

United States Senate

WASHINGTON, DC 20510

May 1, 2025

The Honorable John Thune
Majority Leader
United States Senate
Room S-230, The Capitol
Washington, D.C. 20510

The Honorable John Barrasso
Majority Whip
United States Senate
Room S-208, The Capitol
Washington, D.C. 20510

Dear Leader Thune and Whip Barrasso:

We write to emphasize the far-reaching and likely irreversible consequences if the current Senate Majority were to overrule the Senate Parliamentarian’s recent decision that a joint resolution of disapproval regarding three Clean Air Act preemption waivers granted by the Environmental Protection Agency (EPA) to the state of California would not be entitled to expedited procedures in the Senate.

In reaching that decision, the Senate Parliamentarian relied on the determination made by the independent, non-partisan Government Accountability Office (GAO) that the three Clean Air Act preemption waivers do not qualify as “rules” under the Congressional Review Act (CRA).

GAO’s determination should not be seen as novel or surprising because it is consistent with fifty years of agency practice. Even prominent Senate opponents of *the Clean Air Act* waiver provision—including Energy and Natural Resources Committee Chairman Lee and Environment and Public Works Committee Chairman Capito—have previously acknowledged in legislation and public materials that these waivers are not subject to CRA review.¹

We, however, do not write to relitigate the determination by GAO or the question already decided by the Parliamentarian. Both parties have been on the losing end of decisions by the Parliamentarian. We ourselves were on the losing end of several decisions by the Parliamentarian during the 117th Congress. But we did not attempt to overrule these decisions, even though we did not agree with them.

Now, we understand that some may be considering overruling the Parliamentarian’s decision.² While that might be more expedient than agency rulemaking³ or considering legislation under the Senate’s normal rules, such an action would be a procedural nuclear option—a dramatic break from Senate precedent with profound institutional consequences.

¹ See, e.g., Sen. Mike Lee, [One-Pager, 119th Congress: “Stop CARB Act”](#) (arguing that amending the statute is necessary because “California’s power to influence national emissions standards for the auto, locomotive, and boating industries is not subject to Congressional review, meaning Congress does not have the ability to stop CARB.”).

² See, Inside Congress, Politico (April 28, 2025),

<https://www.politico.com/newsletters/inside-congress/2025/04/28/markup-madness-begins-00312128>

³ We note that EPA may choose to use the normal administrative process to withdraw a previously-granted Clean Air Act waiver, and indeed, this is what the Trump administration chose to do in 2019 with respect to a different waiver.

If the current Senate Majority were to open this door, the CRA could be weaponized to retroactively invalidate decades of agency actions—including adjudications, permits, and licensing decisions that were never previously considered “rules”—and effectively hijack the Senate floor. In addition, if efforts to invalidate such actions were successful, future administrations would face significant obstacles utilizing the underlying authorities for any arguably similar actions, given the plain text of the CRA. Most importantly, however, once that precedent is set, a future Senate Majority could subsequently apply it to legislation beyond the CRA. Put bluntly, there is no cabining a decision to overrule the Parliamentarian.

We therefore urge you to weigh these issues carefully—with full knowledge of the consequences—should you consider whether to overrule the Parliamentarian regarding a CRA resolution disapproving the Clean Air Act preemption waivers.

Sincerely,



Charles E. Schumer
United States Senator
Minority Leader



Alex Padilla
United States Senator
Ranking Member, Committee
on Rules and Administration



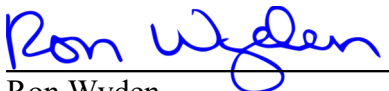
Sheldon Whitehouse
United States Senator
Ranking Member, Senate
Committee on Environment
& Public Works



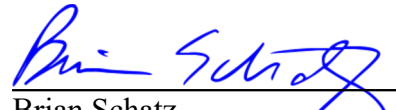
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Committee on the Judiciary



Patty Murray
United States Senator
Vice Chair, Senate Committee
on Appropriations



Ron Wyden
United States Senator
Ranking Member, Committee
on Finance



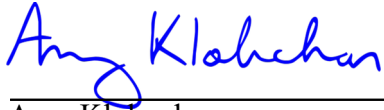
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Committee on Intelligence



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Agriculture, Nutrition, and
Forestry




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on Energy and Natural
Resources



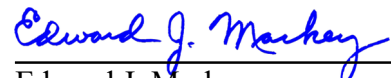
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Jeanne Shaheen
United States Senator
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on Small Business
and Entrepreneurship



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United States Senator
Ranking Member, Special
Committee on Aging



Richard Blumenthal
United States Senator
Ranking Member, Senate
Committee on Veterans'
Affairs



Elizabeth Warren
United States Senator
Ranking Member, Committee
on Banking, Housing, and
Urban Affairs



Maggie Hassan
United States Senator
Ranking Member, Joint
Economic Committee



Christopher A. Coons
United States Senator

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The Honorable Shelley Moore Capito
The Honorable Bill Cassidy
The Honorable Susan Collins
The Honorable Tom Cotton
The Honorable Mike Crapo
The Honorable Ted Cruz
The Honorable Joni Ernst
The Honorable Lindsey Graham
The Honorable Chuck Grassley
The Honorable James Lankford
The Honorable Mike Lee
The Honorable Mitch McConnell
The Honorable Jerry Moran
The Honorable Lisa Murkowski
The Honorable Rand Paul
The Honorable James Risch
The Honorable Eric Schmitt
The Honorable Rick Scott
The Honorable Tim Scott
The Honorable Roger Wicker