



September 26, 2025

OAL Reference Attorney
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RE: Proposed Emergency Amendment and Adoption of Vehicle Emissions Regulations

Roush appreciates the opportunity to submit the following comments on the proposed emergency amendments to CARB's Vehicle Emissions Regulations. We are concerned about the expedited process CARB is implementing here, as we believe CARB's standard administrative process and public review period would be more appropriate; however, we appreciate the opportunity to submit comments even during this limited review period. Due to the short timeframe provided, our feedback may be incomplete at this time given the inability to fully research all of the proposed revisions and their impact.

Roush is a family-owned business which supports the transportation industry on many levels in engineering, testing, and manufacturing. Our comments in this context, however, are specific to our role as a manufacturer of spark-ignited engines for commercial trucks and buses through our ROUSH CleanTech and newly established Roush Power Systems brands. ROUSH CleanTech is very proud to have been a leading provider of low-NOx LPG and CNG engines in the school bus industry, as well as leading the production use of gasoline refueling emissions controls for Blue Bird school buses. Over the last decade, over 2,500 unique customers have deployed nearly 40,000 of our vehicles in every state in the U.S. and province in Canada and accumulated over 1 billion miles in every driving condition. Notwithstanding this market presence, Roush was not invited to be a signatory to the Clean Truck Partnership agreement.

Roush recognizes the significant challenges currently facing CARB and manufacturers (like Roush) desiring to sell products into California in light of the multiple legal challenges and disputes among EPA, CARB, states, manufacturers, and purchasers relating to tailpipe emission standards (and related evaporative, diagnostic, and GHG requirements). Thus, we understand the challenge in trying to maintain a certification program which recognizes the significant lead time needed to prepare and approve applications under rapidly changing circumstances. We hope that our comments can assist CARB in this effort. That said, while a quick solution is highly desirable for all parties, it is only helpful if it is durable and reliable.

To address the shifting circumstances surrounding certification in the current environment, CARB issued two guidance letters: MAC ECCD-2025-03, which initially provided guidance for 2026 MY, and the superseding MAC ECCD-2025-08 which has no specified end date.

Importantly, ECCD-2025-08 provides multiple pathways for certification (these pathways were not clearly labeled in the MAC so for reference purposes we have assigned numbers here to provide greater clarity in our comments):

1. Certification to the Omnibus regulations that were covered by the disapproved waiver. For 2027MY, this is a unique combination of standards, full useful life, test procedures, and in-use standards which do not align with EPA's standards, and which CARB previously communicated the intent to withdraw. This pathway is still available in the proposed emergency regulations, but it is unclear whether this is technically or commercially viable.
2. For manufacturers who are parties to the Clean Truck Partnership, certification applications can be based on the proposed content listed in the CTP agreement



(effectively the EPA 2027 with technical modifications for diesel in-use). This proposed content was never codified into regulation. It is unclear how this pathway is supported under the proposed emergency regulations.

3. Certification to the emissions regulations that immediately preceded those covered by the waivers that were disapproved by the CRA (i.e, tailpipe regulations in place prior to Omnibus and HD OBD regulations from 2013). This pathway is covered by the proposed emergency regulations.
4. CARB certification based on submission of EPA certification. This pathway does not appear to be supported under the emergency regulations.

Options 1 and 3 above appear to be covered by the proposed emergency regulations. As noted, Roush was not invited to join the CTP, so we will refrain from comments on Option 2. Our primary concern is that Option 4 is not covered in the proposed regulations; we believe it is vital that CARB amends the proposed regulations to ensure Option 4 is clearly identified in the regulation so that it has the same durable legal standing as the other proposed pathways. We are aware of CARB acknowledging this pathway in recent filings with the District Court for the Eastern District of California and we are attaching a copy of that motion to ensure that it is included in the rulemaking record.

Roush recognizes that there are multiple ways to codify these pathways. We propose the following as a relatively simple and flexible way to accomplish codifying the other pathways but would support a different approach achieving the same objective.

We suggest that CARB add language to the following alternative regulations (xxxx.xx.1) included in the emergency proposal:

“In lieu of providing an application demonstrating compliance with the regulations specified herein, the Executive Officer shall accept an application demonstrating compliance with the following requirements as equivalent in stringency and shall grant an Executive Order within 30 days of receipt of such application:

- Submission of EPA certificate of conformity for the relevant model year. EPA certification standards (as specified in the relevant standard or as specified FEL’s on the certificate) must be same as or more stringent than the standards listed in this section.
 - Criteria emissions standards for all constituents must be the same as or lower than those listed in this standard over the cycles specified in this section.
 - For any criteria emissions constituents specified here but not included in the EPA certificate, the manufacturer must supply attestation of compliance. The manufacturer is not required to supply certification test data.
 - Full useful life period must be same as or longer (in years, miles, and hours if applicable) than those specified in this section.
 - Emissions warranty period and coverage must be the same as or exceed coverage specified in this section. The manufacturer may offer a California-specific emissions warranty to meet the requirements of this paragraph if applicable.
 - Compliance with EPA 40 CFR 1036.110(b) for 2027 and later model years, or EPA 40 CFR 86.010-18 for earlier model years, shall be sufficient to establish compliance with 1956.8.1 or 1971.1.1 as applicable. No unique data or application content will be required to establish compliance.



- Inclusion of EPA application documents sufficient to fully define the certified product. This includes, at a minimum, listing all configurations covered by the certificate; description of the emissions system; listing of all emissions components; description and justification of all AECD's; warranty language as provided to the purchaser; copy of all labels including California compliance language; full description of the OBD system, including checklist and summary table. CARB will not request information not included in the EPA application and shall accept the compliance determinations made by EPA. The information is provided so that CARB will understand the products being sold into California and to ensure the products sold are consistent with the certified product.
- The manufacturer is required to provide CARB with all documentation provided to EPA relating to running changes, defect investigations, recalls, etc. associated with products certified in this method, throughout the full useful life of the product."

We believe this approach would serve the purposes of the MAC and advance the objectives of the proposed emergency regulations. While we recognize CARB's legal obligation to offer a certification path based on the pre-CRA waiver content, importantly those standards are clearly less stringent than the applicable federal regulations. We believe it is important to ensure that manufacturer and CARB resources are allocated to useful efforts that actually benefit the consumers of California and the environment; developing applications and conducting reviews for obsolete standards are not activities consistent with those ends and we believe the alternatives provided in the MAC (and outlined above) would be sufficient.

We also would like to note that Roush objects to CARB's assertion that CARB may take enforcement action against manufacturers certifying to these alternative pathways should a future final court action reverse the CRA waiver revocations. This position is inconsistent with the purpose of obtaining an Executive Order; we believe that it is entirely reasonable for a manufacturer to sell products under valid EO's without being concerned that potential future actions (with no specified time limit) could create unlimited enforcement jeopardy. This is especially onerous given that the CARB regulation that would be reinstated under such an action is the unamended Omnibus rule (EPA did not consider any Omnibus amendments in their waiver), potentially rendering 24-26MY diesel engines noncompliant as well as all 2027+ engines (even engines certified to proposed CTP standards are not being certified to the waived version of Omnibus). We believe that this is not the outcome CARB intends and that it is in the best interest of all affected stakeholders to acknowledge that CARB has the authority to certify, and that CARB will honor such certifications as valid once granted.

Thank you for considering our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "John Thomson".

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

**DAIMLER TRUCK NORTH AMERICA,
LLC; INTERNATIONAL MOTORS, LLC;
PACCAR, INC.; and VOLVO GROUP
NORTH AMERICA, LLC,**

Plaintiffs,

**THE UNITED STATES OF AMERICA; and
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,**

Plaintiff-Intervenors

v.

**CALIFORNIA AIR RESOURCES BOARD,
STEVEN S. CLIFF, in his official capacity as
the Executive Officer of the California Air
Resources Board; and GAVIN NEWSOM, in
his official capacity as the Governor of
California,**

Defendants.

2:25-cv-02255-DC-AC

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION (ECF 23,
57)**

Date: October 31, 2025
Time: 1:30 PM
Courtroom: 8, 13th Floor
Judge: Hon. Dena Coggins
Trial Date: Not Set
Action Filed: August 11, 2025

TABLE OF CONTENTS

	Page
INTRODUCTION	1
BACKGROUND	2
A. Congress Intentionally Preserved California’s Vehicle Emission Control Program, While Ensuring Manufacturers Face Only Two Such Programs	2
B. California’s Recent Efforts to Reduce New Motor Vehicle Emissions	4
C. The Clean Truck Partnership Provides Parties with Increased Certainty	6
D. The Congressional Review Act Provides Fast-Track Review of Generally Applicable Federal <i>Rules</i>	7
E. The Federal Government Mounts an Unprecedented Attack on California’s Program	9
F. California Responds to the Extraordinary Uncertainty the Federal Government Introduced into the State’s Longstanding Program	10
G. Procedural History	11
STANDARD OF REVIEW	12
ARGUMENT	12
I. The CTP Should Not Be Preliminarily Enjoined	12
A. The CTP Is Not Irreparably Injuring Plaintiffs, and the Equities Do Not Remotely Favor Them	12
B. Plaintiffs’ Challenges to the CTP Fail	14
1. The CTP Is Not Preempted	14
2. The CTP Does Not Violate the First Amendment	15
3. The State Law Challenges to the CTP Are Barred and Fail	16
II. The ACT, Omnibus, and Advanced Clean Cars II Regulations Should Not Be Preliminarily Enjoined	18
A. Plaintiffs Have Not Established Injuries from These State Laws that a Preliminary Injunction Can Redress or Equities that Favor Their Request	18
B. Plaintiffs’ Challenge to the Regulations Is Not Likely to Succeed Because the Allegedly Preempting Resolutions Are Unconstitutional	20
1. The CRA Does Not Bar Defendants’ Challenges to The Resolutions	20
2. The Resolutions Violated the Separation of Powers	23
a. Congress Impermissibly Overrode Three Adjudications by the Executive Branch of a Single Party’s Rights Under Extant Law	23
b. Congress Unlawfully Allowed the Executive Branch To Direct Legislative Procedure	24
3. The Resolutions Violate the Tenth Amendment and Principles of Structural Federalism	28
III. The 2036 Sales Requirement Should Not Be Preliminarily Enjoined	32

TABLE OF CONTENTS
(continued)

		Page
3	IV. The Phase 2 Regulations Should Not Be Preliminarily Enjoined.....	32
4	V. The May MAC Should Not Be Preliminarily Enjoined.....	33
5	VI. Executive Order N-27-25 Should Not Be Preliminarily Enjoined.....	33
6	A. CTP Plaintiffs’ Challenges to the EO Are Unripe, Their Alleged Injuries from It Are Speculative, and the Equities Favor Defendants.....	33
7	B. If They Were Somehow Ripe, CTP Plaintiffs’ Challenges to the EO Would Fail on Their Merits	34
8	1. The Market Participant Exception Is Fatal to the Preemption Challenge.....	34
9	2. The First Amendment Challenge Is Without Merit	35
10	CONCLUSION	35

TABLE OF AUTHORITIES

	<u>Page</u>
CASES	
<i>Actmedia, Inc. v. Stroh</i> 830 F.2d 957 (9th Cir. 1986).....	16
<i>Airlines for Am. v. City & Cnty. of San Francisco</i> 78 F.4th 1146 (9th Cir. 2023).....	14
<i>Am. Airlines, Inc. v. Wolens</i> 513 U.S. 219 (1995) (9th Cir. 1983)	14
<i>Am. Motorcyclist Ass’n v. Watt</i> 714 F.2d 962 (9th Cir. 1983).....	19
<i>Am. Trucking Ass’ns, Inc. v. City of Los Angeles</i> 569 U.S. 641 (2013)	14
<i>Arc of Cal. v. Douglas</i> 757 F.3d 975 (9th Cir. 2014).....	32, 33
<i>Ass’n of Int’l Auto. Mfrs., Inc. v. Comm’r, Mass. Dep’t of Env’tl. Prot.</i> 208 F.3d 1 (1st Cir. 2000)	14
<i>Bank Markazi v. Peterson</i> 578 U.S. 212 (2016)	24
<i>Bennett v. Isagenix Int’l LLC</i> 118 F.4th 1120 (9th Cir. 2024).....	13
<i>Bond v. United States</i> 564 U.S. 211 (2011)	28
<i>Bowsher v. Merck & Co., Inc.</i> 460 U.S. 824 (1983)	8, 23
<i>Bowsher v. Synar</i> 478 U.S. 714 (1986)	8, 23
<i>Brach v. Newsom</i> 38 F.4th 6 (9th Cir. 2022)	33
<i>Cal. Pharm. Ass’n v. Maxwell-Jolly</i> 563 F.3d 852–53 (9th Cir. 2009).....	18
<i>California v. Azar</i> 911 F.3d 558 (9th Cir. 2018).....	12

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
<i>California v. United States</i> No. 3:25-cv-04966 (N.D. Cal.)	19
<i>Caribbean Marine Servs. Co. v. Baldrige</i> 844 F.2d 668 (9th Cir. 1988).....	19, 34
<i>City of Arlington v. FCC</i> 569 U.S. 290 (2013)	24
<i>City of San Joaquin v. State Bd. of Equalization</i> 9 Cal. App. 3d 365 (Ct. App. 1970)	17
<i>Clark v. Martinez</i> 543 U.S. 371 (2005)	23
<i>Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.</i> 527 U.S. 666 (1999)	13
<i>Ctr. for Biological Diversity v. Bernhardt</i> 946 F.3d 553 (9th Cir. 2019).....	20
<i>Davies v. Grossmont Union High Sch. Dist.</i> 930 F.2d 1390 (9th Cir. 1991).....	15, 16
<i>District of Columbia v. Heller</i> 554 U.S. 570 (2008)	22
<i>Doe v. Regents of the Univ. of Cal.</i> 891 F.3d 1147 (9th Cir. 2018).....	17
<i>Ellenburg v. Brockway, Inc.</i> 763 F.2d 1091 (9th Cir. 1985).....	14
<i>Engine Mfrs. Ass’n v. EPA</i> 88 F.3d 1075 (D.C. Cir. 1996)	3, 13
<i>Engine Mfrs. Ass’n v. S. Coast Air Quality Mgmt. Dist.</i> 498 F.3d 1031 (9th Cir. 2007).....	34
<i>Epic Sys. Corp. v. Lewis</i> 584 U.S. 497 (2018)	22
<i>Ex Parte Young</i> 209 U.S. 123 (1908)	15

