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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

STATE OF CALIFORNIA, *et al.*,

Case No. 4:25-cv-04966-HSG

Plaintiffs,

V.

UNITED STATES OF AMERICA, *et al.*,

**BRIEF OF *AMICUS CURIAE* GREG
DOTSON IN OPPOSITION TO
DEFENDANTS' MOTION TO
DISMISS**

Defendants.

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INTRODUCTION

The Congressional Review Act creates an expedited process for Congress to enact a joint resolution to disapprove statutorily-defined Executive Branch agency rules. *See 5 U.S.C. § 801, et seq.* The CRA requires federal agencies to notify Congress upon finalizing a CRA-covered rule. *5 U.S.C. § 801(a)(1)(A).* Congress can then pass a “joint resolution of disapproval” during a statutorily-prescribed window of time after the agency action was taken to overturn the rule. *5 U.S.C. §§ 801(b)(1), 802(a).* A key feature of the law is the truncated process associated with consideration of resolutions of disapproval. *See 5 U.S.C. § 802(c)-(f).* In particular, debate in the U.S. Senate is limited, thereby avoiding a filibuster and allowing passage by a simple majority instead of requiring a three-fifths vote. *See 5 U.S.C. § 802(d)(2); Standing Rules of the Senate, Rule XXII(2), available at <https://www.rules.senate.gov/rules-of-the-senate>.* Nor can there be any amendments or certain procedural motions. *5 U.S.C. § 802(d)(2).*

Since enactment of the CRA in 1996, Congress has relied upon the Government Accountability Office, an independent, nonpartisan agency within the Legislative Branch, to assist in the implementation of the law. The GAO has tracked agency compliance with the CRA and routinely advised Congress on the scope and applicability of the CRA. The GAO has issued approximately 70 legal decisions to advise Congress about whether an agency action is subject to the CRA. Until 2025, Congress relied upon these advisory opinions. This has ensured consistent and predictable application of the meaning and scope of the CRA.

For nearly 30 years, the Executive Branch attempted to faithfully comply with the CRA and where questions of applicability arose, the GAO provided a principled, independent analysis that explicitly informed Congress, the Executive Branch, states, and regulated parties about what agency actions were and were not subject to CRA review. Each of those parties acted accordingly based upon the shared understanding that developed from the interplay between the Executive Branch and the GAO: Members of Congress proposed legislation if they thought the scope of the CRA needed to be changed; the Executive Branch developed rules that factored in the possibility of congressional review under the Act; states and regulated parties assessed the durability of the regulatory landscape.

On May 21, 2025, the U.S. Senate, on a partisan basis, set a new precedent that radically deviates from the statute and the historic practice in Congress. The Senate now abdicates its responsibility for faithful implementation of the CRA to the Executive Branch via this precedent. The Executive Branch may now unilaterally, and without any guiding principle, expand the category of agency actions that receive expedited review in the U.S. Senate pursuant to the CRA, even when such actions are not within the statutory scope of the CRA.

Specifically, it had been established for decades and reaffirmed multiple times between 2022 and 2025 that EPA’s waivers of preemption under the Clean Air Act were not subject to CRA review. Nevertheless, the May 2025 precedent purported to allow the ineligible EPA waivers to be overturned. This is an unheard-of deviation from past practice and a violation of the CRA’s statutory language. The Senate has improperly eliminated the limits on the scope of the CRA that Congress carefully put in place.

INTEREST OF AMICUS CURIAE

Greg Dotson is an Associate Professor at the University of Oregon School of Law. He has 20 years of experience working in the U.S. House of Representatives and the U.S. Senate. He began working as congressional staff in 1996, the year the CRA was enacted. He rose to hold senior staff positions in both chambers of Congress and gained extensive experience with the CRA. Most recently, he served as the Chief Counsel for the Senate Committee on Environment and Public Works in 2021 and 2022. In that capacity, he was directly involved in the consideration and passage of Senate Joint Resolution 14 in the 117th Congress, a resolution of disapproval pursuant to the CRA concerning an EPA rule addressing emissions from oil and gas facilities. As an academic, he has published scholarly articles about vehicle emissions standards, including the California waivers that are at issue in this case. His academic work has been cited by members of Congress in several *amicus* briefs but this is the first *amicus* brief he has submitted.

Professor Dotson offers this *amicus* brief with hope that it will provide the Court with helpful background information about the Congressional Review Act.

DISCUSSION

I. Congressional Review Act Background

A. The Scope Of The CRA Is Limited To Rules

The scope of the CRA is broad in subject matter but cabined to a “rule,” primarily as defined by the Administrative Procedure Act. *See 5 U.S.C. § 804(3).* Through that cross-reference, a “rule” is defined as “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency” 5 U.S.C. § 551(4). A “rule” under the APA excludes an agency order (including the result of an adjudication), licensing, sanctions, relief, or failure to act. *See 5 U.S.C. § 551; see also Congressional Research Service, The Congressional Review Act: Determining Which “Rules” Must Be Submitted to Congress (Oct. 22, 2024), available at https://www.congress.gov/crs-product/R45248.*

The CRA further restricts the applicability of the statute's special criteria by excepting some agency actions from the definition of a "rule." Specifically, rules of "particular applicability"; rules relating to agency management or personnel; and rules of "agency organization, procedure, or practice that do[] not substantially affect the rights or obligations of non-agency parties" are excepted. 5 U.S.C. § 804(3)(A)-(C). The CRA also exempts "rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee." 5 U.S.C. § 807.

