ATTORNEYS GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS AND OF THE STATES OF ARIZONA, CALIFORNIA, CONNECTICUT, DELAWARE, ILLINOIS, IOWA, MAINE, MARYLAND, MINNESOTA, NEW JERSEY, NEW MEXICO, NEW YORK, OREGON, RHODE ISLAND, VERMONT, AND WASHINGTON, THE GENERAL COUNSEL OF THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE CORPORATION COUNSEL FOR THE CITY OF NEW YORK, AND THE CITY SOLICITOR OF BALTIMORE

February 5, 2009

Lisa P. Jackson, Administrator
United States Environmental Protection Agency 1101A
U.S. EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: *Massachusetts v. EPA* remand

Dear Administrator Jackson:

Congratulations on your being sworn in as EPA Administrator. We look forward to working with you over the coming years on issues of critical importance to our states and the country as a whole. We are writing today because of our specific concerns relating to one such issue: the progress of the administrative proceedings on remand from the U.S. Supreme Court ruling in *Massachusetts v. EPA*, 549 U.S. 497, 127 S.Ct. 1438 (2007). We appreciate the tone that you and President Obama have already set to address climate change in partnership with the states. We were also pleased to see your recent statement to EPA employees that the agency "will move ahead to comply with the Supreme Court's decision recognizing EPA's obligation to address climate change under the Clean Air Act." The two-year anniversary of the Court's ruling will fall on April 2, 2009, and no formal action has yet been taken on remand. With that key date quickly approaching, we urge you to act as soon as possible by issuing a determination pursuant to 42 U.S.C. 7521(a)(1) that greenhouse gas emissions are endangering public health and welfare.

As you know, in *Massachusetts v. EPA*, we and other parties challenged EPA's refusal in 2003 to regulate greenhouse gas emissions from motor vehicles pursuant to the federal Clean Air Act. The Court ruled that EPA had authority to regulate

greenhouse gases under the Clean Air Act. 127 S.Ct. at 1459-62. The Court also ruled that EPA had relied on improper policy grounds in denying a rulemaking petition that had been filed under Section 202 of the Act, and it ordered the agency to revisit the rulemaking petition based on proper statutory factors. *Id*. at 1462-63. As EPA itself described the Court's mandate in 2007:

> On April 2, 2007, the Supreme Court ruled that the EPA must determine, under Section 202(a) of the Clean Air Act, whether greenhouse gas emissions (GHG) from new motor vehicles cause or contribute to air pollution that endangers public health or welfare.

72 Fed. Reg. 69934 (December 10, 2007).

In the last two years, we made repeated requests to your predecessor to act on the remand by issuing the required endangerment determination. Although we understand that Administrator Johnson had specifically endorsed a determination of endangerment by the end of 2007 and forwarded that determination to the White House, EPA has not yet acted on the remand. Instead, Administrator Johnson published an Advance Notice of Proposed Rulemaking (ANPR) to "present[] information relevant to, and solicit[] public comment on, how to respond to the U.S. Supreme Court's decision." 73 Fed.Reg. at 44354 (July 30, 2008). The ANPR solicited comment on a broad range of issues beyond the scope of the remand.

The endangerment determination, however, is not dependant on any additional steps in the ANPR process. Indeed, the ANPR and the Technical Summary remove any reasonable doubt that endangerment is occurring as a result of greenhouse gas emissions. As but one example, the ANPR accurately states that "The IPCC projects with virtual certainty (i.e., greater than 99% likelihood) declining air quality in cities due to warmer days and nights, and fewer cold days and nights, and/or more frequent hot days and nights over most land areas, including the U.S." 73 Fed.Reg. at 44426. The science is clear and the need for action at the federal level immediate. Issuance of the endangerment determination is a decisive step that can and should be taken now.

The rulemaking petition that began the process is now a decade old. In view of the approaching two-year anniversary of the Supreme Court's ruling, we urge you to move the regulatory process forward without further delay by formally issuing an affirmative endangerment determination as soon as possible. We would also greatly appreciate information concerning the concrete interim steps you intend to take to keep the standard setting process on track and the schedule that EPA intends to follow. We look forward to working in partnership with EPA throughout this process.

Thank you in advance for your prompt attention to this critically important matter.

Very truly yours,

Martha Coakley
Massachusetts Attorney General

Terry Goddard
Arizona Attorney General

Edmund G. Brown Jr.
California Attorney General

Richard Blumenthal
Connecticut Attorney General

Richard S. Gebelein
Delaware Chief Deputy Attorney General

Lisa Madigan
Illinois Attorney General

Tom Miller
Iowa Attorney General

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