TABLE OF AUTHORITIES
(continued)

		<u>Page</u>
1		
2		
3	<i>FCC v. Consumers' Rsch.</i>	
4	145 S. Ct. 2482 (2025)	27
5	<i>Fed. Mar. Comm'n v. S.C. State Ports Auth.</i>	
6	535 U.S. 743 (2002)	28, 32
7	<i>Fikre v. Fed. Bureau of Investigation</i>	
8	904 F.3d 1033 (9th Cir. 2018)	33
9	<i>Fletcher v. Peck</i>	
10	10 U.S. 87 (1810)	24
11	<i>Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.</i>	
12	561 U.S. 477 (2010)	27
13	<i>Garcia v. Google, Inc.</i>	
14	786 F.3d 733 (9th Cir. 2015)	13
15	<i>Garcia v. San Antonio Metro. Transit Auth.</i>	
16	469 U.S. 528 (1985)	28, 31
17	<i>Gilbreath v. Cutter Biological, Inc.</i>	
18	931 F.2d 1320 (9th Cir. 1991)	16
19	<i>Gundy v. United States</i>	
20	588 U.S. 128 (2019)	27
21	<i>Horne v. Dep't of Agric.</i>	
22	576 U.S. 350 (2015)	23
23	<i>Hughes v. Alexandria Scrap Corp.</i>	
24	426 U.S. 794 (1976)	35
25	<i>INS v. Chadha</i>	
26	462 U.S. 919 (1983)	24, 28
27	<i>Jamgotchian v. Ferraro</i>	
28	No. 8:22-cv-01893, 2023 WL 5420311 (C.D. Cal. July 19, 2023)	16
	<i>King v. Burwell</i>	
	576 U.S. 473 (2015)	25
	<i>Koontz v. St. Johns River Water Mgmt. Dist.</i>	
	570 U.S. 595 (2013)	13

TABLE OF AUTHORITIES**(continued)****Page**

<i>Legal Services Corporation v. Velazquez</i> 531 U.S. 533 (2001).....	15
<i>Leonard v. Clark</i> 12 F.3d 885 (9th Cir. 1993).....	15, 16
<i>Los Angeles Cnty. Bar Ass’n v. Eu</i> 979 F.2d 697 (9th Cir. 1992).....	15
<i>Mapp v. Ohio</i> 367 U.S. 643 (1961).....	27
<i>Metro. Washington Airports Auth. v. Citizens for Abatement of Aircraft Noise</i> 501 U.S. 252 (1991).....	23
<i>Michel v. Anderson</i> 14 F.3d 623 (D.C. Cir. 1994).....	23
<i>Missionary Guadalupanas of Holy Spirit Inc. v. Rouillard</i> 38 Cal. App. 5th 421 (2019).....	33
<i>Motor & Equip. Mfrs. Ass’n, Inc. v. EPA (MEMA I)</i> 627 F.2d 1095 (D.C. Cir. 1979).....	2, 3, 4
<i>Motor & Equip. Mfrs. Ass’n v. Nichols (MEMA II)</i> 142 F.3d 449 (D.C. Cir. 1998).....	4, 6
<i>Nevada v. Skinner</i> 884 F.2d 445 (9th Cir. 1989).....	31
<i>NLRB v. Noel Canning</i> 573 U.S. 513 (2014).....	25, 27, 31
<i>O’Donoghue v. United States</i> 289 U.S. 516 (1933).....	27
<i>Pan. Refin. Co. v. Ryan</i> 293 U.S. 388 (1935).....	27
<i>Pennhurst State Sch. & Hosp. v. Halderman</i> 465 U.S. 89 (1984).....	16
<i>Powell v. SEC</i> No. 24-1899, 2025 WL 2233792 (9th Cir. Aug. 6, 2025).....	15

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
<i>Pub. Citizen v. U.S. Dep’t of Justice</i> 491 U.S. 440 (1989)	27
<i>Pub. Utilities Comm’n of State of Cal. v. FERC</i> 100 F.3d 1451 (9th Cir. 1996).....	33
<i>Ray v. County of Los Angeles</i> 935 F.3d 703 (9th Cir. 2019).....	19
<i>Retail Dig. Network, LLC v. Prieto</i> 861 F.3d 839 (9th Cir. 2017).....	16
<i>San Diego Cnty. Water Auth. v. Metro. Water Dist. of S. Cal.</i> 12 Cal. App. 5th 1124 (2017).....	17
<i>South Carolina v. Baker</i> 485 U.S. 505 (1988).....	29, 31
<i>South Carolina v. Katzenbach</i> 383 U.S. 301 (1966).....	28
<i>Twitter, Inc. v. Paxton</i> 56 F.4th 1170 (9th Cir. 2022).....	15, 34
<i>United States ex rel. Kelly v. Boeing Co.</i> 9 F.3d 743 (9th Cir. 1993).....	20
<i>United States v. Munoz-Flores</i> 495 U.S. 385 (1990)	28
<i>Vasquez, v. Dep’t of Pesticide Regul.</i> 68 Cal. App. 5th 672 (Ct. App. 2021).....	17
<i>Watkins v. Westinghouse Hanford Co.</i> 12 F.3d 1517 (9 th Cir.1993).....	14
<i>West Virginia v. EPA</i> 597 U.S. 697 (2022)	31
<i>WildEarth Guardians v. Mont. Snowmobile Ass’n</i> 790 F.3d 920 (9th Cir. 2015).....	34

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
CONSTITUTIONAL PROVISIONS	
U.S. Const. art. I, § 5, cl. 2	25
U.S. Const. art. II, § 1, cl. 1	24
STATUTES	
1 U.S.C. § 102	22
1 U.S.C. § 103	22
5 U.S.C. § 551	9, 21
5 U.S.C. § 553	29
5 U.S.C. § 801	8, 21, 22, 23 25, 29
5 U.S.C. § 802	8, 22, 23 25
5 U.S.C. § 804	8, 22, 27
5 U.S.C. § 805	20, 22, 23
5 U.S.C. § 806	22
42 U.S.C. § 7507	3
42 U.S.C. § 7543(b)(1)	3, 21
42 U.S.C. § 7607	13, 21
42 U.S.C. § 5911	22
Pub. L. No. 89-272, § 202, 79 Stat. 992 (1965)	3
Pub. L. No. 90-148, § 208(a), (b), 81 Stat. 485, 501 (1967)	3
Pub. L. 104-121, 110 Stat. 847 (Mar. 29, 1996)	7
Cal. Gov. Code § 8550 et seq.	34
Cal. Health & Saf. Code, § 43000	2
Cal. Health & Saf. Code § 43105	3

TABLE OF AUTHORITIES
(continued)

Page

REGULATIONS

Cal. Code Regs., tit. 13, § 1900(b).....	5
Cal. Code Regs., tit. 13, § 1956.8	5, 6
Cal. Code Regs., tit. 13, § 1960.1(g)(2) (1991)	4
Cal. Code Regs., tit. 13, § 1963	4
Cal. Code Regs., tit. 13, § 1963.1	5
Cal. Code Regs., tit. 13, § 1971.1	6
Cal. Code Regs., tit. 13, § 2016	5

CONGRESSIONAL RECORD

119 Cong. Rec. S3017 (daily ed. May 21, 2025).....	29, 30, 31
119 Cong. Rec. S3099 (daily ed. May 22, 2025).....	10, 26

FEDERAL REGISTER

59 Fed. Reg. 36,969 (July 20, 1994).....	3
69 Fed. Reg. 59,920 (Oct. 6, 2004).....	8
70 Fed. Reg. 50,322 (Aug. 26, 2005).....	5
81 Fed. Reg. 78,149 (Nov. 7, 2016).....	6
81 Fed. Reg. 95,982 (Dec. 29, 2016)	5
84 Fed. Reg. 51,310 (Sept. 27, 2019).....	8, 9
87 Fed. Reg. 14,332, (Mar. 14, 2022)	4
88 Fed. Reg. 20,688 (Apr. 6, 2023)	5, 9
90 Fed. Reg. 644 (Jan. 6, 2025)	5

TABLE OF AUTHORITIES
(continued)

Page

OTHER AUTHORITIES

A. Scalia & B. Garner, <i>Reading Law</i> 127 (2012)	22
Congressional Research Service, <i>The Congressional Review Act: Determining Which “Rules” Must Be Submitted to Congress</i> (updated Oct. 22, 2024).....	8
Jonathan S. Gould, <i>Law Within Congress</i> , 129 Yale L. J. 1946 (2020)	24, 30
<i>Regulatory Reform Act: Hearings on H.R. 2327 Before the Subcomm. on Admin. Law and Gov’t Relations of the H. Comm. on the Judiciary</i> , 98 th Cong. (1983).....	28
The White House,, <i>President Trump Participates in a Bill Signing Ceremony</i> , YouTube (June 12, 2025) https://www.youtube.com/watch?v=QjakZRoGnxk	31
Waxman,, <i>Cars, Fuels, and Clean Air: A Review of Title II of the Clean Air Act Amendments of 1990</i> , 21 Env’t L. 1947 (1991)	4x

INTRODUCTION

This Court should deny the motion of Plaintiffs—four vehicle/engine manufacturers and the United States—for a preliminary injunction against nine separate actions of Defendants. Plaintiffs primarily attack the Clean Truck Partnership (CTP)—an agreement these manufacturers (CTP Plaintiffs) voluntarily signed with the California Air Resources Board (CARB) two years ago and now disavow. CTP Plaintiffs effectively ask this Court to immunize them from any consequence of that disavowal, but that request is baseless on its merits, and also inequitable. Moreover, that request is the proper subject of contract claims brought in state court, not the federal claims brought here. The United States’ request to enjoin the CTP fares no better. It simply joins CTP Plaintiffs’ unavailing claims and fails to explain how the federal government would be harmed if manufacturers honored their freely made commitment to sell clean vehicles in California. The United States feigns injury to what it calls uniform national emissions standards, but that “uniformity” is a myth. California began regulating vehicle emissions even before the federal government. And, by congressional design, this Nation has had *two* sets of new motor vehicle emission standards—EPA’s and California’s—since the federal government later entered the field.

Plaintiffs also attack a subset of California’s vehicle emission standards, alleging they are preempted by recently enacted congressional resolutions. Plaintiffs are unlikely to succeed on the merits because those resolutions are invalid, as California is demonstrating in a separate action. But, most significant for immediate purposes, CARB is not currently requiring manufacturers to meet those standards, at least while its challenge to those resolutions is pending. Thus, even if the congressional resolutions were valid, there would be no need for an injunction *now*, particularly since any challenge to possible future enforcement would be both speculative and unripe. Nor could any preliminary injunction provide Plaintiffs with the relief they seek. First, CARB is currently permitting manufacturers to certify to earlier-adopted standards with separate, extant preemption waivers. This Court cannot enjoin certification to standards which are unequivocally not preempted (or even challenged here). This Court thus cannot provide Plaintiffs with the uniform, national standards they desire. Second, only a final, non-appealable judgment (not a

preliminary injunction) can provide the other result Plaintiffs say they seek: *certainty* that no manufacturer will ever be subject to the standards they challenge. Should the congressional resolutions be declared invalid in a future final judgment, that will mean they were always invalid and the relevant California standards were always enforceable. Any preliminary relief awarded now will neither change that nor protect the manufacturers from retroactive enforcement.

Plaintiffs also seek to enjoin enforcement of a different requirement (part of the Advanced Clean Fleets regulation) that will first apply *nine years from now* and that CARB has stipulated (in a separate case) it will not enforce unless and until it receives a preemption waiver from EPA. Plaintiffs identify no reason this Court should grant preliminary relief in these circumstances.

The rest of CTP Plaintiffs' motion—not joined by the United States—also fails to carry their burden for extraordinary relief. They challenge California's "Phase 2" standards for greenhouse gas emissions, but those are not being enforced and will not be enforced absent a preemption waiver. They also challenge a May advisory notice. But that has been superseded; challenges to it are moot (and were never likely to succeed); and it is no longer injuring anyone (if it ever did). The Governor's Executive Order N-27-25 (EO) does not regulate Plaintiffs at all; it simply directs state agencies to take various steps and consider certain factors when doing so. Because none of those steps have been taken, all assertions of injuries from the EO are speculative, and all claims against it are unripe. Each of the manufacturers' scattershot challenges to the EO also fails on its merits, as explained below.

BACKGROUND

A. Congress Intentionally Preserved California's Vehicle Emission Control Program, While Ensuring Manufacturers Face Only Two Such Programs

California has long faced severe air quality challenges, including ozone (or smog) pollution, which increases incidences of respiratory ailments; and particulate matter pollution, which can lead to heart attacks and premature deaths. Exhs. A1 at 1-2; A2 at 15-16.¹ Motor vehicles are substantial sources of this pollution. Cal. Health & Saf. Code § 43000(a). Accordingly, California has been setting emission standards for new motor vehicles since the 1950s, *Motor &*

¹ Exhibits designated by A, B, and C are attached, respectively, to the Meckenstock, Lang, and Heroy-Rogalski declarations filed simultaneously with this brief.

1 *Equip. Mfrs. Ass’n, Inc. v. EPA (MEMA I)*, 627 F.2d 1095, 1109 (D.C. Cir. 1979); and CARB
 2 must certify that vehicles meet those standards before they can be sold in the State, Cal. Health &
 3 Saf. Code § 43105.