The scope of the CRA was a major issue during congressional consideration. Despite the exceptions and exemption discussed above, the lead Democratic proponent of the CRA expressed concern about the broad scope of the Act during its final legislative consideration. Throughout his career, Sen. Carl Levin (D-MI) was a champion of the concept of congressional review of agency rules. In 1979, shortly after joining the Senate, Sen. Levin introduced legislation to establish a legislative review of agency rules. Agency Accountability Act of 1980, S. 1945, 96th Cong. (1980), *available at* <https://www.congress.gov/bill/96th-congress/senate-bill/1945>. In 1985, after the Supreme Court found legislative vetoes unconstitutional in *INS v. Chadha*, 462 U.S. 919 (1983), Sen. Levin introduced revised legislation that proposed the resolution of disapproval

1 approach ultimately enacted by the CRA. Rulemaking Procedures Reform Act of 1985, S. 1145,
 2 99th Cong. (1985), *available at* <https://www.congress.gov/bill/99th-congress/senate-bill/1145>.
 3 Sen. Levin's proposals had enjoyed a measure of bipartisan support, and his 1985 bill was
 4 cosponsored by Senate Majority Leader Bob Dole (R-KS).

5 While Sen. Levin's 1985 bill was not enacted, Congress ultimately passed the CRA more
 6 than a decade later as part of a larger legislative package. Contract with America Advancement
 7 Act of 1996, H.R. 3136, 104th Cong. (1996) (§ 251, 110 Stat. 868-74), *available at*
 8 <https://www.congress.gov/bill/104th-congress/house-bill/3136>. Noting estimates that 4,000 rules
 9 were issued each year at the time, Sen. Levin was concerned that, as drafted, the CRA applied to
 10 too many rules. 142 Cong. Rec. S3122 (Mar. 28, 1996), *available at*
 11 <https://www.congress.gov/104/crec/1996/03/28/142/45/CREC-1996-03-28-pt1-PgS3114-2.pdf#page=9>. Senator Levin said that the text was, "not exactly what I would have chosen to
 12 support, but it's close enough." *Id.* The estimates Sen. Levin cited turned out to be fairly accurate.
 13 In 2006, the GAO reported that it received approximately 15-20 rules each day from federal
 14 agencies that were subject to the CRA, and that approximately 42,000 rules had been subject to the
 15 CRA in its first decade of implementation. U.S. Gov't Accountability Office, GAO 06-601T,
 16 Perspectives on 10 Years of Congressional Review Act Implementation (2006), *available at*
 17 <https://www.gao.gov/assets/gao-06-601t.pdf>. Sen. Levin did not mention the possibility that the
 18 CRA would end up being applied to agency actions that were not even rules.
 19

20 **B. The Role Of The Government Accountability Office**

21 The U.S. Government Accountability Office is "an independent, non-partisan agency that
 22 works for Congress." [Https://www.gao.gov/about](https://www.gao.gov/about). As a Legislative Branch agency, the GAO
 23 serves Congress with a culture of nonpartisan expertise and has no obligation to accept Executive
 24 Branch orders. The GAO "provides Congress and federal agencies with objective, non-partisan,
 25 fact-based information to help the government save money and work more efficiently." *Id.*

26 The CRA requires federal agencies to provide their rules to the Comptroller General of the
 27 GAO. 5 U.S.C. § 801(a)(1). For "major" rules, the GAO subsequently provides Congress with a
 28 report assessing the promulgating federal agency's "compliance with the procedural steps"

1 required by law and Executive order, and the effective date of the rules is delayed for 60 days
 2 unless the President makes a determination that the need for such a delay is outweighed by other
 3 important considerations including health, safety, and national security. 5 U.S.C. § 801(a)(2),
 4 (a)(3)(A), (c)(1)-(2). A rule is considered “major” if the Administrator of the Office of Information
 5 and Regulatory Affairs of the Office of Management and Budget in the Executive Office of the
 6 President finds that the rule would have major economic effects. 5 U.S.C. § 804(2). This structure
 7 enhances Congress’ ability to conduct oversight of the Executive Branch: The Executive Branch is
 8 legally required to submit rules for congressional review; the GAO, in the Legislative Branch,
 9 assesses Executive Branch compliance.

10 In 1998, the GAO presented information to Congress about 10 months of CRA
 11 implementation in 1996 and 1997. U.S. Gov’t Accountability Office, GAO/T-OGC-98-38,
 12 Congressional Review Act: Implementation and Coordination (1998), *available at*
 13 <https://www.gao.gov/assets/t-ogc-98-38.pdf>. The GAO found that agencies were not consistently
 14 filing their rules with the GAO and delaying the effective date of rules as required by the CRA.
 15 The GAO presented this information to federal agencies and stated that they “experienced varying
 16 degrees of responses from the agencies.” But the GAO stated that EPA’s response was notable as
 17 that agency along with several others “took immediate and extensive corrective action to submit
 18 rules that they had failed to submit and to establish fail-safe procedures for future rule
 19 promulgation.” *Id.* The GAO reported 10 years after CRA enactment that agency compliance had
 20 improved and the GAO “generally found that agencies complied with CRA’s requirements.” U.S.
 21 Gov’t Accountability Office, GAO 06-601T, Perspectives on 10 Years of Congressional Review
 22 Act Implementation (2006), *available at* <https://www.gao.gov/assets/gao-06-601t.pdf>.

23 Despite federal agencies’ efforts to comply with the CRA and submit covered rules to
 24 Congress for review, sometimes agencies have failed to submit an applicable rule for review –
 25 perhaps under the mistaken understanding that their action does not fall into the CRA’s definition
 26 of a “rule.” If a rule is not submitted to Congress, Congress could be deprived of its opportunity to
 27 review the rule. The CRA does not directly contemplate this possibility, but over the years
 28 Congress has developed an ad hoc approach to address this problem. Members of Congress

1 routinely request GAO's assistance in determining whether an agency action meets the definition
 2 of a "rule" under the CRA. As the GAO has explained:

3 Congress has opted to treat the receipt of a GAO opinion concluding that an agency action
 4 is a rule as triggering the statutory provisions that otherwise would have been triggered by
 5 the agency's submission. Thus, Congress has used GAO opinions to cure the impediment
 6 created by the agency's failure to submit the rule, protecting its review and oversight
 7 authorities.

