

*ENGINE MANUFACTURERS ASSOCIATION, ET AL. V.  
SOUTH COAST AIR QUALITY MANAGEMENT  
DISTRICT, ET AL.\**

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To protect the auto industry from the burden of varying state standards, the Clean Air Act (“CAA”) preempts states from adopting vehicular emissions standards that differ from federal law.<sup>1</sup> Nationwide, particulate matter is responsible for an estimated 15,000 premature deaths;<sup>2</sup> diesel emissions, which are one of the largest sources of such particulate matter, account for 71% of airborne carcinogens in the state of California.<sup>3</sup> The scope of federal preemption in this area thus has great ramifications for air quality in the United States, and especially in California. Last Term, in *Engine Manufacturers Ass’n v. South Coast Air Quality Management District*<sup>4</sup> the Supreme Court held that the South Coast Air Quality Management District (“South Coast”) in California was preempted by the CAA from imposing purchasing restrictions on private fleet owners. Not only was the Court’s interpretation of “standard” overbroad, but it also left many important questions unanswered. In light of California’s unique air pollution problems, as well as its history of finding creative solutions to those problems, the Court’s holding should be construed as narrowly as possible.

BACKGROUND

The CAA assigns the states primary responsibility for ensuring that clean air standards are met.<sup>5</sup> The major exception to the states having this primary role is in the promulgation of standards relating to new vehicle emissions. Under section 209(a) of the CAA, states are preempted from adopting or enforcing new motor vehicle emissions standards.<sup>6</sup>

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<sup>1</sup> *Engine Mfrs. Ass’n v. S. Coast Air Quality Mgmt. Dist.*, 158 F. Supp. 2d 1107, 1117 (C.D. Cal. 2001), *aff’d*, 309 F.3d 550 (9th Cir. 2002) [hereinafter “*SCAQMD*”].

<sup>2</sup> Environmental Protection Agency, *Diesel Exhaust in the United States*, at <http://www.epa.gov/otaq/retrofit/documents/f02048.pdf> (on file with the Harvard Environmental Law Review).

<sup>3</sup> *SCAQMD*, 158 F. Supp. 2d at 1109.

<sup>4</sup> No. 02-1343, 2004 WL 893964 (U.S. Apr. 28, 2004).

<sup>5</sup> “[A]ir pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments.” 42 U.S.C. § 7401(a)(3) (2000).

<sup>6</sup> “No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle

Despite having some of the most stringent air quality standards in the country, California also continues to have some of the dirtiest air. In fact, the area around Los Angeles (the South Coast basin) is the only one in the country to be designated an “extreme nonattainment area” for ozone under section 181 of the CAA.<sup>7</sup> The CAA requires the South Coast to meet national air quality standards for ozone by 2010, and for particulate matter by 2006.<sup>8</sup> In light of these requirements, California has enacted a wide variety of regulations—including incentive-based programs as well as mandated programs—designed to reduce air pollution.<sup>9</sup> California’s creative responses to its air quality problems have led to a drastic reduction in air pollution over the last twenty years, bringing the state into attainment for lead, sulfur dioxide and nitrogen dioxide standards.<sup>10</sup> But, despite its progress, California still has a long way to go, especially in limiting ozone and particulate matter pollution.<sup>11</sup>

In 2000, South Coast, the agency responsible for “comprehensive air pollution control” in the South Coast Air Basin,<sup>12</sup> adopted a series of rules governing the purchase of new motor vehicles by certain fleet operators within the region [hereinafter “the Fleet Rules”].<sup>13</sup> The Fleet Rules require operators of certain types of vehicular fleets—such as transit buses, trash trucks, airport shuttles and taxis, street sweepers and heavy-duty utility trucks—to buy cleaner-fueled vehicles when replacing or adding to their fleets.<sup>14</sup> Specifically, the rules require certain fleet operators in the South Coast Air Basin to purchase from a particular subset of low emission vehicles already approved for use in California.<sup>15</sup> South Coast estimates that by 2010, the Fleet Rules would eliminate 4780 tons per year of polluting emissions, including 2699 tons of carbon monoxide and 1931 tons of nitrogen oxides.<sup>16</sup>

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engines.” 42 U.S.C. § 7543(a) (2000). However, in recognition of California’s important innovations in emissions controls prior to the CAA, as well as California’s unique pollution problems, *see, e.g.*, Rachel L. Chanin, *California’s Authority to Regulate Mobile Source Greenhouse Gas Emissions*, 58 N.Y.U. SURV. AM. L. 699, 716–71 (2003), the state is permitted under 42 U.S.C. § 7543(b) (2000) to apply for a waiver of the preemption provision.