4 Congress began requiring federal vehicle emission standards in 1965 but did not initially
 5 preempt the States. Pub. L. No. 89-272, § 202, 79 Stat. 992 (1965). Two years later,
 6 manufacturers “raised the spectre of an anarchic patchwork of federal and state regulatory
 7 programs.” *MEMA I*, 627 F.2d at 1109. Acting on this concern, Congress generally preempted
 8 States from setting emission standards for new motor vehicles. But, after “intense debate,” *id.*,
 9 Congress also required EPA to waive that preemption for California, upon request, absent limited
 10 conditions. Pub. L. No. 90-148, § 208(a), (b), 81 Stat. 485, 501 (1967). Congress did so in
 11 recognition of “the benefits for the Nation to be derived from permitting California to continue its
 12 experiments in the field of emissions control ... and the benefits for the people of California to be
 13 derived from letting that State improve on ‘its already excellent program.’” *MEMA I*, 627 F.2d at
 14 1109-10 (quoting S. Rep. No. 90-403, at 33 (1967)). In 1977, Congress further expanded
 15 California’s “discretion in selecting the best means to protect the health of its citizens.” *MEMA I*,
 16 627 F.2d at 1110 (quoting H.R. Rep. No. 95-294, at 301-02 (1977)). Congress also provided
 17 other States the option to adopt standards identical to California’s as their own, subject to certain
 18 conditions. 42 U.S.C. § 7507. Thus, by congressional design, manufacturers must meet two, but
 19 only two, sets of emission standards; and new motor vehicles produced since 1967 have been
 20 “either ‘federal cars’ designed to meet the EPA’s standards or ‘California cars’ designed to meet
 21 California’s standards.” *Engine Mfrs. Ass’n v. EPA*, 88 F.3d 1075, 1080 (D.C. Cir. 1996).

22 The waiver provision requires California to determine that its standards “will be, in the
 23 aggregate, at least as protective of public health and welfare as” EPA’s. 42 U.S.C. § 7543(b)(1).
 24 CARB makes that finding after it adopts new or amended standards and then submits its waiver
 25 request to EPA. 59 Fed. Reg. 36,969, 36,982 (July 20, 1994). Following “notice and opportunity
 26 for public hearing,” EPA “shall ... waive” preemption unless the record evidence supports one of
 27 the three limited findings that permit denial. 42 U.S.C. § 7543(b)(1). As the word “shall”
 28 underscores, “Congress intended the State to continue and expand its pioneering efforts at

1 adopting and enforcing motor vehicle emission standards different from and in large measure
 2 more advanced than the corresponding federal program; in short, to act as a kind of laboratory for
 3 innovation.” *MEMA I*, 627 F.2d at 1111.

4 As intended, the federal government has “drawn heavily on the California” laboratory “to
 5 fashion and to improve the national efforts at emissions control.” *Id.* at 1110. For example,
 6 “California first required automobile manufacturers to install” emission-system monitoring “in
 7 new cars sold in the state in 1988—two years before Congress mandated [such systems] in cars
 8 sold nationwide.” *Motor & Equip. Mfrs. Ass’n v. Nichols (MEMA II)*, 142 F.3d 449, 454 (D.C.
 9 Cir. 1998). Similarly, the federal emission standards for passenger cars that were “phased in
 10 beginning in model year 1994 [were] based on standards adopted in 1989 by the state of
 11 California.” Waxman, *Cars, Fuels, and Clean Air: A Review of Title II of the Clean Air Act*
 12 *Amendments of 1990*, 21 Env’t L. 1947, 1956 (1991).

13 **B. California’s Recent Efforts to Reduce New Motor Vehicle Emissions**

14 Although the State has made tremendous progress reducing harmful air pollution, including
 15 emissions from motor vehicles, more progress is needed. Exhs. A1 at 1; A3 at 15, 18. Indeed,
 16 several, heavily populated areas in California experience the worst air quality—in terms of ozone
 17 and particulate matter—in the country. Exhs. A4 at 1; A5 at 1. In one of these areas, the South
 18 Coast air basin around Los Angeles, meeting federally mandated ozone standards will require
 19 reducing certain emissions *by more than eighty percent* from 2018 levels (already substantially
 20 reduced from earlier decades). Exh. A1 at 14, 24. To meet those standards, and the State’s other
 21 air pollution goals, CARB regularly amends and adds to its regulatory program, as technologies
 22 advance and new information emerges about air pollution threats. Lang Decl., ¶¶ 4-14. For
 23 example, in 1990, CARB adopted standards requiring gradually increasing sales of zero-emission
 24 passenger cars and light trucks in California.² Cal. Code Regs. tit. 13, § 1960.1(g)(2) (1991).
 25 CARB has since amended that aspect of its program multiple times, as these technologies have
 26 matured. *See* 87 Fed. Reg. 14,332, 14,351 & n.168 (Mar. 14, 2022).

27 _____
 28 ² As currently defined, a zero-emission vehicle is one that produces zero exhaust
 emissions of any pollutant—e.g., a battery-electric vehicle. Cal. Code Regs., tit. 13, § 1963(c).

CARB built on that success when it adopted the Advanced Clean Trucks (ACT) regulation in 2021, which similarly requires increasing sales of zero-emission vehicles—but in the medium- and heavy-duty sector—beginning with model year 2024.³ Cal. Code Regs., tit. 13, § 1963.1(b). EPA waived preemption for ACT in 2023. 88 Fed. Reg. 20,688 (Apr. 6, 2023). As part of a different regulation (Advanced Clean Fleets), CARB adopted a requirement that all medium- and heavy-duty vehicles sold in California in model year 2036 be zero emission. Cal. Code Regs., tit. 13, § 2016.⁴ EPA has not yet waived preemption for this requirement, and CARB has stipulated—in a court order in another case—that it will not enforce this requirement until it has such a waiver. Lang Decl., ¶ 22, Exh. A6.

At the same time, CARB has required new vehicles with combustion engines sold in the State to reduce emission levels. For example, in 2001, CARB tightened its standards for emissions of oxide of nitrogen (NOx), a smog precursor, from heavy-duty diesel-powered engines beginning with model year 2007. Lang Decl., ¶ 6. EPA waived preemption in 2005. 70 Fed. Reg. 50,322 (Aug. 26, 2005); *see also* Lang Decl., ¶¶ 7-14 (describing other regulations). CARB tightened these standards again in the Omnibus regulation. Code Regs., tit. 13, § 1956.8(a)(2)(C), (a)(2)(D). EPA once again waived preemption. 90 Fed. Reg. 644 (Jan. 6, 2025).

CARB also regulates vehicular greenhouse gas emissions. It began doing so for medium- and heavy-duty vehicles and engines with the 2014 model year, pursuant to a waiver from EPA. 81 Fed. Reg. 95,982 (Dec. 29, 2016). In 2018, CARB adopted more stringent (“Phase 2”) greenhouse gas emission standards for these vehicles and engines that aligned with EPA’s. Cal. Code Reg., tit. 13, § 1956.8(a)(7)(A). CARB has not yet requested a waiver for these standards and is not presently enforcing them. Lang Decl., ¶ 9.

CARB’s standards tend to increase in stringency over a set of model years, with the final year’s standard applicable to all future years to prevent backsliding. Lang Decl., ¶ 15. Thus, for example, the Omnibus regulation established a NOx emission standard that increased in

³ Vehicles are classified as medium- or heavy-duty based primarily on their weight. Cal. Code Regs., tit. 13, § 1900(b)(6), (b)(13).

⁴ The Advanced Clean Fleets regulation contains several other components that are not at issue here. Lang Decl., ¶¶ 18-19.

1 stringency between model year 2024 and 2027, with the 2027 standard then applicable to all
2 “subsequent” model years. Cal. Code Regs., tit. 13, § 1956.8(a)(2)(A), (a)(2)(D).

3 Along with emission standards, CARB’s program has long required that emission control
4 technologies continue to perform at requisite levels after a vehicle is sold. Thus, CARB requires
5 on-board diagnostic (OBD) devices that “monitor, control, and record the [engine’s] emissions,”
6 “store information about emissions system faults for later retrieval,” and “warn drivers of
7 problems through [features such as] ‘check engine’ lights.” *MEMA II*, 142 F.3d at 453.
8 California has required OBDs in medium- and heavy-duty vehicles sold in the State since model
9 years 1988 and 2010, respectively. Lang Decl., ¶ 16. CARB most recently amended the OBD
10 requirements for heavy-duty vehicles (Cal. Code Regs., tit. 13, § 1971.1) and for medium-duty
11 vehicles (*id.* § 1968.2) in 2023. EPA waived preemption for these requirements, as amended.
12 Exhs. A7 at 3 n.5; A8 at 3 n.4.⁵ A prior EPA waiver covered OBD amendments through 2013.
13 81 Fed. Reg. 78,149 (Nov. 7, 2016).

14 **C. The Clean Truck Partnership Provides Parties with Increased Certainty**

15 In 2023, several manufacturers of medium- or heavy-duty engines and vehicles (including
16 CTP Plaintiffs) and their trade association (the Engine Manufacturers Association (EMA)) signed
17 the CTP with CARB. Exh. C1. All parties sought to reduce or resolve uncertainties they faced.
18 For their part, the manufacturers wanted assurances that CARB would provide four years of “lead
19 time” before future heavy-duty vehicle standards would apply. Heroy-Rogalski Decl. (“CTP
20 Decl.”), ¶¶ 8-12. The manufacturers also wanted certainty that CARB would consider certain
21 amendments to existing CARB regulations, including greater alignment between state and federal
22 NOx standards beginning with model year 2027. *Id.* For its part, CARB wanted greater certainty
23 that vehicle emissions in California would be reduced, as required to protect public health and
24 meet federal air quality standards. *Id.* ¶ 15. CARB was well aware of the risk that the
25 manufacturers might challenge these emission standards or any waiver granted for them. *Id.*
26 ¶¶ 13-14. CARB was also aware that other parties might bring suits and that manufacturers might

27 ⁵ California thus *has* “obtained a waiver for its [OBD] standards at section 1971.1 since
28 2016.” *Contra* ECF 23 (Mot.) 7:5. And these OBD requirements should not be enjoined for the
same reasons as the Advanced Clean Cars II and Omnibus regulations. *Infra* Argument II.

1 support those efforts—whether through amici briefs, declarations, or public statements opposing
 2 the regulations. *Id.* ¶ 14. CARB sought to reduce these risks and increase the certainty that
 3 cleaner vehicles would be sold in California. *Id.* ¶ 15.

4 The parties’ negotiations culminated in the CTP, which was fully executed by July 5, 2023.
 5 Exh. C1. CARB agreed to provide manufacturers four years of lead time in future heavy-duty
 6 vehicle regulations. *Id.* at 1; CTP Decl., ¶¶ 23, 30. CARB also agreed to commence
 7 consideration of certain amendments to its existing regulations by specified dates. Exh. C1 at
 8 App. B. EMA and the manufacturers promised not to bring legal challenges to the Omnibus,
 9 ACT, or Advanced Clean Fleets regulations, and to refrain from supporting challenges brought by
 10 others. *Id.* at App. D, ¶ A. The manufacturers also agreed to sell clean vehicles in California
 11 consistent with the Omnibus and ACT regulations, and with the 2036 requirement in Advanced
 12 Clean Fleets, regardless of CARB’s authority to enforce those regulations. *Id.* at App. D, ¶ B.

13 After signing the CTP, EMA issued a press release stating that “[t]his agreement reaffirms
 14 EMA’s and its members’ longstanding commitment to reducing emissions and to a zero-
 15 emissions commercial vehicle future.” Exh. C3 at 1. EMA also asserted the CTP “demonstrates
 16 how EMA and CARB can work together to achieved shared clean air goals” and highlighted the
 17 CTP’s benefits for EMA’s members, including “lead time and stability” and “regulatory
 18 changes.” *Id.* Several CTP Plaintiffs also directly lauded the agreement, touting the “regulatory
 19 certainty” it would provide and the “cooperative effort[]” it reflected. *Id.* at 2, 3.

20 **D. The Congressional Review Act Provides Fast-Track Review of Generally** 21 **Applicable Federal Rules**

22 In 1996, the push for federal regulatory reform evolved into what became a broad,
 23 bipartisan bill—the Contract with America Advancement Act of 1996. Pub. L. 104-121, 110 Stat.
 24 847 (Mar. 29, 1996). That Act contained an increase to the Nation’s debt limit and an increase to
 25 the amount of income Social Security recipients may earn without losing benefits. 110 Stat. at
 26 847, 875. It also included a component known as the Congressional Review Act (CRA). The
 27 complete bill passed the House by a bipartisan vote and then passed the Senate, without
 28 amendment, by unanimous consent. 142 Cong. Rec. S3114 (Mar. 28, 1996).

1 The CRA applies only to federal “rule[s],” as that term is defined in the statute. 5 U.S.C.
 2 § 804(3). “Before a rule can take effect,” the promulgating agency must submit a report to
 3 Congress and the Government Accountability Office (GAO). *Id.* § 801(a)(1)(A).⁶ If an agency
 4 does not submit an action, any member of Congress may ask the GAO to opine on whether the
 5 action is a “rule” subject to the CRA. Cong. Rsch. Serv., *The Congressional Review Act:
 6 Determining Which “Rules” Must Be Submitted to Congress* 23 (updated Oct. 22, 2024) (“CRS
 7 Report”). If the GAO concludes the action is a rule, Congress treats it as such for CRA purposes.
 8 *Id.* Congress can disapprove of rules subject to the CRA through resolutions adopted using
 9 expedited and extraordinary procedures. Motions, amendments, and even debate over such
 10 resolutions are severely limited. 5 U.S.C. §§ 802(d)(1), 802(d)(2). And the Senate’s 60-vote
 11 cloture rule, commonly known as the filibuster, does not apply.

