

# The Detroit News

## Can Trump end California's autos emission rule supremacy?

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*Washington* — Environmental groups and the U.S. Environmental Protection Agency, still under the control of President Joe Biden, are bracing to protect California's central role in regulating vehicle emissions against what could be a formidable deregulatory push from President-elect Donald Trump.

The lame-duck Biden administration has not yet granted California a waiver allowing it to move ahead with the next round of its influential, strictest-in-the-country rules that explicitly require automakers to sell more electric vehicles. But official sign-off is likely to arrive soon.

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Biden, a Democrat, did not issue the waiver in the heat of a presidential race that featured EVs as a sensitive topic in battleground, automotive-heavy Michigan. But officials are expected to act soon and tee up multipronged efforts by Trump, GOP allies and fossil fuel groups across the country to roll back rules or even end California's unique regulatory privileges once and for all.

The EPA, responding to an inquiry from The Detroit News, said it is working to ensure its

impending waiver decision is "durable and grounded in the law." The agency added: "(T)he Biden-Harris EPA is committed to maintaining its successful track record fighting for cleaner air."

The state of California — and its environmental regulator, the California Air Resources Board — has long set its own vehicle emissions standards enabled by waivers from the federal government. The state gained that authority thanks to a provision in the Clean Air Act, originally passed in 1970.

The state's Los Angeles Basin had especially bad smog at the time, in part due to its warm climate and position between mountains and inward-sweeping winds from the Pacific Ocean.

Clean Air Act Amendments in 1977 paved the way for other states to adopt California's standards. Currently, 11 other states and the District of Columbia have pledged to adopt its latest auto regulations that require EVs to represent more than one-third of new vehicle sales by model year 2026 or 2027. The number rises to 100% by 2035.

**More:** Ruling paves way for Biden to approve stricter California vehicle rules, but SCOTUS looms

**More:** State rules would force quick EV adoption. Automakers and dealers are worried

Trump repeatedly vowed on the campaign trail to eliminate policies he said amount to "EV mandates" and — albeit with bureaucratic hurdles — will be able to do so at federal agencies. But California could be more of a challenge.

The president-elect previously tried to revoke a past California waiver during his first White House tour, but those efforts didn't materialize until later in Trump's first term and never fully played out before he left office. This time, Trump has said EV policies will be a day-one priority in his new administration.

Challenges to California's authority will happen through public battles in Congress and courtrooms, and in private battles between the Trump administration and major automakers like the Detroit trio of Ford Motor Co., General Motors Co. and Stellantis NV — which have all invested heavily into electrification.

## **The Congress**

The cleanest, most direct way for Trump to end California's regulatory supremacy would be through the Republican-led 119th Congress. In theory, GOP lawmakers could amend or cutout sections of the Clean Air Act that grant the Golden State its privileges. But in practice, that could prove too big a hill to climb.

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Robert Glicksman, an environmental law professor at George Washington University, said that such a move is "conceivable" but noted that the act has not been amended since 1990.

Most bills in the U.S. Senate require 60 votes to pass, significantly higher than the 53-47 majority Republicans will enjoy over Democrats in the chamber. That threshold could change if GOP leadership decides to end its longstanding 60-vote requirement or if the law is approved under reconciliation, a parliamentary procedure allowing up to three measures annually to pass with a simple 50-vote majority.

The House only requires a simple majority on all bills, but the fight could be even more difficult there with Republicans poised to hold, at most, an eight-seat majority. That means it could only lose four votes if Democrats uniformly supported preserving California's powers.

Those could be difficult votes for the state's nine (potentially 11, pending election results) Republican house members. The News reached out to U.S. Reps. Ken Calvert and Tom McClintock — the two longest-tenured California Republicans in the chamber — but did not receive comments before the publication of this story.

### **The courts**

A more complicated but potentially fruitful avenue for Trump to cut back on California's authority will be through the courts. The effort will likely take shape through a series of different cases.

For example, Trump could try to use his powers as president to revoke a Biden-issued waiver for California. His authority to do so is dubious and would almost certainly be challenged in court by environmental groups and the state of California.