8 Internal Revenue Service: Applicability of the Congressional Review Act to Revenue Procedure
 9 2018-38, B-330376 (Nov. 30, 2018), *available at* <https://www.gao.gov/products/b-330376>.

10 Accordingly, the importance of GAO legal decisions has grown over time. In the first 10
 11 years of CRA implementation, members of Congress requested GAO's assistance eight times. U.S.
 12 Gov't Accountability Office, GAO 06-601T, Perspectives on 10 Years of Congressional Review
 13 Act Implementation (2006), *available at* <https://www.gao.gov/assets/gao-06-601t.pdf>. Such
 14 requests have markedly increased in recent years, with some 13 of them in 2025 alone. *See*
 15 <https://www.gao.gov/legal/congressional-review-act/legal-decisions>. In total, Congress has
 16 requested GAO's assistance in these matters approximately 70 times over the last 30 years. *Id.*

17 C. The Use Of The CRA Disapproval Process

18 The CRA was first successfully used by Congress and President George W. Bush in 2001
 19 to negate a regulation related to ergonomic injuries promulgated by the Clinton Administration.
 20 S.J.Res. 6, 107th Cong. (2001), *available at* <https://www.congress.gov/bill/107th-congress/senate-joint-resolution/6>. The next successful use did not occur until President Trump's first term when,
 21 in 2017 and 2018, Congress used the CRA to undo 16 rules finalized by the Obama
 22 Administration. These included measures to protect streams from coal mining, to keep firearms
 23 from the mentally ill, to protect consumers' privacy, to promote women's health, and to discourage
 24 U.S. companies from bribing foreign officials. *See* Congressional Research Service, The
 25 Congressional Review Act (CRA): Frequently Asked Questions 28-29 (Appendix A. Rules
 26 Overturned Using the Congressional Review Act) (Updated Nov. 12, 2021), *available at*
 27 https://www.congress.gov/crs_external_products/R/PDF/R43992/R43992.15.pdf#page=32.

1 After President Trump's first term, Congress and President Biden used the CRA three
 2 times. Professor Dotson was personally involved in consideration of one of these resolutions. In
 3 2020, the Trump Administration promulgated a rule to deregulate methane emissions from the oil
 4 and gas sector and Congress passed a CRA resolution of disapproval to overturn this rule in 2021.
 5 S.J.Res. 14, 117th Cong. (2021), *available at* [https://www.congress.gov/bill/117th-
 6 congress/senate-joint-resolution/14](https://www.congress.gov/bill/117th-congress/senate-joint-resolution/14). President Biden signed that resolution into law. As Chief
 7 Counsel for the Committee with jurisdiction over Senate Joint Resolution 14, Professor Dotson
 8 was charged with helping to ensure that the resolution was properly considered. As part of that
 9 process, he consulted with EPA, the GAO, and the Senate Parliamentarian, to ensure that the rule
 10 fell within the scope of the CRA and that the resolution was properly drafted.

11 In President Trump's second term, in addition to the purported use of the CRA to overturn
 12 the California emissions waivers at issue in this case, the CRA has been used to rescind 19 agency
 13 rules. These rules include a rule that imposes a fee on emitted methane to discourage waste and
 14 pollution; a rule that limits the use of off-road vehicles in Glen Canyon National Recreation Area;
 15 rules that set efficiency standards for gas water heaters, walk-in coolers and freezers, and
 16 commercial refrigerators and freezers; a rule that reduces toxic emissions from tire manufacturing;
 17 a rule that protects marine archeological resources; an IRS rule regarding reporting of digital asset
 18 sales; two rules issued by the Consumer Financial Protection Bureau; a rule that revises the process
 19 of considering bank mergers; and a rule that limits emissions of persistent and bioaccumulative
 20 hazardous air pollutants. *See* Uses of the Congressional Review Act during the Trump
 21 administrations: Trump administration, second term (2025-2029), Ballotpedia.org, *available at*
 22 [https://ballotpedia.org/Uses_of_the_Congressional_Review_Act_during_the_Trump_administrations#Trump_administration,_second_term_\(2025-2029\)](https://ballotpedia.org/Uses_of_the_Congressional_Review_Act_during_the_Trump_administrations#Trump_administration,_second_term_(2025-2029)).

24 The CRA has seen its most use during periods of presidential transition, when a new
 25 President has the opportunity to undo some of the last actions of the former President. But the
 26 CRA has also served as an important congressional tool outside of those transition periods. Mere
 27 introduction and consideration of a CRA resolution can serve as a tool to build and demonstrate
 28 opposition to executive action. President Obama vetoed five resolutions of disapproval during his

1 presidency relating to labor protections; protections against financial conflicts of interest; pollution
 2 controls for new and existing power plants; and rules limiting water pollution. *See* Congressional
 3 Review Act: Federal agency rules challenged under the Congressional Review Act that passed
 4 both chambers, Ballotpedia.org (at 5-6), *available at*
 5 https://ballotpedia.org/Congressional_Review_Act#datawrapper-chart-LOcJZ. President Biden
 6 vetoed 11 resolutions of disapproval relating to the domestic content of electric vehicle chargers;
 7 small business lending; endangered species protections for certain bats and birds; consumer
 8 protections relating to cryptocurrency; labor rules; student loans; emissions standards for heavy-
 9 duty vehicles; Labor Department rules that address climate change-related fiduciary duties; and the
 10 scope of the Clean Water Act. *See id.* at 3.