12 The CRA operated in this way from 1996 until earlier this year. Agencies frequently
 13 submitted rules prior to their effective dates. CRS Report 21. When they did not, members of
 14 Congress sought and relied upon GAO opinions as to whether an agency action was a “rule.” *Id.*
 15 at 26, 31-35. And, until the resolutions at issue here, neither House of Congress had used
 16 extraordinary procedures to disapprove of agency action in the face of controversy about whether
 17 it was a “rule,” unless the GAO independently concluded it was. *See id.* at 26.

18 Through Administrations of both parties, EPA has consistently maintained that its Clean
 19 Air Act preemption waiver decisions are not “rules” under the Administrative Procedure Act
 20 (APA) or CRA because they merely adjudicate whether EPA “shall” grant California’s request
 21 for a waiver of preemption under the Clean Air Act’s statutory criteria. EPA has thus maintained
 22 that waivers are not subject to a host of requirements that apply only to rules—including the
 23 CRA. *E.g.*, 69 Fed. Reg. 59,920, 59,922 (Oct. 6, 2004) (“The CRA does not apply ... because
 24 this action is not a rule.”); 84 Fed. Reg. 51,310, 51,352 (Sept. 27, 2019) (“EPA’s action here ... is
 25 not a rule ..., consistent with its previous actions on waiver requests.”). The GAO agreed,
 26 concluding that a preemption waiver is an “order,” rather than a “rule,” because it is “a ‘final

27 _____
 28 ⁶ “The GAO is an independent agency within the legislative branch that exists in large part
 to serve the needs of Congress.” *Bowsher v. Merck & Co., Inc.*, 460 U.S. 824, 844 (1983).

disposition’ granting California a ‘form of permission’ which meets the definition of order under APA.” Exh. A9 at 5 (quoting 5 U.S.C. § 551(6), (8), (9)). Following that GAO conclusion, members of the House and Senate introduced bills—which never got out of committee—to repeal the Clean Air Act’s waiver provision, explaining they believed the bills were necessary because these waivers are not “*rule[s]*” as that term is defined in the CRA” and “cannot be reviewed under” its expedited procedures. Exh. A10 n.3; *see also* Exh. A11 at 1.

E. The Federal Government Mounts an Unprecedented Attack on California’s Program

When it finalized the waivers for the ACT, Omnibus, and Advanced Clean Cars II amendments to California’s program, EPA reiterated its longstanding position that preemption waivers are not rules. *E.g.*, 88 Fed. Reg. 20,688, 20,725-26 (Apr. 6, 2023). Accordingly, EPA did not submit these waivers to Congress in April 2023 or December 2024 when they were signed. Exh. A15 at 5. No member of Congress sought a GAO determination. *See id.*

Instead, after the change in Administrations, President Trump and EPA Administrator Zeldin declared in a press release, without process or explanation, that these three waivers were actually rules subject to the CRA. Exh. A12 at 1. EPA later submitted the notices of these waiver decisions to Congress and the GAO. Exhs. A13 at 1, 3-4; A14 at 1, 2; A16 at 1, 3. EPA provided no administrative process or explanation for its change in position. *See* Exh. A15 at 5-6.

The previous Trump Administration had also taken issue with parts of a preemption waiver granted to California and had purported to withdraw those parts through an administrative proceeding. 84 Fed. Reg. 51,310 (Sept. 27, 2019). Although a day-one Executive Order suggested this Administration would take that path again, Exh. A17 § 3(b), advocates urged the use of the CRA because “the administrative process” could “take years ... and ordinary legislation ... would have to overcome the 60-vote filibuster in the Senate.” Exh. A18.

Waiver opponents in Congress cheered EPA’s purported reclassification and submission, announcing “[Zeldin] submitted it to us [so] we can take it down.” Exh. A26 at 2. But, in response to a request from other members, the GAO once again concluded that the CRA is inapplicable to preemption waivers because they are not “rules” as the CRA defines that term.

Exh. A15 at 7-8. The Senate Parliamentarian—the nonpartisan arbiter of Senate rules—agreed. Exh. A27. Congressional leadership then jumped through unusual—even extraordinary—procedural hoops to attempt to apply the CRA to these waivers, including adopting the remarkable position that: “When an Agency says [something] is a rule,” it is. 119 Cong. Rec. S3017, S3140 (May 21, 2025) (Sen. Lankford). In other words, EPA’s post-hoc and unexplained about-face from its consistent position that waivers are not rules was sufficient to determine that expedited procedures could apply.

On May 22, 2025, the Senate passed the Resolutions (which had previously passed the House) with votes of 51-45 (H.J. Res. 87, ACT), 51-44 (H.J. Res. 88, Advanced Clean Cars II), and 49-46 (H.J. Res. 89, Omnibus). On June 12, 2025, the President signed the Resolutions.

F. California Responds to the Extraordinary Uncertainty the Federal Government Introduced into the State’s Longstanding Program

On May 23, 2025, after Congress passed the Resolutions but before the President signed them, CARB issued Manufacturers Advisory Correspondence ECCD-2025-03 to provide initial and “necessary guidance” in light of Congress’s actions. Exh. B1 (May MAC) at 1. CARB noted that model year 2026 certifications were already “well underway” and indicated it would “continue to accept and process certification applications” for that model year in order “to provide certainty to affected parties and consumers, provide consistent treatment of regulated entities, maintain stability in the market, [and] enable lawful vehicle sales in California.” *Id.* at 2. This would also allow manufacturers to meet their commitments under the CTP. *Id.* CARB indicated that additional information would be forthcoming. *Id.*

After the President signed the Resolutions, on June 12, 2025, Governor Newsom issued Executive Order N-27-25 (EO), reaffirming the State’s commitment to reducing air pollution. ECF 23-17 (EO). The EO directs CARB to begin developing new regulations, *id.* at ¶ 2, and to “identify, maintain, and update publicly available lists of” manufacturers and fleets that choose to follow the regulations targeted by the Resolutions, *id.* at 3. The EO further directs CARB and other state agencies to align state vehicle procurement and state-funded incentives with those

1 lists, and directs CARB to “explore opportunities for special considerations and flexibilities for
2 listed manufacturers and fleets” as part of its consideration of future regulations. *Id.* at ¶ 3.

3 On August 25, 2025, CARB provided the “further clarity” about its certification processes
4 that it had promised, issuing a new, superseding Manufacturers Advisory Correspondence
5 (August MAC). Exh. B2 at 2. CARB recognized that the intervening enactment of the
6 Resolutions had created “unprecedented uncertainty” in California’s vehicle market, prompting
7 more manufacturer questions. *Id.* at 1-2. The August MAC clarifies there are three pathways to
8 obtain the requisite approval from CARB to sell vehicles or engines in the State:

- 9 • Manufacturers may certify to the ACT, Omnibus, and Advanced Clean Cars II
10 standards—i.e., the standards for which waivers were targeted by the Resolutions.
- 11 • Manufacturers may certify to earlier-adopted California standards that were
12 applicable to all future model years when promulgated and have extant preemption waivers
13 not subject to the Resolutions.
- 14 • Manufacturers may demonstrate that they have obtained EPA certification to
15 applicable federal standards, as currently codified.

16 *Id.* at 2-3. While the August MAC states that manufacturers who choose the second or third
17 options may be subject to enforcement action, including for interim model years, if the
18 Resolutions are ultimately declared invalid, it also makes clear that CARB will decide whether or
19 not to pursue such enforcement when and if “that question becomes ripe.” *Id.* at 3.

20 On September 15, 2025, CARB issued a notice of emergency rulemaking to confirm that its
21 earlier-adopted standards remain operative, as described in the August MAC, “until a court
22 resolves the uncertainty created by the federal government’s actions.” Exh. B3 at 3. CARB
23 intends to proceed to adopt these same regulations through non-emergency procedures during the
24 180 days that an emergency regulation may remain in effect. Lang Decl., ¶ 48.

25 **G. Procedural History**

26 CTP Plaintiffs filed suit on August 11, 2025. ECF 1. They submitted a preliminary
27 injunction motion on all claims the next day, along with a motion to file an overlength brief. ECF
28 22, 23. The Court permitted the filing on August 13. ECF 36.⁷ The United States moved to

⁷ Plaintiffs filed this motion before any response to the Complaint. Defendants reserve their rights to present all affirmative defenses at the appropriate time, even if not presented here.

1 intervene. ECF 43. This Court granted that motion and set a briefing and hearing schedule for
 2 the preliminary injunction, after considering the parties' competing schedule proposals. ECF 54.
 3 The United States joined that motion in part, only as to the preemption challenges to the CTP and
 4 the ACT, Advanced Clean Fleets, and Omnibus regulations. ECF 57.⁸ One Plaintiff, alone,
 5 sought to expedite the hearing on that motion, ECF 64, and the Court denied that request, ECF 71.

6 STANDARD OF REVIEW

7 "A preliminary injunction is ... an extraordinary remedy that may only be awarded upon a
 8 clear showing that the plaintiff is entitled to such relief." *California v. Azar*, 911 F.3d 558, 575
 9 (9th Cir. 2018) (cleaned up). "A party can obtain a preliminary injunction by showing that (1) it
 10 is likely to succeed on the merits, (2) it is likely to suffer irreparable harm in the absence of
 11 preliminary relief, (3) the balance of equities tips in its favor, and (4) an injunction is in the public
 12 interest." *Id.* "When the government is a party, the last two factors merge." *Id.* In the event a
 13 movant makes all four showings clearly, the scope of the preliminary injunction "must be no
 14 broader and no narrower than necessary to redress the injury shown." *Id.* at 584.

15 ARGUMENT

16 Between them, Plaintiffs seek to enjoin (1) the CTP, (2) regulations they allege have been
 17 preempted by congressional resolutions, (3) a sales requirement applicable beginning in model
 18 year 2036, (4) greenhouse gas standards, (5) the May MAC, and (6) EO N-27-25. To obtain
 19 relief, Plaintiffs must meet their burdens for the extraordinary relief they seek *as to each action or*
 20 *set of actions* they challenge. They have not done so for any of them.

21 I. THE CTP SHOULD NOT BE PRELIMINARILY ENJOINED

22 A. The CTP Is Not Irreparably Injuring Plaintiffs and the Equities Do Not 23 Remotely Favor Them

24 The United States identifies no injury to it from the CTP. ECF 57 (US Br.) 2-4 (alleging
 25 harms from "laws" and "regulations"). And no Plaintiff can claim—much less demonstrate—that
 26 the CTP is adversely affecting "decisions about the type and quantity of vehicles" to sell because
 27 each of the CTP Plaintiffs has publicly affirmed that it will make those decisions "without regard

28 ⁸ Defendants do not seek to present oral testimony, unless Plaintiffs offer such testimony,
 and anticipate that 120 minutes will be required for the hearing.

1 to whether those decisions are compliant with any restrictive terms of the CTP.” Exhs. C3-C7.
 2 CTP Plaintiffs face no “Hobson’s choice,” Mot. 30:3, or harm from “continu[ing] to comply,” *id.*
 3 at 29:14. They have made their choice and do not intend to comply. These CTP signatories may
 4 wish to avoid a suit for breach or other consequences of disavowing their commitments. *See* ECF
 5 23-25 (Proposed Order) at 1. But they cannot do so by seeking a preliminary injunction on
 6 unrelated legal theories. *Garcia v. Google, Inc.*, 786 F.3d 733, 737 (9th Cir. 2015) (denying
 7 preliminary injunction due, in part, to “mismatch” between claim asserted and relief sought).⁹ In
 8 any event, as CTP Plaintiffs themselves recognize, parties are not irreparably injured by terms to
 9 which they agreed. *Bennett v. Isagenix Int’l LLC*, 118 F.4th 1120, 1130 (9th Cir. 2024); Mot.
 10 30:8-9.

11 CTP Plaintiffs’ myriad attempts to evade that conclusion are unavailing. They first suggest
 12 this principle applies only to “private contracts” but cite no authority. Mot. 30:10. Next, they
 13 claim their decision to join the CTP was not “truly voluntary” because it was “the only way” they
 14 could “obtain [the] lead time, to which they were entitled under the Clean Air Act.” *Id.* 30:15-25.
 15 But, as these Plaintiffs know, there is another way to bring Clean Air Act claims: a petition for
 16 judicial review. 42 U.S.C. § 7607(b); *Engine Mfrs. Ass’n*, 88 F.3d at 1078. CTP Plaintiffs
 17 wanted assurance that their proposed amendments to existing regulations would be considered
 18 and that future regulations would provide Plaintiffs’ preferred lead time. Exh. C1 at 2 ¶ 5; CTP
 19 Decl., ¶¶ 9–12. They got the consideration they bargained for, and that is the essence of a
 20 voluntary agreement. Their citations to inapposite cases concerning coercive land-use regulation,
 21 *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 599 (2013), and waivers of sovereign
 22 immunity, *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 668
 23 (1999), only highlight the absence of any support for this involuntariness claim. Mot. 30:17-22.

24 CTP Plaintiffs finally try arguing that the agreement does not mean what it says—that they
 25 “did not agree” to sell vehicles and engines in California consistent with ACT, Omnibus, and

26 _____
 27 ⁹ CTP Plaintiffs appear to assert that CARB breached the CTP. Mot. 31:19-32:6; *but see*
 28 CTP Decl., ¶¶ 30-31. They can attempt to seek contract remedies in a proper forum but cannot
 obtain a preliminary injunction on any theory advanced here. Their repeated citations to a state
 law contract case only underscore the point. Mot. 31:21-23, 33:2-4.

Advanced Clean Fleets if those regulations were preempted. *Id.* at 30:26, 31:12-18. But that is precisely what they agreed to do “irrespective of the outcome of any litigation challenging the waivers ... or of CARB’s overall authority to implement.” Exh C1 at 2 ¶ 2. That term contemplates the possibility of preemption, which could be an outcome of litigation challenging a preemption waiver and is also the most obvious reason CARB might lack authority.¹⁰

CTP Plaintiffs should not be heard to cry irreparable injury from an agreement they voluntarily entered into two years ago; and the balance of the equities certainly does not support relief for the party that comes with unclean hands, having disavowed any intent to honor their agreement’s terms. *Ellenburg v. Brockway, Inc.*, 763 F.2d 1091, 1097 (9th Cir. 1985), *abrogated on other grounds by Watkins v. Westinghouse Hanford Co.*, 12 F.3d 1517, 1527 (9th Cir. 1993).