<sup>7</sup> See 42 U.S.C. § 7511 (2000); *SCAQMD*, 158 F. Supp. 2d at 1109.

<sup>8</sup> Brief for Respondent South Coast Air Quality Management District at 28 n.11, *Engine Mfrs. Ass’n* (No. 02-1343) [hereinafter Respondent’s Brief], available at 2003 WL 22766722.

<sup>9</sup> For an overview of California’s broad range of air quality programs, see the California Air Resources Board’s website, at <http://www.arb.ca.gov/html/programs.htm>.

<sup>10</sup> California Air Resources Board (“CARB”), *Assessment of California’s Statewide Air Monitoring Network for the Children’s Environmental Health Protection Act* (SB 25) at 5 (2003), at <http://www.arb.ca.gov/ch/programs/sb25/adequacyreport.pdf> (on file with the Harvard Environmental Law Review).

<sup>11</sup> *Id.*

<sup>12</sup> CAL. HEALTH & SAFETY CODE ANN. § 40412 (West 1996).

<sup>13</sup> *Engine Mfrs. Ass’n*, 2004 WL 893964, at \*2.

<sup>14</sup> *Id.*

<sup>15</sup> *SCAQMD*, 158 F. Supp. 2d at 1118 (C.D. Cal. 2001), *aff’d*, 308 F.3d 550 (9th Cir. 2002).

<sup>16</sup> Miguel Bustillo, *Supreme Court Curbs AQMD in Smog Battle*, L.A. TIMES, Apr. 29,

In November 2000, the Engine Manufacturers Association (“EMA”), a trade association representing manufacturers of diesel engines, filed a complaint against South Coast in the U.S. District Court of California alleging that the Fleet Rules violate the preemption provision in section 209 of the CAA, which proscribes states from adopting or enforcing emission control standards for new vehicles.<sup>17</sup>

In August 2001, the district court granted South Coast’s motion for summary judgment.<sup>18</sup> The court held that the Fleet Rules do not violate section 209(a) because they regulate the purchasing and leasing of vehicles rather than the sale of vehicles, and because they do not set a standard “relating to the control of emissions,” as preempted by the CAA.<sup>19</sup> The court also pointed out that section 246 of the CAA expressly authorizes purchasing restrictions such as South Coast’s Fleet Rules.<sup>20</sup>

EMA appealed to the Ninth Circuit, which affirmed the lower court opinion.<sup>21</sup> The Ninth Circuit issued no opinion of its own, stating only that it affirmed “for the reasons stated in [the District Court’s] well-reasoned opinion.”<sup>22</sup> EMA petitioned the Supreme Court for certiorari, which was granted in June 2003.<sup>23</sup> In August, the United States submitted an *amicus* brief in support of EMA,<sup>24</sup> and in December the Solicitor General was granted leave to participate in oral arguments as *amicus curiae*.<sup>25</sup>

The Supreme Court vacated and remanded.<sup>26</sup> Writing for the Court,<sup>27</sup> Justice Scalia first pointed to Webster’s Second New International Dictionary (1945) to define the word “standard” as “that which ‘is established by authority, custom, or general consent, as a model or example; criterion; test.’”<sup>28</sup> Using this definition, Justice Scalia drew a distinction between this broad reading of “standards,” which target vehicles or engines generally, and the “means of enforcing” those standards, which can be directed at purchasers as well as manufacturers.<sup>29</sup> According to Justice Scalia, the provisions following section 202 of the CAA support this distinction.<sup>30</sup>

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2004, at A1.

<sup>17</sup> *SCAQMD*, 158 F. Supp. 2d at 1117.

<sup>18</sup> *Id.* at 1120.

<sup>19</sup> *Id.* at 1117, 1119.

<sup>20</sup> *Id.* at 1118.

<sup>21</sup> *Engine Mfrs. Ass’n v. S. Coast Air Quality Mgmt. Dist.*, 309 F.3d 550 (9th Cir. 2002), *cert. granted*, 123 S.Ct. 2274 (2003).

<sup>22</sup> *Id.* at 551.

<sup>23</sup> 123 S. Ct. 2274 (2003).

<sup>24</sup> See Brief for the United States as Amicus Curiae Supporting Reversal, *Engine Mfrs. Ass’n* (No. 02-1343) [hereinafter Brief for the United States], available at 2003 WL 22068761.