"We're ready," said Kathy Harris, director of the Natural Resource Defense Council's clean vehicles program. "If there are attempts to try to undercut the legal right to address this pollution, we're ready to fight while we can."

California's Democratic Gov. Gavin Newsom has also convened a special state legislative session to focus on "bolstering California legal resources" related to environmental issues, among others, against actions from the incoming Trump administration.

"The freedoms we hold dear in California are under attack — and we won't sit idle. California

has faced this challenge before, and we know how to respond," he said in a press release.

On the other side of the ideological spectrum, pro-fossil fuel groups could challenge California's authority as unlawful. Mario Loyola, an energy policy fellow at the conservative Heritage Foundation, laid out such arguments in a public comment on the waiver.

"Simply put, the risk of climate change does not justify the risk of departing from constitutional democratic governance," said Loyola, a contributor to Project 2025 — a recent initiative by Heritage laying out a more conservative policy vision across government.

The transportation section of Project 2025 — authored primarily by former Trump administration official Diana Furchtgott-Roth — separately argues that there is "no valid basis" for California's unique authority to regulate carbon dioxide emissions. One specific approach could be an argument over the Energy Policy and Conservation Act of 1975.

EPCA created a comprehensive approach to federal energy policy and laid the foundation for the U.S. Department of Transportation to set fuel economy standards, commonly known as CAFE. The plaintiffs could argue that California's standards are in conflict with the federal government.

If Trump's Justice Department brings a case on those or similar grounds against California quickly after taking office, a court could issue a preliminary injunction within months — well before the case and appeals to higher courts are fully resolved.

Such a preliminary ruling, at least on a temporary basis, would determine whether California could enforce its latest standards while litigation is ongoing.

Much of that litigation would happen in the D.C. Court of Appeals, which tends to handle federal regulatory matters, or the Ninth Circuit Court headquartered in San Francisco. Democratic presidents nominated the majority of judges currently serving at each court, though that majority is stronger in the D.C. circuit.

Appeals to higher courts — like the U.S. Supreme Court — could take several years but would likely wrap up well before the end of Trump's term.

### **The board room**

Michael Buschbacher, a Washington-based partner at the law firm Boyden Gray, said in an interview that California will wield significant power even as legal or congressional challenges mount.

"Automakers, as a practical matter, will have to be pretty conservative. Because imagine ... the original rules come back," explained Buschbacher, who represents plaintiffs in a series of challenges to emissions regulations set by California and the Biden administration.

"They're going to still be operating in the shadow of those rules until it's finally settled by the courts," he added.

In other words, automakers could face significant fines and compliance issues if they scale back electrification efforts but eventually have to abide by stricter rules from California or a future Democratic regime in Washington.

Stellantis has already committed voluntarily to following California's pending emissions regulations, even if the state were to be unable to enforce them due to federal legislation or a judicial ruling.

The transatlantic automaker also agreed to invest \$4 million to install public electric vehicle chargers in the state, plus another \$6 million on chargers in more than a dozen other states that also follow California's strict emissions standards, according to CARB.

**Look back:** Stellantis, California reach deal on emissions regulations (March)

The settlement document between the parties noted that the deal offers Stellantis more regulatory certainty so it can make long-term planning decisions and investments, and "satisfy market demand and production realities."

Automakers like Ford, Volkswagen AG, Honda Motor Co. and BMW AG inked agreements in 2019 with California over past emissions rules through 2026. Ford and GM declined to comment on whether they would enter agreements on the newest set of regulations, as Stellantis did.

The New York Times reported in 2019 that Trump was enraged by the deals, a signal that he could be on the lookout for similar ones. Automakers will have to manage their current business plans around Trump's anger and against potential regulatory consequences by California down the line.

"I don't know whether the heads of auto companies are going to be scared to piss Trump off by abiding by those agreements, or whether they're going to renege on them," said Glicksman, the GW University law professor.

"If you come at the — well, they're not really the king — but if you come at the marquess, you best not miss," Buschbacher said of CARB. "Because they have a lot of authority in California."

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