B. Plaintiffs’ Challenges to the CTP Fail

1. The CTP Is Not Preempted

The Clean Air Act does not preempt the sales commitments CTP Plaintiffs entered into voluntarily. “[F]ederal preemption is generally confined to formal state laws and regulations and not applicable to contracts and other voluntary agreements” like the CTP that, by definition, are not “command[s].” *Ass’n of Int’l Auto. Mfrs., Inc. v. Comm’r, Mass. Dep’t of Env’tl. Prot.*, 208 F.3d 1, 7 (1st Cir. 2000) (citing *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 233 (1995)).¹¹ And Section 209(a) of the Clean Air Act was “intended to govern formal regulations adopted by the states, rather than voluntary and cooperative agreements between the states and automakers.” *Id.*

The analysis is no different because a public entity is party to the CTP. Contracts with the government *may* be subject to preemption when they “result[] not from ordinary bargaining ... but instead from the threat of criminal sanctions,” *Am. Trucking Ass’ns, Inc. v. City of Los Angeles*, 569 U.S. 641, 650-51 (2013), or are enforceable in ways only available to governmental actors, *Airlines for Am. v. City & Cnty. of San Francisco*, 78 F.4th 1146, 1147 (9th Cir. 2023). But Plaintiffs do not and cannot claim either is true here, and cannot establish that these

¹⁰ CTP Plaintiffs’ contention that the “newly amended” ACT is a regulation they “never agreed to follow” is equally specious. Mot. 30:5-6. The ACT amendments are “any agreed upon modifications.” Exh. C1 ¶ 2; CTP Decl., ¶ 30.

¹¹ Plaintiffs’ claim that the CTP is a preempted attempt to enforce the ACT and Omnibus standards fails for the additional reason those standards are not preempted. *Infra* II.B.

commitments were not entered into voluntarily. *Infra* 15:18-22; *see also* CTP Decl., ¶¶ 8-29.

2. The CTP Does Not Violate the First Amendment

CTP Plaintiffs are unlikely to succeed on their First Amendment challenge to the agreement because the Court lacks jurisdiction over that claim. CTP Plaintiffs point to state regulatory proceedings during which they claim their trade association, EMA, would have spoken differently absent the CTP. Mot. 21:13-27; ECF 23-4 (Mandel Decl.) ¶¶ 9-11. There is no remedy for that both because the speech cannot be retroactively altered and because the Eleventh Amendment forbids retrospective relief here. *See Ex parte Young*, 209 U.S. 123, 150 (1908); *Los Angeles Cnty. Bar Ass’n v. Eu*, 979 F.2d 697, 704 (9th Cir. 1992). CTP Plaintiffs nowhere suggest that additional States might open relevant rulemakings, so claims of future chilled speech are speculative and unripe. *See Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1174-75 (9th Cir. 2022). Moreover, any claim of ongoing violation of CTP Plaintiffs’ First Amendment rights is undercut by their public disavowal of the agreement, Exhs. C4-C7, and their filing of this very lawsuit.

In any event, voluntary relinquishment of constitutional rights is “permissible, so long as appropriate safeguards are attached.” *Powell v. SEC*, No. 24-1899, 2025 WL 2233792, at *5 (9th Cir. Aug. 6, 2025). More specifically, First Amendment rights “may be waived upon clear and convincing evidence that the waiver is knowing, voluntary, and intelligent,” as is the case here. *Id.*; *see also* CTP Decl., ¶¶ 18-23. CTP Plaintiffs are “sophisticated players” with access to experienced counsel. *Powell*, 2025 WL 2233792, at *9; *see also Leonard v. Clark*, 12 F.3d 885, 890 (9th Cir. 1993). Indeed, EMA’s President claims he “was in charge of negotiating the CTP” on the manufacturers’ behalf, and he is a partner and founding member of a Chicago law firm. Mandel Decl., ¶¶ 4-6. CTP Plaintiffs also have experienced in-house attorneys. *E.g.*, Exhs. A19 at 8; A20 at 1-2; A21 at 1. If these Plaintiffs felt their First Amendment rights were “burdened” by the CTP, they “should not have bargained them away.” *Leonard*, 12 F.3d at 890.¹²

Because CTP Plaintiffs’ waiver was knowing, voluntary, and intelligent, it is enforceable so long as CARB had a “legitimate reason” for including it in the agreement. *Davies v.*

¹² Plaintiffs’ reliance on *Legal Services Corporation v. Velazquez*, 531 U.S. 533, 548 (2001) is misplaced because CARB did not “impose” any rule or condition insulating the CTP from judicial challenge; instead, Plaintiffs voluntarily waived their First Amendment rights.

1 *Grossmont Union High Sch. Dist.*, 930 F.2d 1390, 1399 (9th Cir. 1991). “A legitimate reason
 2 will almost always include a close nexus—a tight fit—between the specific interest the
 3 government seeks to advance ... and the specific right waived.” *Id.* *Leonard* upheld a limited
 4 waiver of presumed First Amendment rights in a collective bargaining agreement between a city
 5 and a union where the relevant provision did “not ban *all* Union speech.” 12 F.3d at 891.
 6 Because the waiver only affected endorsements of payroll-increasing legislation, it was “narrowly
 7 tailored to achieve the City’s goal of budgetary predictability.” *Id.* The Union remained “free to
 8 endorse legislation” on other topics, such that “the public policy in favor of the Union’s
 9 completely unfettered freedom of expression” did not outweigh “the public interests in the finality
 10 of collective bargaining agreements and the predictability of municipal budgets.” *Id.* at 891-92.¹³

11 So, too, here. The CTP does not ban *all* of these Plaintiffs’ speech. In exchange for
 12 CARB’s agreement to consider CTP Plaintiffs’ desired amendments to certain regulations, these
 13 Plaintiffs waived their rights to challenge those same regulations, including indirectly—*e.g.*, with
 14 public comments opposing adoption by other States. *See* Exh. C1 ¶¶ 3-4, App. B, App. D. Even
 15 then, CTP Plaintiffs were free to provide comments to those States on key implementation
 16 issues—and in fact claim to have done so. *See id.* App. D ¶¶ D-E; Mandel Decl. (attaching
 17 comments). These Plaintiffs also remained free to challenge and oppose future CARB
 18 regulations. These “narrowly tailored” restrictions furthered CARB’s legitimate interest in
 19 ensuring its negotiating partners would not upend the agreed-upon program, achieving the same
 20 sort of stability the City sought in *Leonard*. Such stability would, in turn, ensure “significant
 21 reductions of air pollutants,” Exh. C1—an interest of CARB’s that has not waned, *see* Mot. 19:6-
 22 8. This stability would also allow the agency to focus on implementing the negotiated
 23 amendments, rather than defending its program. CTP Decl., ¶ 31.

24 **3. The State Law Challenges to the CTP Are Barred and Fail**

25 CTP Plaintiffs also seek to enjoin the CTP based on allegations that it violates the
 26 California Constitution, Article I, Section 3, Mot. 22:12-23:19, and the California APA, *id.* at

27 ¹³ CTP Plaintiffs’ interest in unrestricted public expression is not “of the highest order”
 28 because it does not implicate the fundamental constitutional “right of the people to elect
 representatives of their own choosing to public office.” *Davies*, 930 F.2d at 1397.

23:20-26:1. But “the Eleventh Amendment deprives federal courts [of] jurisdiction to order state actors to comply with state law.” *Gilbreath v. Cutter Biological, Inc.*, 931 F.2d 1320, 1327 (9th Cir. 1991) (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984)); *see also Actmedia, Inc. v. Stroh*, 830 F.2d 957, 964 (9th Cir. 1986) (free speech claim), *abrogated on other grounds, Retail Dig. Network, LLC v. Prieto*, 861 F.3d 839 (9th Cir. 2017); *Jamgotchian v. Ferraro*, No. 8:22-cv-01893, 2023 WL 5420311, at *5 (C.D. Cal. July 19, 2023) (underground regulation claim under California APA), *rev’d and remanded on other grounds*, 93 F.4th 1150 (9th Cir. 2024). Defendants have not “unequivocally” waived immunity. *Doe v. Regents of the Univ. of Cal.*, 891 F.3d 1147, 1152 (9th Cir. 2018).

Even if jurisdiction lies, CTP Plaintiffs’ claims also fail on the merits. The CTP does not violate the California Constitution because (1) CTP Plaintiffs’ waiver of their right to challenge specific CARB regulations is “reasonably related” to CARB’s compelling interests; (2) “the public value of imposing the condition manifestly outweighs its burden on constitutional rights”; and (3) “there are no less restrictive means to achieve” CARB’s goals. *San Diego Cnty. Water Auth. v. Metro. Water Dist. of S. Cal.*, 12 Cal. App. 5th 1124, 1160 (2017). The CTP’s narrow waiver is closely tied to CARB’s legitimate interests in providing stability, reducing emissions, and conserving agency resources to focus on the negotiated amendments. There are no “less restrictive” means by which CARB could achieve these objectives because the limited waiver is already precisely tailored to them. *Supra* I.B.2.

CTP Plaintiffs’ challenge under the California APA likewise fails. Plaintiffs assert the CTP is a “regulation” under California law because the agreement contemplates CARB will continue implementing it, even if the referenced standards are preempted. Mot. 24:23-25:3. But whether a state agency has established a state law rule without appropriate procedures does not turn on federal preemption. Moreover, Plaintiffs’ obligations under the CTP derive from promises they themselves made in a “contract which [they] ultimately signed.” *City of San Joaquin v. State Bd. of Equalization*, 9 Cal. App. 3d 365, 375 (Ct. App. 1970). Such promises are not regulations, *id.*, especially when they only bind those that voluntarily signed the agreement, *cf. Vasquez, v. Dep’t of Pesticide Regul.*, 68 Cal. App. 5th 672, 689-90 (Ct. App. 2021) (MOU governed non-party

conduct). The CTP binds only the signatories to it, not every manufacturer of heavy-duty vehicles, *contra* Mot. 24:19-20, much less every vehicle manufacturer subject to CARB's certification program. CTP Decl., ¶ 25. Plaintiffs have not remotely established that CARB has imposed new regulatory obligations without rulemaking. *Cf. Vasquez*, 68 Cal. App. 5th at 691 (numeric cap on pesticide use was a regulation because it made statute more specific).

II. THE ACT, OMNIBUS, AND ADVANCED CLEAN CARS II REGULATIONS SHOULD NOT BE PRELIMINARILY ENJOINED

A. Plaintiffs Have Not Established Injuries from These State Laws that a Preliminary Injunction Can Redress or Equities that Favor Their Request

Plaintiffs' request for a preliminary injunction against the enforcement of ACT, Omnibus and parts of the Advanced Clean Cars II regulations¹⁴ fails because CARB is not currently enforcing those regulations; because the prospect of future enforcement is speculative; and because any injury from regulatory uncertainty cannot be redressed by interim relief.

To sell their vehicles or engines in California, manufacturers *may* request that CARB certify to the Advanced Clean Cars II, ACT, or Omnibus regulations (and the amended OBD requirements contained therein). August MAC at 2. But manufacturers may also sell vehicles in California that are (1) certified by CARB to earlier-adopted CARB standards (which are not preempted) or (2) certified by EPA to currently applicable federal standards. *Id.* Manufacturers thus need not incur costs now to comply with the standards they claim are preempted, Mot 28:3, and are not "barred from selling their products in California" absent that compliance, *id.* at 28:18-19, 33:23-34:13.¹⁵ The United States' asserted *parens patriae* injuries derive from CTP Plaintiffs' asserted harms, U.S. Br. 3:21-4:5, and fail with them.

The United States also asserts "'per se irreparable harm' to [itself] when States attempt to ... enforce preempted laws," *Id.* at 3:1-2, but no such enforcement is occurring here.¹⁶ And

¹⁴ The United States seeks no injunction against any part of the Advanced Clean Cars II regulation. US Br. 18:21. CTP Plaintiffs seek only to enjoin the portions of that regulation that apply to medium- or heavy-duty vehicles. Mot. 6:6-19.

¹⁵ CTP Plaintiffs will incur costs to obtain approval to sell in California, as they have for decades, but an injunction against *these* California standards will not avoid those costs because other standards and the approval requirement would remain. *See* Lang Decl., ¶ 38.

¹⁶ CTP Plaintiffs identify no binding precedent for their dubious assertion that private parties experience per se injury and are "entitle[d] ... to equitable relief" merely from being

(continued...)

1 manufacturers face no danger of federal enforcement “if they continue to comply with [these
 2 standards],” *id.* at 29:13-14, because that compliance is not currently required. Plaintiffs also fail
 3 to identify a charge that could be brought against manufacturers for selling vehicles that *meet or*
 4 *exceed* federal emission standards, *id.*; *see also, e.g.*, ECF 23-19 (US DOJ letter).