11 The CRA undoubtedly also has an important, yet unquantifiable, effect on the rulemaking
 12 process. Seeing agency rules challenged or even nullified by the CRA, agency regulators craft
 13 regulations with the specter of the CRA hanging over their heads. *See* Kevin Bogardus & Robin
 14 Bravender, *How Biden Beat the Clock on Big Environmental Regs*, E&E News (June 12, 2024,
 15 1:16 PM), *available at* <https://www.eenews.net/articles/how-biden-beat-the-clock-on-big-environmental-reg/>. It cannot be known how many changes are made in contemplation of the
 16 possibility of having to defend a regulation against a CRA vote, but there can be little doubt that
 17 the CRA has a chilling effect on agency rule writers. The GAO has referred to this as the CRA's
 18 "deterrent effect." U.S. Gov't Accountability Office, GAO 06-601T, *Perspectives on 10 Years of*
 19 *Congressional Review Act Implementation* (2006), *available at* <https://www.gao.gov/assets/gao-06-601t.pdf>. The GAO has stated: "The Congressional Research Service has reported that several
 20 rules have been affected by the presence of the review mechanism, suggesting that the CRA
 21 review scheme has had some influence." *Id.*

22 This is consistent with Professor Dotson's experience working in the Senate, where
 23 conversations with the Executive Branch indicated a consistent awareness of the CRA and how the
 24 existence of the CRA affected potential agency schedules for rule promulgation.

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1 **II. EPA Waivers And The CRA**

2 **A. Clean Air Act Waivers Historically Have Not Been Subject To The CRA**

3 The Clean Air Act generally preempts states from adopting or enforcing emission standards
 4 for motor vehicles. 42 U.S.C. § 7543(a). The Clean Air Act also requires EPA to waive federal
 5 preemption over California vehicle emissions standards when certain factual predicates are
 6 satisfied. 42 U.S.C. § 7543(b). Since enactment of the Congressional Review Act in 1996, EPA
 7 has taken nearly 150 actions pursuant to this authority. *See* U.S. Environmental Protection Agency,
 8 Vehicle Emissions California Waivers and Authorizations, *available at* <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations>. All available
 9 information indicates a consensus among Congress, EPA, and the GAO until 2025 that EPA's
 10 waivers of preemption were not considered to be "rules" subject to the CRA. Notices of these
 11 waivers of preemption were never before submitted to the GAO and the Congress by EPA
 12 pursuant to the CRA. *See* Congressional Research Service, California and the Clean Air Act
 13 (CAA) Waiver: Frequently Asked Questions, n.217, (May 9, 2025), *available at*
 14 https://www.congress.gov/crs_external_products/R/PDF/R48168/R48168.5.pdf.

15 For example, EPA granted a waiver of preemption in 2003 relating to California's Low
 16 Emission Vehicle program. Notice of Decision, Environmental Protection Agency, California State
 17 Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption, 68 Fed. Reg. 19811
 18 (Apr. 22, 2003). In its notice, EPA states: "*As with past waiver decisions, this action is not a rule*
 19 *as defined by Executive Order 12866.*" *Id.* (emphasis added). The definition of a rule under
 20 Executive Order 12866 is similar to and likely more expansive than the definition of a rule under
 21 the CRA. *See* Executive Order No. 12866 (1993), § 2(d), *available at*
 22 <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>. The notice was not
 23 submitted to the GAO and Congress.

24 On March 14, 2022, EPA granted a waiver of preemption for California's Clean Car
 25 Program. Notice of Decision, Environmental Protection Agency, California State Motor Vehicle
 26 Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous
 27 Withdrawal of a Waiver of Preemption, 87 Fed. Reg. 14332 (Mar. 14, 2022). A Senator requested
 28

1 that the GAO determine whether the waiver of preemption is a “rule” for purposes of the CRA.
 2 GAO Decision B-334309, *Environmental Protection Agency—Applicability of the Congressional*
 3 *Review Act to Notice of Decision on Clean Air Act Waiver of Preemption*, at 1 (Nov. 30, 2023),
 4 *available at* <https://www.gao.gov/assets/870/863746.pdf>.

5 The GAO examined the issue and concluded that EPA’s waivers do not fall under the
 6 CRA’s definition of a rule. *Id.* at 4-7. The GAO explained that the waiver was an “order,” not a
 7 “rule” under the APA because it “meets the statutory definition of an order, reflects the hallmarks
 8 of an order that courts identified, and is similar to the actions in our prior decisions that were
 9 orders.” *Id.* at 5. The GAO found further support for this finding because the waiver was particular
 10 to California, based on consideration of particular facts, and had immediate effect in California. *Id.*
 11 at 5-6. The GAO concluded that even if the waiver was a rule, it is a rule of particular applicability
 12 because it “concerns a specific entity—California—and addresses a statutory waiver specific to
 13 California’s Advanced Clean Car Program.” *Id.* at 6. The CRA specifically excepts rules of
 14 particular applicability from review. 5 U.S.C. § 804(3)(A).

15 **B. The Reaction To The Finding That The CRA Is Inapplicable To Waivers**

16 With CRA’s inapplicability confirmed, opponents of California’s emissions standards
 17 attempted to block the standards through the normal legislative process. On December 6, 2023, just
 18 one week after the GAO’s determination was published, the House of Representatives passed the
 19 “Choice in Automobile Retail Sales Act of 2023,” which would have prohibited EPA from
 20 finalizing its most recent emissions standards for cars and trucks, and, more importantly to the
 21 California waiver, amended the Clean Air Act to ensure that standards do not “result in limited
 22 availability of new motor vehicles based on the type of new motor vehicle engine in such new
 23 motor vehicles.” H.R. 4468, 118th Congress (2023), *available at*
 24 <https://www.congress.gov/bill/118th-congress/house-bill/4468/text>.

