If California follows through on enacting a climate-superfund law, the Department of Justice should sue to enjoin California from enforcing that law, just like it did with Vermont and New York.

Sincerely,



James Uthmeier
Attorney General