5 Even if CARB were currently enforcing these regulations, manufacturers failed to seek this
 6 relief in time to prevent the primary harms they allege: costs associated with certification for
 7 model year 2026 vehicles and engines. Mot. 27:26-28:8; *see id.* 28:1-2 (costs incurred before suit
 8 filed); *id.* at 27:27-28:1 (asserting further harm “within a matter of weeks”). Plaintiffs could have
 9 sought relief as early as June 12, 2025, when the President signed the Resolutions. *See California*
 10 *v. United States*, No. 3:25-cv-04966 (N.D. Cal.) (filed that day). Instead, most CTP Plaintiffs
 11 have been submitting model year 2026 certification applications and fees, consistent with prior
 12 years. Lang Decl., ¶ 33. Plaintiff DTNA appears to have chosen to delay its submissions, ECF
 13 70-1 ¶ 15, despite its earlier assertion that it “must begin” “by mid-August” (when it filed suit),
 14 ECF 23-15 ¶¶ 8, 11. But that delay does not change the fact that all manufacturers (DTNA
 15 included) have a pathway to sell in California without certifying to standards they claim are
 16 preempted. A preliminary injunction against the challenged standards will not change the
 17 availability, cost, or timing of that pathway. And the same is true for model year 2027
 18 certifications, to the (minimal) extent CTP Plaintiffs rely on those. Mot. 28:10-11.¹⁷

19 The August MAC does reserve CARB’s rights to enforce the challenged regulations “in the
 20 event a court of law holds [the congressional] resolutions invalid, including with respect to model
 21 years” in which manufacturers opted to certify under an alternative pathway. Aug. MAC at 3.
 22 But that reservation does not support preliminary relief now. Any future injury is speculative as it
 23 depends on both litigation outcomes (whether the Resolutions are invalidated) and future choices
 24 by CARB (whether CARB then elects to enforce for model years that passed during that
 25 litigation). *Id.*; *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 675 (9th Cir. 1988)

26 subject to an allegedly preempted regulation. Mot. 27:9-10. *Cal. Pharm. Ass’n v. Maxwell-Jolly*,
 27 563 F.3d 852-53 (9th Cir. 2009) addressed statutory violations, not preemption, and considered
 those only under the public interest prong, after finding *economic* injury, *id.* at 851-52.

28 ¹⁷DTNA claims it needs relief by October 31, 2025 for model year 2026 certifications,
 ECF 70:2-3, belying any claim that extraordinary relief is needed *now* for model year 2027.

(declining to find injury where “[m]ultiple contingencies must occur” first). Indeed, “[i]ssuance of a preliminary injunction would do little to redress” concerns about future enforcement because the legal status of these regulations “will remain uncertain until judgment has been entered on the merits.” *Am. Motorcyclist Ass’n v. Watt*, 714 F.2d 962, 966-67 (9th Cir. 1983); *see also Ray v. County of Los Angeles*, 935 F.3d 703, 715 (9th Cir. 2019) (requiring retroactive compliance with federal rule despite earlier vacatur by district court).

By contrast, Defendants and the public interest would be harmed by any injunction that interfered with CARB’s acceptance of voluntary certifications to these standards. That would discourage clean-vehicle production and increase emissions, threatening public health and complicating the State’s compliance with federal air quality standards. If manufacturers who are not plaintiffs here wish to obtain certification to these standards—for their own business reasons—the public interest is served by CARB remaining free to process those requests.

B. Plaintiffs’ Challenge to the Regulations Is Not Likely to Succeed Because the Allegedly Preempting Resolutions Are Unconstitutional

In considering Plaintiffs’ request for a preliminary injunction, this Court “must not hesitate” to set the Resolutions aside, as they are unconstitutional. *United States ex rel. Kelly v. Boeing Co.*, 9 F.3d 743, 750 (9th Cir. 1993). They breach the separation of powers in multiple respects and also violate the Tenth Amendment and the structural principles of federalism. Each of those problems stems from the proposition—so clear that no one thought to question it until recently—that waivers of statutory preemption that EPA issues to California are not “rules” that could be subject to the CRA. For the same reason, the CRA does not bar judicial review of Defendants’ arguments here. All of Plaintiffs’ claims based on the Resolutions are likely to fail.

1. The CRA Does Not Bar Defendants’ Challenges to The Resolutions

Section 805 of the CRA prohibits judicial review of any “determination, finding, action, or omission under this chapter.” 5 U.S.C. § 805. That prohibition lacks the clear statement needed to foreclose a constitutional challenge. *Ctr. for Biological Diversity v. Bernhardt*, 946 F.3d 553, 561 (9th Cir. 2019). Indeed, Section 805 does not forbid *any* challenges to the Resolutions since, as discussed below, the Resolutions were not “action[s] ... under” the CRA. 5 U.S.C. § 805.

1 To be “actions under” the CRA, the Resolutions would have to satisfy the narrow, multipart
2 definition of “joint resolution of disapproval, described under section 802.” *Id.* § 801(b)(1).

3 “[J]oint resolution” means only a joint resolution [of text set out verbatim in the
4 statute] introduced in the period beginning on the date on which the report referred to
5 in section 801(a)(1)(A) is received by Congress and ending 60 [legislative] days
6 thereafter

7 *Id.* § 802(a). The Resolutions meet the first half of that definition, as they recite the cookie-cutter
8 language after their resolving clauses. But they do not meet the second half because Congress did
9 not receive “the report[s] referred to in section 801(a)(1)(A).” *Id.* EPA sent Congress reports that
10 *claimed* to be section 801(a)(1)(A) reports, but an *actual* section 801(a)(1)(A) report must involve
11 a “rule.” *Id.* § 801(a)(1)(A) (“[T]he Federal agency promulgating such *rule* shall submit to each
12 House of Congress ... a report containing ... a copy of the *rule*; a concise general statement
13 relating to the *rule* ...; and ... the proposed effective date of the *rule*.” (emphases added)).
14 Absent a “rule,” there can be no qualifying “report,” and thus no qualifying “joint resolution.”

15 “[A] waiver granted under” Section 209(b) of the Clean Air Act, 42 U.S.C. § 7543(b)(1), is
16 not a “rule” as defined in Section 804(3) of the CRA. That definition draws from the APA, which
17 divides administrative proceedings into rulemakings and adjudications. Adjudications include all
18 forms of licensing. *See* 5 U.S.C. § 551(6), (7). “[L]icensing” includes agency process respecting
19 the grant,” *id.* § 551(9), of an “approval, ... statutory exemption or other form of permission,” *id.*
20 § 551(8). That definition perfectly fits a waiver, which *approves* a request made by an individual
21 party (the State) for a *statutory exemption* from “application of” Section 209 of the Clean Air Act.
22 42 U.S.C. § 7543(b)(1). An EPA waiver is a *form of permission* for California to enforce its laws.
23 Waivers thus are not rules under the APA, or the CRA.¹⁸ Congress agrees. *See id.* § 7607(d)(1)
24 (listing Clean Air Act “rulemakings” without listing waivers). So does the GAO. *See* Exhs. A9
25 at 4-5; A15 at 6-8. Even if waivers *were* rules, they would not be subject to the CRA, which

26 ¹⁸ The rebuttal that Russell Vought, the White House Office of Management and Budget
27 Director, submitted to GAO—after the Resolutions were enacted and their validity challenged in
28 court—refutes itself. Vought conflates EPA’s waiver grant and California’s standards, Exh. A23
at 4; asserts, contrary to the APA’s text, that the downstream effects of a license can transform it
into a rule, *id.* at 5; and suggests, again atextually, that “[t]rue adjudications” lack future effect
and further lack predictive findings, *id.* at 6. On Vought’s logic, even a driver’s license is a rule.

1 excludes dispositions of “particular applicability,” 5 U.S.C. § 804(3)(A)—i.e., dispositions that
 2 afford relief to individual named parties based on specific facts. *See* Exhs. A9 at 6; A15 at 7.

3 In short, an EPA waiver is not a Section 804(3) rule; EPA’s reports of these three waivers
 4 were not Section 801(a)(1)(A) reports that opened periods for Members of Congress to introduce
 5 Section 802(a) joint resolutions; the Resolutions are not CRA actions; and Section 805’s judicial-
 6 review bar does not attach. The foregoing is true despite the prefatory clauses of the Resolutions,
 7 which purport to “[p]rovid[e] congressional disapproval under chapter 8 of title 5, [U.S.] Code.”
 8 139 Stat. 65, 66, 67 (June 12, 2025). Prefatory clauses lack legal effect, *see* 1 U.S.C. §§ 102-03,
 9 and cannot “expand the scope of the operative clause[s],” *District of Columbia v. Heller*, 554 U.S.
 10 570, 578 (2008). The Resolutions’ operative clauses do not even purport to augment the CRA’s
 11 reach to cover agency actions that are not Section 804(3) rules. By contrast, one operative clause
 12 of the CRA states that its precise definitions of *rule* and *joint resolution* control “notwithstanding
 13 any other provision of law.” 5 U.S.C. § 806(a). That clause means those definitions “absolutely,
 14 positively prevail” over all but the most crystalline statements in other legislation. A. Scalia & B.
 15 Garner, *Reading Law* 127 (2012); *cf.* 42 U.S.C. § 5911(b) (explicitly subjecting a type of “order”
 16 to the CRA). Especially where the issue is whether a sovereign State’s constitutional challenge to
 17 a federal statute is justiciable, only text Congress enacted into law could “bear[] the heavy burden
 18 of showing a clearly expressed congressional intention,” *Epic Sys. Corp. v. Lewis*, 584 U.S. 497,
 19 510 (2018) (cleaned up), to bring the Resolutions *under* the CRA. It is far from crystal clear that
 20 Congress intended, through fast-track procedures no less, to aggrandize the CRA itself simply by
 21 reciting the cookie-cutter language of a Section 802(a) joint resolution.

22 This is not to say that Congress accomplished nothing through the Resolutions, whose clear
 23 purpose was to revoke the three subject EPA waivers. That purpose can be accomplished without
 24 declaring the Resolutions to be “under” the CRA. The way to harmonize the Resolutions with the
 25 CRA’s definitions and its *notwithstanding* clause is to read the Resolutions to do what they say—
 26 disapprove the three EPA waivers. As that is all the Resolutions do, Section 805 does not apply.

27 Lastly, this analysis is not affected by “the constitutional right of either House to change the
 28 rules [in Section 802 of the CRA] (so far as relating to the procedure of that House) at any time.”

5 U.S.C. § 802(g)(2). Section 802(a)’s definition of “joint resolution” is not a procedural rule; it anchors the entire CRA, repeats throughout, and means the same thing every time. *See, e.g., id.* § 801(b)(1) (referencing “joint resolution of disapproval, described under section 802”). The Act would make no sense if each chamber could unilaterally redefine “joint resolution,” as that would leave the term with indeterminate meaning—or worse, meaning two things at once. *Cf. Clark v. Martinez*, 543 U.S. 371, 383, 386 (2005) (holding that the “same statutory text” cannot “bear[] two different meanings”). The codified definitions of “rule” and “joint resolution” “trump[ed] any authority of [either] House to change its rules unilaterally.” *Michel v. Anderson*, 14 F.3d 623, 628 (D.C. Cir. 1994). For all these reasons, Section 805 does not make the Resolutions unreviewable.

2. The Resolutions Violated the Separation of Powers

“[O]ur Government as conceived by the Framers of our Constitution disperses the federal power among the three branches—the Legislative, the Executive, and the Judicial—placing both substantive and procedural limitations on each.” *Metro. Washington Airports Auth. v. Citizens for Abatement of Aircraft Noise*, 501 U.S. 252, 272 (1991). When passing the Resolutions, Congress improperly exceeded its substantive power and improperly ceded its procedural power. These are independent reasons to hold the Resolutions unlawful and set them aside for purposes of this case.

a. Congress Impermissibly Overrode Three Adjudications by the Executive Branch of a Single Party’s Rights Under Extant Law

As explained above, EPA waivers are not rules. *See supra* II.B.1. A waiver proceeding is an adjudication under the Clean Air Act of whether, based on a specific set of facts, California is entitled to a waiver of the Act’s preemption for a set of state laws. Here, the Executive Branch (acting through EPA) determined that the Clean Air Act does not preempt the California laws at issue. Members of Congress who disagreed with those determinations could have responded with legislation to preempt those laws. For example, Congress could have amended Section 209 of the Act to preempt them without possibility of a waiver—as some Members had previously proposed. Instead, Congress passed the Resolutions, which did no more or less than countermand Executive adjudications that, by that time, were under judicial review. The Resolutions may have sought to achieve the same end as those proposals. “The Constitution, however, is concerned with means

1 as well as ends.” *Horne v. Dep’t of Agric.*, 576 U.S. 350, 362 (2015). And Congress did not act
 2 within its means by revoking Executive adjudications rather than amending the underlying laws.

3 The Vesting Clauses strictly divide powers among the three branches and “do[] not permit
 4 Congress to execute laws.” *Bowsher v. Synar*, 478 U.S. 714, 726 (1986). That task falls solely to
 5 the Executive Branch. U.S. Const. art. II, § 1, cl. 1. “[S]ince the beginning of the Republic,” the
 6 Executive has, in appropriate cases, executed laws by determining individual parties’ legal rights
 7 in adjudications. *City of Arlington v. FCC*, 569 U.S. 290, 304 n.4 (2013). And, where Article III
 8 permits, the Judiciary is available to review the lawfulness of adjudications by the Executive. But
 9 whether in the first instance or on review, *Congress* cannot declare the rights of individual parties
 10 under its own laws. *See Fletcher v. Peck*, 10 U.S. 87, 136 (1810) (“[T]he legislature [is] to
 11 prescribe general rules for the government of society; the application of those rules to individuals
 12 in society would seem to be the duty of other departments.”). Yet that is just what happened here.

13 In overriding the waivers, the Resolutions “create no new substantive law”; they just decide
 14 “how pre-existing law applies to particular circumstances.” *Bank Markazi v. Peterson*, 578 U.S.
 15 212, 225 n.17 (2016). The preexisting Clean Air Act entitled California to waivers of preemption
 16 unless the Executive made one of three findings spelled out in Section 209(b)(1). After assessing
 17 three sets of “particular circumstances,” the Executive did not make such a finding. Majorities of
 18 the House and Senate evidently would have retained preemption in all three cases, had they stood
 19 in the Executive’s shoes. But just as EPA made no law by granting the waivers, Congress made
 20 no law by “disapproving” them. By overriding three isolated applications of the Clean Air Act’s
 21 waiver provision, the Resolutions simply declared the State’s rights under that preexisting law.