25 The proposed amendment to the Clean Air Act would have prevented EPA from approving
 26 waivers of preemption for California’s emissions standards. That is because California’s waiver
 27 requests must be granted unless (among other considerations) the state standards are not consistent
 28 with the federal standards. 42 U.S.C. § 7543(b)(1)(C). Had the “Choice in Automobile Retail Sales

1 Act of 2023" been enacted, California's standards would not be consistent with the amended
 2 section governing federal standards because California's rules result in increasing sales of zero-
 3 emission vehicles and decreasing sales of vehicles that operate on internal combustion engines.
 4 The Senate never took up the bill before the end of the 118th Congress.

5 Attempts were subsequently made to advance legislation to simply remove the Clean Air
 6 Act's waiver provisions. The leading proposal entitled "Stop CARB Act" was introduced in
 7 September 2024, S. 5038, 118th Congress (2024), and again in the next Congress in March 2025.
 8 S. 1072, 119th Congress (2025). The sponsor of this legislation, Sen. Mike Lee (R-UT), circulated
 9 a fact sheet in 2024 describing the proposed legislation that included the statement: "California's
 10 CAA federal preemption waivers cannot be reviewed under the Congressional Review Act (CRA)
 11 because the waiver granted by the EPA is not a *rule* as that term is defined in the CRA." Office of
 12 Senator Mike Lee, One-Pager, 118th Congress, Stop CARB Act, *available at*
 13 <https://www.lee.senate.gov/services/files/D7060B80-6E13-4481-8EC6-63155F546C1A>. (Despite
 14 this definitive statement, Sen. Lee later voted to apply the CRA to the waiver.) The legislation
 15 never advanced beyond referral to the Senate Committee on Environment and Public Works. *Id.*

16 Another legislative tactic that opponents of California's emissions standards have
 17 attempted is to include a funding limitation in a pending appropriation bill. In 2023, for example, a
 18 proposed funding bill for EPA contained a prohibition on using funds to approve a waiver for a
 19 California mobile source emissions rule. Section 463, Department of the Interior, Environment,
 20 and Related Agencies Appropriations Act, 2024, H.R. 4821, 118th Cong. (2023) (prohibiting funds
 21 to approve a waiver submitted to the Environmental Protection Agency by the State of California
 22 pursuant to Section 209(e) of the Clean Air Act for the State of California's Amendments to its
 23 rule titled "Small Off-Road Engine Regulations: Transition to Zero Emissions"), *available at*
 24 <https://www.congress.gov/bill/118th-congress/house-bill/4821/text>. This appropriations bill was
 25 abandoned when it had insufficient support to pass.

26 **C. The Unjustified Attempt To Apply The CRA To The 2025 Waivers**

27 For EPA's part, shortly after the GAO concluded that California's waivers were not rules
 28 subject to the CRA, the agency announced a public hearing for consideration of California's

1 Advanced Clean Cars II waiver request and called for public comments. U.S. EPA. Hearings,
 2 Meetings, Proceedings, etc.: California State Motor Vehicle Pollution Control Standards;
 3 Advanced Clean Cars II Regulations; Request for Waiver of Preemption (Dec. 26, 2023), *available*
 4 *at* <https://www.regulations.gov/document/EPA-HQ-OAR-2023-0292-0001>. EPA granted
 5 California a waiver for this program in January 2025. U.S. EPA, California State Motor Vehicle
 6 and Engine Pollution Control Standards; Advanced Clean Cars II; Waiver of Preemption; Notice
 7 of Decision, 90 Fed. Reg. 642 (Jan. 6, 2025), *available at*
 8 <https://www.govinfo.gov/content/pkg/FR-2025-01-06/pdf/2024-31128.pdf>.

9 Notwithstanding the history and record of legal determinations recounted above, in
 10 February 2025, EPA submitted three waivers of preemption to Congress, characterizing them as
 11 rules subject to the CRA. *See* GAO Letter B-337179, *Observations Regarding the Environmental*
 12 *Protection Agency's Submission of Notices of Decision on Clean Air Act Preemption Waivers as*
 13 *Rules Under the Congressional Review Act*, at 1 & n.1 (Mar. 6, 2025), *available at*
 14 <https://www.gao.gov/assets/880/875948.pdf>.

15 After EPA submitted the waiver decisions to Congress, the GAO reviewed the agency
 16 actions and again concluded that the waivers of preemption were not rules subject to the CRA. *Id.*
 17 at 2. The Trump EPA offered no explanation to counter the GAO's analysis or to justify EPA's
 18 radical departure from its former, decades-long position, and provided no information that could be
 19 used to distinguish California waivers from any other executive action historically not subject to
 20 review under the CRA. *See id.*

21 The Congressional Research Service has explained how the Trump Administration's
 22 position has changed from the consistent views held by the EPA during administrations prior to
 23 2025. Congressional Research Service, California and the Clean Air Act (CAA) Waiver:
 24 Frequently Asked Questions, at 27 (May 9, 2025), *available at*
 25 https://www.congress.gov/crs_external_products/R/PDF/R48168/R48168.5.pdf.

26 The independent, nonpartisan Senate Parliamentarian determined that the CRA did not
 27 apply to the waivers. *See* Rachel Frazin, *Senate parliamentarian says lawmakers can't overturn*
 28 *California car rules — but Republicans may try anyway*, The Hill (Apr. 4, 2025), *available at*

1 https://thehill.com/policy/energy-environment/5233436-senate-parliamentarian-says-lawmakers-
 2 cant-overturn-california-car-rules-but-republicans-may-try-anyway/. This was critically important
 3 as the Senate Parliamentarian is considered the neutral arbiter of the Senate rules, ensuring that no
 4 party gets an unfair advantage in the application of the rules. Senators who were supportive of the
 5 waivers responded as though this was determinative. California's senators, along with the ranking
 6 Democratic Senator on the Environment and Public Works Committee, issued a press release
 7 stating that the Parliamentarian's decision affirmed that the EPA "cannot weaponize the CRA to
 8 repeal these waivers." Press release, Padilla, Schiff, Whitehouse Welcome Senate
 9 Parliamentarian's Reaffirmation That California's Clean Air Act Waivers Not Subject to
 10 Congressional Review Act (Apr. 4, 2025), *available at*
 11 <https://www.padilla.senate.gov/newsroom/press-releases/padilla-schiff-whitehouse-welcome-senate-parliamentarians-reaffirmation-that-californias-clean-air-act-waivers-not-subject-to-congressional-review-act/>.

