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August 28, 2023

To the Board and Department of Environmental Protection:

I write to offer testimony and expertise as a professor of environmental law on the proposed Department of Environmental Protection rules: Chapter 127-A: Advanced Clean Cars II (ACC II) Program and Chapter 128: Advanced Clean Trucks (ACT) Program. [Note: any opinions imbedded within this comment are mine personally and not the official position of the University of Maine or the University of Maine School of Law.]

The task facing the Department of Environmental Protection, and, frankly, governmental entities throughout our country and the world, is a daunting one. Climate change poses an existential threat to our environment, our economy, our way of life. I am quite confident that the Board has heard testimony and taken notice on the ongoing, and anticipated, impact of climate change on our state. I trust that the Board will heed the warnings of the scientific community on the urgency of the need to address this problem. As a legal expert, I will therefore not repeat the scientific evidence here, expect to emphasize the importance of designing law and policy that reflects the advice of the scientific community and retains adaptability in the face of new developments in research.

To that end, I thought it important to draw the Board's attention to the significance of state-led initiatives to address climate change and the policy diffusion from state to state that rules like the State of California's Advanced Clean Cars and Trucks programs embody. Among other topics, I have written extensively about the increasing role of subnational (i.e. state and municipal) governments in climate mitigation and adaptation. In particular, my 2020 article in the University of Richmond Law Review – entitled *Uniform Climate Control* and appended to this comment – argues that confronting climate change in the current national political environment demands more subnational policy development and diffusion. California has developed the ACC II and ACT rules and other states have begun to adopt them, just as I argue must be done. Maine should join that growing group of states, particularly because in our state, as the Board well knows, almost half of greenhouse gas emissions come from transportation.

Our system of federalism depends on this kind of interaction between overlapping, parallel jurisdictions. In environmental law, that overlap exists horizontally (e.g., state to state, town to town) and vertically (e.g., state to nation, town to county). A properly functioning system produces regulatory innovation, followed by vertical and horizontal diffusion. The interaction in the system also naturally counteracts the "regulatory commons problem" of inaction. Subnational climate change law thus has the potential to serve two important federalism functions: (1) spread effective legal solutions to a common problem, and (2) push back on the temptation not to act. That organic diffusion, a core component of the federalist idea, has likely been artificially delayed due to a demonstrably effective political organization promoting inaction on climate.

In a properly functioning federal republic, one would expect to see states emulate legal regimes of neighbors based on the success of those regimes. This process should happen organically through direct observation but also communication between subnational governments. In the United States, increasing polarization, as has led to a transfer of influence from nonpartisan, quasi-governmental institutions to nakedly partisan, third-party advocacy organizations, some of which no doubt commented on these proposed rules. Unfortunately, as my work documents, the most coordinated and effective advocacy organizations have sought to entrench inaction at the state and local level, for the benefit of their members, largely from the fossil fuel industry.

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The regulation of motor vehicles by states pursuant to the Clean Air Act is a prominent model of functioning, sanctioned policy diffusion, and it directly impacts our ability to mitigate climate change. The Clean Air Act specifically contemplates precisely the "laboratories of democracy" scenario that is playing out with ACC II and ACT – allowing California to engage in policy innovation and giving other states the option to follow along. The Clean Air Act appropriately constrains the experimentation to California for historical reasons, but also for practical ones. Automakers do not want to have fifty separate sets of emissions and fuel economy standards to conform to. Maine adopting ACC II and ACT would be entirely consistent with the cooperative federalism design of the Clean Air Act AND would advance the national and international goals of reducing greenhouse gas emissions.

Adopting these rules would also be consistent with, and is arguably required by, Maine's greenhouse gas reduction statute (38 M.R.S. §576-A(4) – "by September 1, 2021, the board shall adopt rules to ensure compliance with [emissions reduction goals, which include net zero by 2045]") and Climate Action Plan. According to the latter, adoption of rules like ACC II and the ACT is necessary for the state to cut greenhouse gas emissions consistent with statutory climate targets. Specifically, the stated goal of having 219,000 light-duty EVs on the road by 2030 will be directly advanced by these rulemakings.

I want to conclude by offering my perspective on the related affordability and environmental justice arguments often bandied about in defense of internal combustion vehicles and against EV initiatives. While it is true that the current average sticker price of new EVs is higher than new gasoline vehicles, the cost of ownership is already arguably lower for a new EV. Further, the populations of significant concern from an equity perspective – low-income households, especially in marginalized communities – are populations that are unlikely to purchase a new vehicle, regardless of engine type. These populations, if they are able to afford personal vehicles, disproportionately purchase used vehicles. Thus, two things are true. First, the rules changing the lineup of new vehicles available in future model years will have little immediate direct economic effect on household budgets in environmental justice communities. Second, increased inventory and sales of new EVs to higher income households will lead to increased inventory and sales of used EVs to environmental justice communities in following years. Those communities will then get to experience the economic benefits of lower maintenances and fuel costs, as well as the environmental benefit of cleaner air. Without rules like these, fewer affordable used EVs will become available, and the benefits will be more concentrated in higher income communities, while lower income communities are forced to rely on old, dirty technology in the form of internal combustion vehicles.

I stand ready to provide any further assistance the Board and/or the Department need in this matter.

Regards,

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