22 The Constitution forecloses that mode of action. Congress may change the law, midstream
 23 or after the fact, but it may not second-guess a different Branch’s adjudications under extant law.

24 **b. Congress Unlawfully Allowed the Executive Branch To Direct**
 25 **Legislative Procedure**

26 The unprecedented procedure Congress used to pass the Resolutions violated the separation
 27 of powers in another respect. Under the guise of changing an internal procedural rule, the Senate
 28 transformed an innocuous reporting requirement into a vehicle for the Executive Branch to direct

1 legislative procedure. The Constitution forbids any amount of Executive direction in this setting.
 2 *See* U.S. Const. art. I, § 5, cl. 2 (“Each House may determine the Rules of its Proceedings”).
 3 And courts must strike down legislation enacted through procedures that “ignore[d] constitutional
 4 restraints,” as the Senate’s did. *NLRB v. Noel Canning*, 573 U.S. 513, 551 (2014) (cleaned up).¹⁹

5 **Normal Operation of the CRA:** Section 801(a)(1)(A) of the CRA directs each Executive
 6 agency to report each rule “[b]efore [the] rule can take effect.” 5 U.S.C. § 801(a)(1)(A). Receipt
 7 of a section 801(a)(1)(A) report triggers extraordinary procedures for any “joint resolution” that a
 8 Member of Congress introduces to disapprove that rule. These extraordinary procedures include
 9 prioritized consideration, no opportunity for amendment, limited debate, and bypass of the Senate
 10 filibuster. *Id.* § 802. Each smooths the path for bills responding to agency “rules,” as defined in
 11 the CRA, whereas legislation responsive to the array of *other* Executive action still receives “the
 12 type of care and deliberation that one might expect.” *King v. Burwell*, 576 U.S. 473, 492 (2015).

13 The CRA leaves each House free to vary its own procedures, *see* 5 U.S.C. § 802(g)(2), but
 14 subject to constitutional restraints. Until this case, however, neither House had given a different
 15 Branch free rein to decide whether proposed legislation will come in for ordinary or extraordinary
 16 procedures. To pass the Resolutions, the Senate gave that free rein to the Executive Branch.

17 **The Senate’s Extraordinary Maneuver:** Members of Congress opposed to the three EPA
 18 waivers in these cases hoped to override them without abandoning facial support for the filibuster
 19 or the traditional adherence to the Senate Parliamentarian’s rulings on procedural issues. *See* 171
 20 Cong. Rec. S3047-48 (May 21, 2025) (Sen. Thune); *id.* at S3087-88 (Sen. Capito). That fidelity
 21 put waiver opponents in a bind because EPA, GAO, and the Parliamentarian agreed that waivers
 22 are not rules. *Supra* 8:18-9:1. So Senators teed up a “vote[] on what qualifies for [a] fast-track
 23 procedure,” 171 Cong. Rec. S3048 (May 21, 2025), and the Senate sustained a point of order that:

24 joint resolutions that meet all the requirements of section 802 of the [CRA] or are
 25 disapproving of Agency actions which have been determined to be rules subject to the
 26 CRA by a legal decision from GAO are entitled to expedited procedures under the
 [Act]

27
 28 ¹⁹ The House of Representatives implicitly did the same. But it is enough that the Senate
 violated the Constitution. *Cf. INS v. Chadha*, 462 U.S. 919 (1983) (invalidating one-House veto).

1 *Id.* at S3051 (Sen. Thune). The Senate then fast-tracked the three Resolutions “[p]ursuant to the
2 precedent just established” in the point of order. *Id.* at S3052 (Sen. Capito as presiding officer).

3 At first blush, this course of proceedings is puzzling. The first half of the point of order—
4 that fast-track procedures are used for joint resolutions “that meet all the requirements of section
5 802 of the [CRA],” *id.* at S3051—seemed to merely recite the status quo. And the second half—
6 that fast-track procedures are used for joint resolutions “disapproving of Agency actions which
7 have been determined to be rules subject to the CRA by a legal decision from GAO,” *id.*—would
8 not apply to these Resolutions, which GAO had determined were *not* subject to the CRA. But the
9 Resolutions’ proponents “clarif[ied]” what they meant. 171 Cong. Rec. S3140 (May 22, 2025)
10 (Sen. Lankford). The Senate had voted to fast-track resolutions that would disapprove agency
11 actions that the Executive Branch *denominated* as “rules” in a submission to Congress, whether or
12 not they *were* rules. The Senate thus modified its internal procedural rules to substitute the term
13 “Agency-submitted rule,” 171 Cong. Rec. S3018 (May 21, 2025) (Sen. Barrasso); *accord id.* at
14 S3088 (Sen. Capito), for the definition of “rule” that had been (and still is) codified in the CRA.

15 The Senate’s abdication to the Executive Branch on this question of procedure is apparent
16 from remarks of Senator Capito, who “r[ose] in support of [her] resolution” to disapprove EPA’s
17 preemption waiver for California’s Advanced Clean Cars II regulation. *Id.* at S3086. It was
18 “[f]ortunate[],” she noted, that “President Trump and EPA Administrator Lee Zeldin decided to
19 give the American people a say by submitting the approved California waiver to Congress as a
20 rule.” *Id.* at S3087. Waiver opponents were fortunate because, absent EPA’s after-the-fact
21 reclassification in a report to Congress, the Senate would not have considered, much less fast-
22 tracked, her Resolution. The next day, in the debate over the disapproval of EPA’s waiver for
23 California’s Omnibus standards, Senator Lankford left no doubt as to what had transpired:

24 So we worked to make sure that we were clarifying one simple thing . . . this one
25 simple question: When an Agency says it is a rule, is it a rule? The answer is,
yes, it is a rule. And then we acted on that.

26 171 Cong. Rec. S3140 (May 22, 2025). In “acting on that,” the Senate acted unconstitutionally.

27 **The Constitutional Problem:** The Senate’s *when you say so* regime invites the Executive
28 to manipulate the Senate’s procedure to serve Executive purposes. The President may, in his sole

1 discretion, direct an agency head to slap the new (and errant) label “rule” on any action by a prior
 2 Administration that the President disfavors and report it to Congress, upon which the Senate will
 3 dutifully fast-track a joint resolution introduced to disapprove it, without the ordinary procedural
 4 safeguards. This regime is especially pernicious because it encourages the President to treat the
 5 reporting requirement still on the books as a farce. *Cf. Mapp v. Ohio*, 367 U.S. 643, 659 (1961)
 6 (“Nothing can destroy a government more quickly than its failure to observe its own laws, or
 7 worse, its disregard of the charter of its own existence.”).

8 Since “the Constitution by explicit text commits the power at issue to the exclusive control
 9 of” each House of Congress, courts cannot “tolerate *any* intrusion by” the Executive and must act
 10 “to prevent any other Branch from undertaking to alter” that textual commitment. *Pub. Citizen v.*
 11 *U.S. Dep’t of Justice*, 491 U.S. 440, 485, 487 (1989) (Kennedy, J., concurring in the judgment).
 12 It is of no moment that the Branch with the power ceded it willingly, or even that it came up with
 13 the idea. *See Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 497 (2010).
 14 Indeed, the Senate’s “enthusiasm for” this novel arrangement “sharpen[s] rather than blunt[s]” the
 15 need for judicial scrutiny. *Noel Canning*, 573 U.S. at 572 (Scalia, J., concurring in the judgment).

16 In an ordinary case, this Court would turn to “the ‘intelligible principle’ standard” to decide
 17 whether Congress delegated lawmaking power to the Executive. *FCC v. Consumers’ Rsch.*, 145
 18 S. Ct. 2482, 2498 (2025). That forgiving standard “respects the President’s Article II authority to
 19 execute the laws—that is, to exercise discretion and policymaking authority within the limits set
 20 by Congress and without undue judicial interference.” *Id.* at 2514 (Kavanaugh, J., concurring).
 21 But Article II is irrelevant here because the Executive Branch does not execute Congress’s own
 22 internal procedures. The Framers told each House to run its own show, from start to finish. If the
 23 intelligible-principle standard applied here, though, the Senate’s delegation fails it. *When you say*
 24 *so* is the least intelligible principle there is; it “sweep[s] so wide as to make a laughingstock of the
 25 statute’s core definition,” *Gundy v. United States*, 588 U.S. 128, 143 (2019) (opinion of Kagan,
 26 J.), of a “rule,” 5 U.S.C. § 804(3). The Senate “left the matter to the President without standard
 27 or rule, to be dealt with as he pleased.” *Pan. Refin. Co. v. Ryan*, 293 U.S. 388, 418 (1935).
 28

1 It is not enough that the Senate stayed *more* in control of its procedures than the Executive
 2 because the Senate retained the power to amend those procedures again at any time until it passed
 3 the legislation. The Senate had a passenger-side brake, but it still let the President drive. And the
 4 Constitution demands that each House stay in absolute, not relative, control of its own procedure,
 5 which “shall never be controlled by, or subjected, directly or indirectly, to, the coercive influence
 6 of either of the other [Branches].” *O’Donoghue v. United States*, 289 U.S. 516, 530 (1933).

7 The Senate’s maneuver is no less troubling because it concerns “procedure.” Process often
 8 determines substance. *See Regulatory Reform Act: Hearings on H.R. 2327 Before the Subcomm.*
 9 *on Admin. Law and Gov’t Relations of the H. Comm. on the Judiciary*, 98th Cong., 312 (1983)
 10 (statement of Rep. John Dingell) (“I’ll let you write the substance on a statute and you let me
 11 write the procedure, and I’ll screw you every time.”). The power to determine internal rules of
 12 procedure “only empowers Congress to bind itself,” *Chadha*, 462 U.S. at 955 n.21, but that is
 13 precisely why the power must be “independent ... of the President,” *id.* at 955. The flaw in the
 14 Senate’s process was not made harmless by the House’s passage of, and the President’s signature
 15 on, the Resolutions. *Cf. United States v. Munoz-Flores*, 495 U.S. 385, 397 (1990) (“A law passed
 16 in violation of the Origination Clause” is “no more immune from judicial scrutiny because it was
 17 passed by both Houses and signed by the President than ... a law passed in violation of the First
 18 Amendment.”). The process by which the Resolutions became law is incurably unconstitutional.

19 **3. The Resolutions Violate the Tenth Amendment and Principles of** 20 **Structural Federalism**

21 The Resolutions also failed to respect the “affirmative limits the constitutional structure ...
 22 impose[s] on federal action affecting the States under the Commerce Clause.” *Garcia v. San*
 23 *Antonio Metro. Transit Auth.*, 469 U.S. 528, 556 (1985). “The true ‘essence’ of federalism is that
 24 the States *as States* have legitimate interests which the National Government is bound to respect
 25 even though its laws are supreme.” *Id.* at 581 (O’Connor, J., dissenting). Separate and apart from
 26 honoring their “residual sovereignty,” the Constitution “preserves the integrity” and the “dignity”
 27 of States. *Bond v. United States*, 564 U.S. 211, 221 (2011). And while States are not “person[s]”
 28 afforded Fifth Amendment due process rights, *South Carolina v. Katzenbach*, 383 U.S. 301, 323

(1966), the need to turn square corners in dealings with States—to “accord [them] the respect owed them as joint sovereigns,” *Fed. Mar. Comm’n v. S.C. State Ports Auth.*, 535 U.S. 743, 765 (2002) (cleaned up)—is one of the “postulates which limit and control” the permissible conduct of the Federal Government, *Garcia*, 469 U.S. at 547 (cleaned up). The “extraordinary defects in the national political process” that led to the Resolutions violated that postulate, rendering them “invalid under the Tenth Amendment” and structural federalism. *South Carolina v. Baker*, 485 U.S. 505, 512 (1988).

California and its congressional representatives were deprived of “any right to participate in,” *id.* at 513, what proved to be the pivotal step in the legislative process: the Executive Branch’s post-hoc declaration that these waivers are “rules” subject to the CRA. EPA did not open an administrative process to reconsider the waivers or to revise their classification. The Executive Branch’s process foul was as extraordinary as it was novel. It also contravened clear requirements for public participation in the promulgation of any “rules,” *e.g.*, 5 U.S.C. § 553(c), as well as the CRA’s requirement that agencies submit qualifying rules *before* their actions take effect (not months or years later), *id.* § 801(a)(1)(A). In fact, EPA’s post-hoc reclassifications and belated submissions were so far beyond the bounds of the agency’s own procedures that its first submission to Congress referred to the waivers as “actions” and “notices of decision,” not “rules,” based (as it usually would be) on the agency’s statements in the decisions themselves. *Compare* Exhs. A13 at 1, 3-4, *with* A16 at 1, 3; *see also* Exh. A22 at 1, 3-4. And even when EPA relabeled, the agency provided no explanation for the inconsistency with the underlying decisions or its departure from its decades-old, consistently held position. Exhs. A16 at 1, 3; A15 at 2.

Congress then followed suit—disregarding ordinary procedures for extraordinary ones at every turn. When Members believe an agency “failed to send rules” to Congress (as the claim is here, Exh. A12 at 1), the routine course is to request a GAO determination—not wait for a new Administration to reclassify and submit agency actions months or years after the actions took effect. No Member of Congress sought such a determination—not in March 2023 when EPA purportedly failed to submit the ACT waiver; and not in December 2024 when EPA purportedly failed to submit the Advanced Clean Cars II and Omnibus waivers. *See* 119 Cong. Rec. at S3087.

1 Notably, Congress *had* taken this ordinary course in 2022 when EPA reinstated parts of a waiver
 2 the first Trump Administration had earlier purported to withdraw. Exh. A9 at 1. GAO had
 3 concluded that action was not a “rule”; and—again following the ordinary course—neither House
 4 of Congress took up resolutions of disapproval. *See id.* at 5-6. This time, however, EPA
 5 belatedly slapped “rule” labels on the waivers, without process or explanation; and congressional
 6 leadership claimed *that* made these actions “rules” subject to the CRA. Exh. A26 at 2. And when
 7 GAO was asked for a determination about *these* waivers (after EPA submission), Congressional
 8 leadership simply disregarded that opinion—although Congress otherwise relies on the GAO for
 9 determinations of CRA applicability. *See* CRS Report 26; *see also* Exh. A24.