14 In nonetheless purporting to invoke the CRA to overturn the waivers, the Senate – which is
 15 the critical chamber of Congress for this purpose due to the difference between needing a majority
 16 versus a three-fifths vote – articulated no rationale to explain why approvals of the California
 17 waivers are subject to the CRA, but not other orders, adjudications, or excepted actions like
 18 contracts, leases, and permit approvals. The new Senate precedent establishes that the Senate
 19 simply defers to Executive Branch conclusions about what is subject to CRA review and does not
 20 independently analyze the applicability of the CRA (or lack thereof) to an agency action that the
 21 Executive Branch claims is subject to the CRA. (Plaintiffs' Opposition explains how this was
 22 accomplished. Doc. No. 194 at 4:26-6:15.)

23 The Senate's handling of the California waiver CRA resolutions signals an unprecedented
 24 new era in which Congress abdicates its role of deciding which actions are eligible for CRA
 25 review. This precedent in effect says that the Senate now just accepts the Executive Branch's
 26 decision that an action is subject to the CRA – even when that action is facially at odds with the
 27 CRA statutory language and no justification or argument for applicability is even offered. *See*
 28 Molly Reynolds, *The Senate's Recent Actions on the Congressional Review Act*, Yale J. on Reg.

1 Notice & Comment (May 28, 2025). An administration that is willing to recategorize orders,
 2 adjudications, and excepted and exempted actions as “rules” subject to the CRA can now achieve
 3 privileged consideration in the Senate, contrary to the plain language of the statute and the original
 4 intent of the CRA.

5 The Senate has therefore engineered a path for a one-party government to bypass the scope
 6 of the CRA (and the filibuster) when seeking to eliminate virtually any previously unreviewed
 7 agency action. This opens the door to abuse of the CRA – for instance by opening up resolved
 8 issues through re-characterizing agency actions as “rules,” resulting in unpredictable policy shifts.
 9 This new path is even more problematic because the CRA provides that a disapproved rule “may
 10 not be reissued in substantially the same form, and a new rule that is substantially the same as such
 11 a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted
 12 after the date of the joint resolution disapproving the original rule.” 5 U.S.C. § 801(b)(2). Although
 13 nothing prohibits an agency from promulgating a rule pursuant to the same authority as a
 14 disapproved rule as long as that new rule is not substantially the same as the disapproved rule, this
 15 is nevertheless strong medicine. But the Congress that enacted this provision also thought it was
 16 limiting the CRA to rules as strictly defined. Now that the floodgates are open, the harsh
 17 consequences of overturning an agency action under the CRA can be applied to circumstances
 18 Congress never intended.

19 In an odd and unprecedented endnote to this purported use of the CRA, several weeks after
 20 the Senate vote and the GAO’s analysis, as well as after the actions of both chambers were long
 21 completed, the White House belatedly attempted to provide a rationale for why the waivers should
 22 be considered rules subject to the CRA. In a letter to the GAO, the Director of the Office of
 23 Management Budget emphasized that Congress needed to “decide for itself” what is subject to the
 24 CRA. Letter from Russell Vought to Gene Dodaro (June 18, 2025), *available at*
 25 <https://www.whitehouse.gov/wp-content/uploads/2025/03/CA-Waiver-Letter-to-GAO.pdf>. The
 26 argument is baffling because the Senate decided to defer to the Executive Branch about what is
 27 subject to the CRA without articulating a general theory about why the GAO was wrong and how
 28 to square application of the CRA to the waivers with the CRA’s language. Upon beginning debate

1 over the resolutions of disapproval, Senator John Barrasso (R-WY), the Republican Majority
 2 Whip, summed up the argument for CRA applicability by stating:

3 The Environmental Protection Agency submitted these rules as rules to Congress this year,
 4 after being released by the Biden administration in his final days in office. That is a fact.
 5 No one disputes it.... Under the Congressional Review Act, that makes these rules subject
 6 to review—period, end of story. They are subject to review.

7 Statement of Sen. Barrasso, 171 Cong. Rec. S3018 (May 21, 2025), *available at*
 8 <https://www.congress.gov/119/crec/2025/05/21/171/86/CREC-2025-05-21-pt1-PgS3017-6.pdf>.

9 **III. The Proper Means Of Changing The Scope Of The CRA Is Legislative Amendment**

10 Congress has made minor amendments to the CRA since the Act was originally enacted.
 11 One amendment in 2023 gave the GAO new responsibilities regarding oversight of a law that was
 12 enacted for just a one-year trial period and then sunsetted. *See* Pub. L. 118–5, div. B, title III, § 270
 13 (June 3, 2023), 137 Stat. 33. In 2024, Congress required federal agencies to report additional
 14 information to GAO regarding rules that were rendered ineffective. Pub. L. 118–97, § 2 (Oct. 1,
 15 2024), 138 Stat. 1573. These amendments show that Congress knows how to change the scope of
 16 the CRA – and also suggest congressional satisfaction with the GAO’s performance as Congress
 17 added to the GAO’s oversight authority in small, but real ways.

