Attorneys General of the States of California, Arizona, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Massachusetts, New Jersey, New Mexico, Minnesota, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Pennsylvania Department of Environmental Protection, and Corporation Counsel for the City of New York

November 9, 2007

The Honorable Nancy Pelosi
Office of the Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Harry Reid
Office of the Majority Leader
U.S. Senate
Washington, DC 20515

RE: CAFE Provisions in Energy Bill

Dear Speaker Pelosi and Majority Leader Reid:

We write to voice our strong opposition to any preemption language in the Energy Bill that could be used to invalidate the Clean Air Act motor vehicle greenhouse gas emission standards that have been developed by California and adopted by other States. As of today, fourteen States – representing over 40% of the American population – have adopted or are in the process of adopting standards identical to California's landmark standards. We now await a decision from the U.S. Environmental Protection Agency (US EPA) on whether it will grant a waiver of preemption under Clean Air Act section 209(b), thereby allowing these state emission standards to become enforceable.

We urge you to ensure that the Energy Bill not contain language that could be used to undermine the States' longstanding authority under the Clean Air Act. The most direct way to accomplish this goal is to include in the Energy Bill the U.S. Senate's language contained in section 519 of H.R. 6:

> Nothing in this title shall be construed to conflict with the authority provided by sections 202 and 209 of the Clean Air Act.

This language is clear and not subject to future dispute. Other language could put this Congress on record as allowing further needless litigation against the greenhouse gas emission standards developed by California and adopted by States.

California and other States are not seeking anything new. Congress long ago set in place the legal framework that the U.S. Senate's savings clause would protect. From the beginning, Congress established a two-car system for emission standards, in which California acted as a "laboratory for innovation." *See Motor & Equip. Mfrs. Ass'n v. Envtl. Prot. Agency*, 627 F.2d 1095, 1110-11 (D.C. Cir. 1979). California has, in fact, led the Nation in establishing vehicle pollution controls for cars and light trucks for more than 40 years. Other States can adopt these standards only if, among other things, they are "identical" to California's standards, 42 U.S.C. § 7507, preserving the Clean Air Act's two-car system. Just last year, a distinguished panel of experts catalogued the benefits of separate California-led emission standards, validating this two-car system as a vital tool in dramatically reducing air pollution. *See* National Research Council, State and Federal Standards for Mobile Source Emissions (2006).

This year, the U.S. Supreme Court had "little trouble concluding" that the Clean Air Act provides authority to address carbon dioxide emissions. *Massachusetts v. Environmental Protection Agency*, 549 U.S. ____, 127 S. Ct. 1438, 1459 (2007). In so ruling, the Court understood the need to address this particular pollution from cars and trucks in the fight against global warming: "Judged by any standard, U.S. motor-vehicle emissions make a meaningful contribution to greenhouse gas concentrations." *Id.* at 1457-58.

In 2004, California approved its regulations limiting the emissions of greenhouse gases carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons from new motor vehicles, beginning with model year 2009 vehicles. The automobile industry can meet the California standards using technologies that exist today. California came to that conclusion when it adopted the regulation, after extensive study and public input. In the currently pending waiver proceeding, US EPA will again examine whether California has provided the industry with "'adequate lead time to permit the development of the technology necessary to implement the new procedures, giving appropriate consideration to the cost of compliance.'" *Motor & Equip. Mfrs. Ass'n v. Nichols*, 142 F.3d 449, 463 & n.13 (D.C. Cir. 1998) (quoting Federal Register notice in explaining waiver test). This past spring, the automobile industry presented its arguments and evidence to the U.S. District Court in Vermont, in the industry's challenge to Vermont's identical standards. After a 16 day trial, the Court issued a detailed opinion that discussed many of the technologies available to the industry, and agreed that these state standards are feasible:

> It is improbable that an industry that prides itself on its modernity, flexibility and innovativeness will be unable to meet the requirements of the regulation, especially with the range of technological possibilities and alternatives currently before it.

Green Mountain Chrysler-Plymouth-Dodge-Jeep v. Crombie, No. 2:05-cv-302, slip op. (D. Vt. Sept. 12, 2007) at 202.

As explained in the attached comparison sheet, the California standards have significant differences from any federal fuel economy standard, with the California standards providing much more flexibility than federal fuel economy standards. Ignoring these differences and added flexibility, and treating the California standards as just a carbon dioxide tailpipe standard for traditional gasoline-powered vehicles, the stringency of the California standards is roughly equivalent to the targets that the U.S. Senate energy bill would enact. Thus, fulfilling California's role as a laboratory for innovation, these state greenhouse gas emission standards nicely complement federal legislative efforts to amend the federal fuel economy statute.

It is very important that the Energy Bill clearly and unambiguously protect the States' existing authority to set new motor vehicle emission standards under the Clean Air Act. The United States can achieve energy security for its citizens without putting at risk the authority of the States to reduce vehicle emissions and address global warming.

Sincerely,

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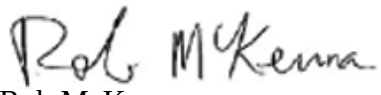
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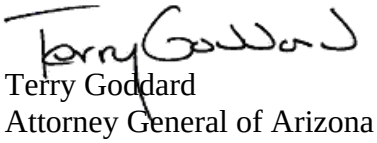
Terry Goddard
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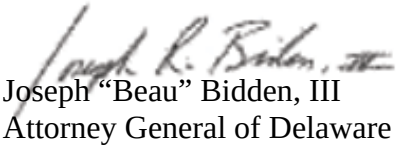
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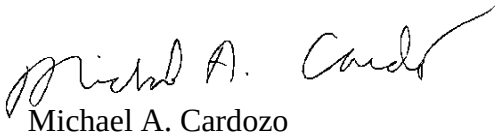
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