10 The Senate then veered deeper into uncharted procedural territory. It began ordinarily
 11 enough with members consulting the Senate Parliamentarian. Jonathan S. Gould, *Law Within*
 12 *Congress*, 129 Yale L. J. 1946, 1959 (2020) (“The parliamentarians are the primary interpreters
 13 of the rules governing Congress.”). And, when the Parliamentarian concluded the CRA did *not*
 14 apply, Exh. A28 at 1, many Senators—including some waiver opponents—“weren’t convinced
 15 the chamber could use the CRA against the waivers,” *id.* at 2. That’s because “in the ordinary
 16 course of business, ... the parliamentarians’ interpretations ... are as good as binding.” Gould,
 17 129 Yale L. J. at 1958. Senate leadership then decided to overrule the Parliamentarian—an
 18 unusual move in itself. 119 Cong. Rec. at S3031 (“The Senate has never overruled the
 19 Parliamentarian regarding the CRA”). But even that was not done in the usual way—an
 20 overriding floor vote on the Parliamentarian’s CRA decision. *See id.* at S3026.

21 Instead, during consideration of a different CRA resolution (concerning a DOT rule), *id.* at
 22 S3025, Senate leadership introduced a parliamentary “point of order” allowing points of order on
 23 CRA resolutions, *id.* at S3048; *see also* Exh. A25 at 2. This seemingly inexplicable procedural
 24 maneuver was, in fact, entirely unnecessary for consideration of the resolution at hand; rather, its
 25 sole purpose was to permit a *second* point of order—also unnecessary to the DOT resolution—
 26 that would “bypass ... the Parliamentarian’s decision” on the *waiver resolutions* without
 27 appearing to overrule her “directly.” 119 Cong. Rec. at S3025-26. As shown above, that second
 28 point of order transferred the decision whether to use extraordinary procedures to the Executive

1 Branch, *see supra* II.B.2.b. But even if this maneuver had not violated separation of powers, it
 2 compounded the extraordinary defects in this process, relying on EPA’s unfounded and
 3 unexplained actions to dismantle duly adopted state programs through fast-track procedures
 4 designed exclusively for federal rules. Nothing like this had ever been done before. *See* 119
 5 Cong. Rec. at S3048. Indeed, there was no semblance of a “reasonable relation between the
 6 mode or method of proceeding established by the [CRA] and the result which [Congress] sought
 7 to be attained.” *Noel Canning*, 573 U.S. at 551.

8 In purporting to use the CRA in this way, the federal government also nullified California’s
 9 participation in the enactment an expressly limited CRA—the one to which all States consented
 10 through their Senators. And the government did so for the singular purpose of preventing
 11 California from implementing the laws it had determined (through state-law proceedings) would
 12 best serve its residents’ needs. *E.g.*, 119 Cong. Rec. at S3017 (Sen. Barasso) (“This week, this
 13 Senate will end California’s mandate madness.”). Yet, the Framers intended that “legislating at
 14 the federal level” be difficult precisely “to preserve room for lawmaking by governments” like
 15 States, which are “more local and more accountable than a distant federal authority.” *West*
 16 *Virginia v. EPA*, 597 U.S. 697, 739 (2022) (Gorsuch, J., concurring) (cleaned up).

17 The exclusion of California from pivotal procedural steps was not just the means here; it
 18 was also the intended end. The federal government skirted *any* administrative process in an effort
 19 to deprive California of participation *and* of judicial review. This is why the Executive Branch
 20 declined to reconsider these waivers administratively—as the first Trump Administration had
 21 done and as President Trump initially signaled his second Administration would do. 119 Cong.
 22 Rec. at S3026; *see also supra* 9:19-22. Indeed, the federal government preferred the CRA—
 23 despite its obvious inapplicability—because, in the President’s words, California “can’t do
 24 anything about it,” and specifically, “can’t take us to court.”²⁰ *But see supra* II.B.1.

25 Both political branches were far from “disinclined to invade the rights of the individual
 26 States, or the prerogatives of their governments,” as the Framers envisioned. *Garcia*, 469 U.S. at

27
 28 ²⁰ The White House, *President Trump Participates in a Bill Signing Ceremony*, YouTube
 (June 12, 2025) at 28:31, <https://www.youtube.com/watch?v=QjakZRoGnxk>; *id.* at 2:31.

551 (quoting *The Federalist* No. 46, p. 332 (B. Wright ed. 1961)). By invading those rights and prerogatives through a process riddled with extraordinary defects from start to finish, the federal government violated the Tenth Amendment and principles of structural federalism. *See South Carolina*, 485 U.S. at 512. Although “the contours of the ‘extraordinary defects’ test remain[] fuzzy,” *Nevada v. Skinner*, 884 F.2d 445, 452 (9th Cir. 1989), and “the Framers likely did not envision the intrusion on state sovereignty at issue in today’s case,” this Court can be “confident that it is contrary to their constitutional design,” *Fed. Mar. Comm’n*, 535 U.S. at 769.

III. THE 2036 SALES REQUIREMENT SHOULD NOT BE PRELIMINARILY ENJOINED

Plaintiffs also seek to enjoin enforcement of the model year 2036 sales requirement adopted as part of the Advanced Clean Fleets regulation, asserting that requirement has no waiver and is therefore preempted. Mot. 6:20-26; US Br. 2:9-10. But CARB has already stipulated—in a signed court order in another case—that it will not enforce this regulatory requirement unless and until it has a preemption waiver from EPA. Exh. A6. The possibility of enforcement during the pendency of this litigation is thus speculative—all the more so because this requirement does not become enforceable for *nine years*. Lang Decl., ¶ 19; *see also, e.g.*, ECF 23-15 (Potter Decl.) ¶ 9b (alleging manufacturers’ “work begins at least two years in advance of a given model year”). In any event, in light of CARB’s stipulation, the possibility of *preempted* enforcement is nil. There is no basis for a preliminary injunction of this requirement.

IV. THE PHASE 2 REGULATIONS SHOULD NOT BE PRELIMINARILY ENJOINED

There is likewise no basis for an injunction against the “Phase 2 Greenhouse Gas Regulations.” Mot. 6:26-7:3. CARB is not requiring manufacturers to certify to these standards, though it will continue to accept and process certification applications if manufacturers voluntarily submit them. Lang Decl., ¶ 9. In any event, CTP Plaintiffs identify no injury from these standards, presumably because (as they concede) vehicles or engines that meet existing federal standards will also meet these California standards. Mot. 6:26-28. CTP Plaintiffs fail to identify any differences between the two or any other injury the state standards cause them. By contrast, Defendants and the public interest would be harmed by interference with voluntary certifications, as described above. *Supra* 20:7-12.

V. THE MAY MAC SHOULD NOT BE PRELIMINARILY ENJOINED

CTP Plaintiffs’ motion is moot as to the May MAC because the August MAC expressly superseded it, Aug. MAC at 2, and “there is nothing left ... to enjoin,” *Arc of Cal. v. Douglas*, 757 F.3d 975, 982 (9th Cir. 2014); *see also Brach v. Newsom*, 38 F.4th 6, 11 (9th Cir. 2022) (en banc) (challenge to rescinded executive order was moot). The voluntary cessation exception to mootness is inapplicable as the August MAC was not issued “because of” this litigation, *Pub. Utilities Comm’n of State of Cal. v. FERC*, 100 F.3d 1451, 1460 (9th Cir. 1996), but rather reflects CARB’s ongoing evaluation of unprecedented circumstances and responsiveness to questions from regulated parties, Lang Decl., ¶¶ 39-49. Moreover, CARB cannot reasonably be expected to reissue the May MAC. It was an initial advisory, as evinced by the express indication that further information would be forthcoming. May MAC at 2. CARB has also since begun a rulemaking to further clarify a certification pathway described in the August MAC. *See* Exh. B3. Those regulatory modifications cannot be “easily abandoned,” *Brach*, 38 F.4th at 12-13 (cleaned up), and provide “procedural safeguards” against reissuance of the May MAC, *Fikre v. Fed. Bureau of Investigation*, 904 F.3d 1033, 1039 (9th Cir. 2018). For the same reasons, the May MAC is not capable of repetition yet evading review. *Brach*, 38 F.4th at 15.

Even if these claims were not moot, CTP Plaintiffs cannot show they are being irreparably harmed by a superseded advisory. Nor are they likely to succeed in their claims. The May MAC was merely “repetitive of” other sources of law, *Missionary Guadalupanas of Holy Spirit Inc. v. Rouillard*, 38 Cal. App. 5th 421, 432 (2019)—namely, CARB’s duly-adopted *emission standards*, Mot. 11:3-18. It cannot therefore give rise to a free-floating preemption claim, any speech-based claim, or an underground regulation challenge. And CTP Plaintiffs’ state law challenges are barred by sovereign immunity. *Supra* 17:1-9.

VI. EXECUTIVE ORDER N-27-25 SHOULD NOT BE PRELIMINARILY ENJOINED

A. CTP Plaintiffs’ Challenges to the EO Are Unripe, Their Alleged Injuries from It Are Speculative, and the Equities Favor Defendants

As CTP Plaintiffs concede, the EO merely directs state agencies to take further actions, without prescribing the time or manner of performance. *See* Mot. 11:23-25 (referring to “future

regulations”); *id.* at 16:15 (same); *id.* at 29:2-3 (referring to “future government incentive programs”). The EO thus does not operate on these Plaintiffs at all. An executive order by the Governor is merely a tool for organizing and administering state government by giving direction to state agencies; an executive order does not and *cannot* compel or prohibit action by private actors.²¹ If and when CARB or another state agency implements the EO’s direction, and if the CTP Plaintiffs believe that implementation adversely affects them, then and only then would they have a concrete, ripe claim. *WildEarth Guardians v. Mont. Snowmobile Ass’n*, 790 F.3d 920, 933 (9th Cir. 2015); *see also Twitter*, 56 F.4th at 1174. Any alleged injuries from such future actions are also too speculative to support a preliminary injunction. *Caribbean Marine Servs.*, 844 F.2d at 674-75. Defendants, on the other hand, would be injured by interference with the Governor’s ability to direct state agencies.

B. If They Were Somehow Ripe, CTP Plaintiffs’ Challenges to the EO Would Fail on Their Merits

1. The Market Participant Exception is Fatal to the Preemption Challenge

Even if it were ripe, CTP Plaintiffs’ preemption challenge to the EO would fail because state actions taken as market participants “are generally protected from federal preemption,” including under the Clean Air Act. *Engine Mfrs. Ass’n v. S. Coast Air Quality Mgmt. Dist.*, 498 F.3d 1031, 1040, 1043 (9th Cir. 2007). As CTP Plaintiffs admit, the EO gives direction as to “government vehicle procurement decisions.” Mot. 11:21-22. And the Ninth Circuit has already held that “provisions directing state and local governmental entities to purchase, procure, lease, or contract for use of vehicles meeting specified air pollution criteria constitute direct state participation in the market” and are thus exempt from Clean Air Act preemption. *South Coast*, 498 F.3d at 1045. As a market participant, California may prefer certain suppliers over others, for any number of reasons (including their production of cleaner vehicles), just as “private fleet operators do.” *Id.* at 1047. CTP Plaintiffs’ attack on the EO’s prioritization of certain

²¹ Executive orders issued in response to a state of emergency proclaimed under California’s Emergency Services Act, Cal. Gov. Code § 8550 et seq., are distinct; those do have the force and effect of law and may regulate private conduct. EO N-27-25 is not an *emergency* executive order, however.

1 manufacturers' vehicles for state-funded incentives fails for the same reason. Mot. 11:22; *see*
 2 *also* EO, ¶ 3. Just as Maryland's qualifications for state incentives to remove "automobile hulks"
 3 from the State reflected its participation in the market, *Hughes v. Alexandria Scrap Corp.*, 426
 4 U.S. 794, 809 (1976), so too do these qualifications for California's incentives.

5 **2. The First Amendment Challenge Is Without Merit**

6 CTP Plaintiffs' First Amendment challenge would likewise fail, if it were ripe, because the
 7 EO also does not restrict speech or deny benefits based on the exercise of protected speech.²²
 8 The EO directs CARB to keep and publish lists of vehicle manufacturers that continue to follow
 9 several enumerated emissions requirements. EO, ¶ 3. State agencies are then to use these lists to
 10 prioritize manufacturers in their own vehicle procurement, for certain incentive programs, and
 11 when developing regulatory flexibilities for new emissions requirements. *Id.* CTP Plaintiffs
 12 claim that the EO directs CARB to leave manufacturers—such as themselves—that fail to comply
 13 with speech conditions they agreed to when they signed the CTP off the list. Mot. 20:19-21:6.
 14 Yet the CTP is referenced only once, and only indirectly, in the EO:

15 [CARB] shall identify, maintain, and update publicly available lists of ... medium-
 16 and heavy-duty vehicle manufacturers that are continuing to certify to and follow
 17 the requirements of the [ACT] regulation and the [Omnibus] regulation, or
 requirements agreed to as part of any agreements between such manufacturer and
 [CARB]....

18 The reference to agreement requirements has the same meaning as the other "requirements" listed
 19 in the paragraph: *emissions* requirements, not speech. Because the EO directs nothing with
 20 respect to the CTP's speech restrictions, it has no plausible impact on CTP Plaintiffs' First
 21 Amendment rights.

22 **CONCLUSION**

23 The motion for preliminary injunction should be denied.

24
25
26
27
28 ²² The Eleventh Amendment bars Plaintiffs' state constitutional challenge to the EO,
supra 17:1-9, which lacks merit for the same reasons that their federal constitutional claim fails.

1 Dated: September 16, 2025

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