18 The proper way for Congress to expand the scope of what is covered by the CRA is
 19 legislative amendment. Indeed, since enactment of the CRA 30 years ago, members of Congress
 20 have proposed revising the CRA to expand the scope of agency actions to which the statute
 21 applies. Many of these proposals and others are listed in the appendix at the end of this brief. In
 22 particular, in the 113th and 114th Congresses, members of Congress proposed the “Stop the EPA
 23 Act” to expand the CRA and require approval for EPA actions, including those that are excepted
 24 under current law. H.R. 3056, 114th Congress (2015), *available at*
 25 <https://www.congress.gov/bill/114th-congress/house-bill/3056>; H.R. 5034, 113th Congress (2014),
 26 *available at* <https://www.congress.gov/bill/113th-congress/house-bill/5034>. The proposal was not
 27 enacted. But this legislation, as well as other proposals, reflected a congressional understanding of
 28 the process for changing the scope of application of the CRA – amendment of the existing law via

1 passage of proposed amendments by both houses of Congress, followed by presidential signing of
 2 the enacted legislation.

3 **IV. The Senate Rules Do Not Justify Applying The CRA To The Waivers**

4 Nor can what the Senate did be justified as the Senate simply applying its own internal
 5 rules. By way of background, both the House and the Senate have established rules to govern
 6 consideration of legislation in each chamber. The Senate refers to its rules as “the linchpin of
 7 orderly proceedings and civil debate … since 1789.” U.S. Senate, About Senate Rules (2025),
 8 *available at* <https://www.senate.gov/about/powers-procedures/rules.htm>. The CRA is not
 9 mentioned in either the House or Senate rules. In enacting the CRA, Congress established by
 10 statute a legislative process that might otherwise be governed by the rules of the House and the
 11 Senate.

12 The Constitution reserves Congress’ right to establish its own internal governance rules:
 13 “Each House may determine the Rules of its Proceedings.” U.S. Const, Art. I, Sec. 5, Cl. 2. The
 14 CRA explicitly recognizes this right of Congress in 5 U.S.C. § 802(g), which states: “*This section*
 15 is enacted by Congress … as an exercise of the rulemaking power” of Congress and “is deemed a
 16 part of the rules of each House, respectively, but applicable *only with respect to the procedure to*
 17 *be followed in that House* in the case of a joint resolution described in subsection (a).” (Emphases
 18 added.) Additionally, this section recognizes the constitutional right of each chamber of Congress
 19 to change rules “relating to the *procedure* of that House.” 5 U.S.C. § 802(g)(2) (emphasis added).

20 The right to establish rules does not justify what Congress did with respect to the waivers.
 21 First, § 802(g)(1) is explicit in limiting the rulemaking power to the part of the CRA contained in §
 22 802 as that is the “section” to which the language refers. Other sections of the CRA governing
 23 Executive Branch duties and the definitions, exceptions, and exemption that determine the scope of
 24 the Act are not in § 802 and therefore not deemed part of the rules of each chamber. In this way,
 25 the structure of the CRA reveals Congress’ understanding that most portions of the CRA cannot
 26 relate to Congress’ constitutional power to establish its own rules of procedure. Most relevant in
 27 this case, the definition of a rule in § 804(3) is not deemed to be part of the rules of the Senate.
 28

1 Second, § 802(g)(2) means that only provisions governing procedure can be changed
 2 pursuant to each chamber’s normal rulemaking authority. Accordingly, Congress cannot change
 3 any substantive provisions in the CRA (including in § 802) by rulemaking. The language does not
 4 reflect an intent that would allow the Senate to effectively change the definitions in § 804,
 5 including the definition of “rule.” This is what should be expected given the repeated introduction
 6 of legislative proposals to change the scope of the CRA over the past decades.

7 Finally, the Senate certainly has the authority to change its rules to allow for privileged
 8 consideration of measures outside the scope of the CRA. In setting the new precedent expanding
 9 the category of agency actions that receive expedited review in the Senate, however, the Senate did
 10 not change its rules. Instead, the Senate used a parliamentary maneuver to reinterpret the existing
 11 CRA statute much like the Senate has done previously to interpret Senate Rule XXII with regard to
 12 the requirement for a three-fifths majority for presidential nominations. *See* Congressional
 13 Research Service, Majority Cloture for Nominations: Implications and the “Nuclear” Proceedings
 14 of November 21, 2013 (Dec. 6, 2013) (“The precedent did not change the text of Rule XXII of the
 15 Standing Rules; rather, the Senate established a precedent reinterpreting the provisions of Rule
 16 XXII to require only a simple majority of those voting, rather than three-fifths of the full Senate, to
 17 invoke cloture on all presidential nominations except those to the U.S. Supreme Court.”), *available*
 18 *at* <https://www.congress.gov/crs-product/R43331>.

19 But the CRA is different than the filibuster requirement for Senate confirmations. The CRA
 20 is a statute that imposes legal requirements on the Executive Branch to apply the statutory
 21 definition of a “rule” and to submit such rules to Congress. Unlike the filibuster’s application to
 22 confirmations, the CRA is not solely a creature of the rules governing Senate proceedings. The
 23 precedent used for the waivers provides that the Executive Branch can take action under § 801,
 24 acting as though an agency action not meeting the definition of a “rule” in § 804 is a rule under §
 25 804. This is not in accordance with the substantive statutory provisions of the CRA as opposed to
 26 an internal Senate procedure. This new precedent is roughly analogous to the Executive Branch
 27 sending a legislative proposal to the Senate and calling it a “nomination” to enjoy a privileged
 28 status for its consideration.

CONCLUSION

The Senate’s claimed use of the CRA to consider the California waivers in 2025 radically departs from past CRA implementation and Senate practice. For nearly 30 years, Congress, the GAO, the Executive Branch, states, and regulated parties had a shared understanding of what agency actions were and were not subject to CRA review. Each of those parties acted accordingly based upon that understanding. Members of Congress proposed legislation if they thought the scope of the CRA needed to be changed. The Executive Branch developed rules that factored in the defined possibility of congressional review under the Act. States and regulated parties assessed the durability of the regulatory landscape. This system has worked. For many years, the Executive Branch appeared to implement the CRA in good faith, but when there were failures, Congress developed an approach to ensure compliance. That approach relied on a Legislative Branch entity, the GAO, to independently and rigorously apply the terms of the statute to ensure that federal agencies were properly submitting rules for review.

