

From: Carlson, Ann on behalf of Carlson, Ann <carlson@law.ucla.edu>
Sent: Wednesday, September 23, 2020 12:52 PM PDT
To: Keith Goldberg <keith.goldberg@law360.com>
Subject: Re: Looking to chat about Newsom order banning gas car sales

I think the policy is highly dependent on a Biden win. Trump has already withdrawn the waiver for California's current ZEV program (currently being litigated, of course). There's no chance he (or his EPA Administrator) would grant an even more ambitious waiver request, although California would have strong legal grounds to challenge a waiver denial just as it is currently challenging the revocation of the waiver.

The answer to your question about the DC Circuit is so dependent on the basis for any ruling that it's hard to answer in the abstract. Sorry not to be more committal!

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From: Keith Goldberg <keith.goldberg@law360.com>
Sent: Wednesday, September 23, 2020 12:45 PM
To: Carlson, Ann <carlson@law.ucla.edu>
Subject: Re: Looking to chat about Newsom order banning gas car sales

So it seems like the state is banking on a Biden administration, no?

And I know the DC Circuit probably isn't going to decide the vehicle emissions case until next year and a new administration could abandon it, but if it does get to rule and sides with the administration, how damaging is that to the new executive order?

On Wed, Sep 23, 2020 at 2:42 PM Carlson, Ann <carlson@law.ucla.edu> wrote:

Hi Keith,

Off the top of my head, the ban on engines would be on very strong footing if the state gets a waiver from EPA, something I would guess it would seek if Biden is elected. The ban would help California achieve the National Ambient Air Quality Standard for ozone

pollution, something very difficult to achieve as long as conventional vehicles remain on the road. And it would help the state achieve its climate goals. Legally, the air pollution connection should make the granting of a waiver very easy to defend. The

question of whether the state can proceed without a waiver is I think a novel one: does an engine ban "relate to the control of emissions," which is preempted by the Clean Air Act without a waiver? There would certainly be a huge legal battle if the state

proceeded without a waiver.

Hope that's helpful.

Ann Carlson

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From: Keith Goldberg <keith.goldberg@law360.com>

Sent: Wednesday, September 23, 2020 11:27 AM

To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Looking to chat about Newsom order banning gas car sales

Hi Ann,

Hope all is well. I'm sure you saw Gov. Newsom's announcement that he's directing CARB to phase out new gas car sales by 2035. Had a few questions that I was hoping to get your take on:

How much does this raise the stakes of the fight between California and the feds over vehicle emissions policy? Does this effectively double down on the state's positions in the vehicle emissions litigation?

What's the legal authority that the state can rely on for barring non-ZEV sales by 2035?

What are the potential legal vulnerabilities of this move?

If you could get back to me ASAP, I'd appreciate it.

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Best,

Keith Goldberg

Senior Reporter, Energy

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Best,

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