No federal actions were more carefully reviewed for CRA applicability than the EPA’s waivers of preemption for state vehicle emissions standards. Thirty years of bipartisan precedent, combined with two reviews by the GAO and confirmation from the Senate Parliamentarian all point to the same conclusion: the EPA’s waivers of preemption under the Clean Air Act are not subject to CRA review. Purporting to use the CRA to overturn the California waivers has yielded a result that is inconsistent with the letter and the intent of the CRA and has shattered the shared understanding of the CRA.

Dated: January 16, 2026

Respectfully submitted,

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APPENDIX

Below is a compilation of unenacted proposals to amend the CRA or establish statutes similar to the CRA.

Proposals To Expand The CRA To Agency Actions Not Currently Covered

Some proposals would have allowed congressional review of federal agency actions that are currently outside the scope of the CRA. One proposal, entitled the “Stop the EPA Act,” would have created a new subchapter of the CRA that would apply only to EPA actions and would apply to actions that are currently excepted and exempted under the CRA. H.R. 3056, 114th Congress (2015), *available at* <https://www.congress.gov/bill/114th-congress/house-bill/3056>; H.R. 5034, 113th Congress (2014), *available at* <https://www.congress.gov/bill/113th-congress/house-bill/5034>.

Proposals To Expand The Scope Of The CRA Beyond The Actions Of Federal Agencies

Proposals have been made to expand the scope of the CRA to cover actions taken by entities that are not federal agencies. S. 676, 118th Congress (2023) (proposing to increase the scope of the CRA to task forces, including a task force involved in recommending vaccination of federal contractors), *available at* <https://www.congress.gov/bill/118th-congress/senate-bill/676>; H.R. 4349, 113th Congress (2014) (proposing to expand the CRA to certain actions taken by the President), *available at* <https://www.congress.gov/bill/113th-congress/house-bill/4349>.

Proposals To Expand The Scope Of The CRA To Rules Currently In Effect

One proposal would have amended the CRA to apply it to rules already in effect. H.R. 3442, 115th Congress (2017), *available at* <https://www.congress.gov/bill/115th-congress/house-bill/3442>. Another proposal would have established a parallel law to the CRA, which would have provided for congressional review of existing rules without the exceptions and exemption in the CRA. H.R. 998, 115th Congress (2017), *available at* <https://www.congress.gov/bill/115th-congress/house-bill/998>.

1 **Proposal To Amend The CRA To Require Approval Of Regulations With Criminal Penalties**

2 One proposal would amend the CRA to require approval of new regulations that have
 3 criminal penalties. H.R. 3401, 114th Congress (2015), *available at*
 4 <https://www.congress.gov/bill/114th-congress/house-bill/3401>.

5 **Proposals To Repeal The CRA And Authorize Reinstatement Of Disapproved Rules**

6 Members have proposed to repeal the CRA and allow for reinstatement of disapproved
 7 rules. H.R. 2449, 115th Congress (2017), *available at* <https://www.congress.gov/bill/115th-congress/house-bill/2449>; S. 1140, 115th Congress (2017), *available at*
 8 <https://www.congress.gov/bill/115th-congress/senate-bill/1140>. A proposal was made in 2023 to
 9 authorize agencies for which a rule had been disapproved pursuant to the CRA to reinstate the
 10 disapproved rule within a certain time period. H.R. 1507, 118th Congress (2023), *available at*
 11 <https://www.congress.gov/bill/118th-congress/house-bill/1507>.

13 **Proposals To Reduce Reporting To Congress Pursuant To The CRA**

14 Proposals have been made to reduce the amount of reporting that agencies make to
 15 Congress pursuant to the CRA. H.R. 2247, 111th Congress (2009), *available at*
 16 <https://www.congress.gov/bill/111th-congress/house-bill/2247>; H.R. 5593, 110th Congress (2008),
 17 *available at* <https://www.congress.gov/bill/110th-congress/house-bill/5593>.

18 **Proposals To Allow A Resolution Of Disapproval To Apply To More Than One Rule**

19 Finally, proposals have been made to allow for consideration of more than one agency rule
 20 per resolution of disapproval. S. 164, 119th Congress (2025), *available at*
 21 <https://www.congress.gov/bill/119th-congress/senate-bill/164>; H.R. 77, 119th Congress (2025),
 22 *available at* <https://www.congress.gov/bill/119th-congress/house-bill/77>; H.R. 115, 118th
 23 Congress, *available at* <https://www.congress.gov/bill/118th-congress/house-bill/115> (2024); S.
 24 4485, 118th Congress, *available at* <https://www.congress.gov/bill/118th-congress/senate-bill/4485> (2024); H.R. 61, 117th Congress, *available at*
 25 <https://www.congress.gov/bill/117th-congress/house-bill/61> (2021); H.R. 87, 116th Congress, *available*
 26 *at* <https://www.congress.gov/bill/116th-congress/house-bill/87> (2019); S. 34, 115th Congress,
 27 *available at* <https://www.congress.gov/bill/115th-congress/senate-bill/34> (2017); H.R. 21, 115th

1 Congress, *available at* <https://www.congress.gov/bill/115th-congress/house-bill/21> (2017); S.
2 3483, 114th Congress, *available at* <https://www.congress.gov/bill/114th-congress/senate-bill/3483> (2016); H.R. 5982, 114th Congress, *available at* <https://www.congress.gov/bill/114th-congress/house-bill/5982> (2016).

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