<sup>25</sup> See 124 S. Ct. 973 (2003).

<sup>26</sup> *Engine Mfrs. Ass’n*, 2004 WL 893964, at \*2.

<sup>27</sup> Chief Justice Rehnquist and Justices Stevens, O’Connor, Kennedy, Thomas, Ginsburg, and Breyer joined Justice Scalia’s opinion. *Id.*

<sup>28</sup> *Id.* at \*4.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

Section 202 sets national emissions standards, and the sections following it lay out guidelines for enforcing those standards.<sup>31</sup> Justice Scalia argued that South Coast improperly conflated the meaning of “standard” in section 202 with the manufacturer-directed *enforcement mechanisms* for those standards laid out in sections 203, 204, and 205.<sup>32</sup> The Court read section 246 as further demonstrating that Congress understood standards to relate not just to manufacturer-directed regulation but also to purchases, because section 246 requires “restrictions on the purchase of fleet vehicles to meet clean-air standards.”<sup>33</sup> Justice Scalia concluded by stating that “[t]he manufacturer’s right to sell federally approved vehicles is meaningless in the absence of a purchaser’s right to buy them.”<sup>34</sup>

Justice Souter dissented, citing both the presumption against federal preemption in fields traditionally occupied by the states and the legislative history behind the preemption provision at issue.<sup>35</sup> Justice Souter found the presumption against preemption commanding in this case because regulation of pollution falls within “even the most traditional concept” of the police power granted to states<sup>36</sup> and the specific language of section 101 of the CAA states explicitly that “air pollution prevention . . . is the primary responsibility of States and local governments.”<sup>37</sup> As for legislative intent, Justice Souter pointed out that the legislative history of the preemption provision shows that Congress’s purpose was to stop states from directly limiting what kinds of vehicles manufacturers could sell,<sup>38</sup> concerned that otherwise auto manufacturers might have to produce different vehicles for each of the fifty states.<sup>39</sup> Under these principles, according to Justice Souter, section 209(a) has no preemptive application to the Fleet Rules.<sup>40</sup> Although some purchase restrictions could be so all-encompassing as to have the same effect as a direct regulation of manufacturers (and such restrictions would be properly preempted), Justice Souter emphasized the Fleet Rules’ limited nature and commercial availability provisions.<sup>41</sup> Additionally, Justice Souter argued that the majority’s interpreta-

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<sup>31</sup> *Engine Mfrs. Ass’n*, 2004 WL 893964, at \*4.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* (quoting *SCAQMD*, 158 F. Supp. 2d at 1118 (C.D. Cal. 2001)).

<sup>34</sup> *Id.* at \*5.

<sup>35</sup> *Id.* at \*8 (Souter, J., dissenting).

<sup>36</sup> *Engine Mfrs. Ass’n*, 2004 WL 893964, at \*8 (citing *Huron Portland Cement Co. v. Detroit*, 362 U.S. 440, 442 (1960)).

<sup>37</sup> *Id.* (quoting 42 U.S.C. § 7401 (2000)). Justice Souter also pointed out that section 101 “specifically notes that the ‘air pollution’ to which it refers is ‘brought about by,’ among other causes, ‘motor vehicles.’” *Id.* at \*8, n.2.

<sup>38</sup> *Id.*

<sup>39</sup> See *SCAQMD*, 158 F. Supp. 2d at 1119–20 (C.D. Cal. 2001). This is usually referred to as the “third-vehicle” requirement. Congress did not want auto manufacturers to have to comply with other standards beyond those adopted by the federal government or those adopted by California pursuant to its waiver privilege. *Id.*

<sup>40</sup> *Engine Mfrs. Ass’n*, 2004 WL 893964, at \*9.

<sup>41</sup> *Id.* All of the fleet rules contain provisions exempting those vehicles for which no low emission replacements are commercially available. *Id.*

tion of “standard” causes textual difficulties, rendering the second sentence of section 209(a) superfluous<sup>42</sup> and implying carelessness on the part of Congress in drafting section 246.<sup>43</sup> Justice Souter’s final point was that under the majority’s expansive definition of “standard,” it would be hard to see how even voluntary incentive programs and internal state purchasing decisions could escape preemption.<sup>44</sup>

The Court responded to Justice Souter’s dissent by stating that despite Justice Souter’s disagreement with the outcome of the decision, he nevertheless agreed with the majority on the answer to the principle question: that the Fleet rules do not escape preemption merely because they govern purchases rather than sales.<sup>45</sup> The majority also disagreed with Justice Souter’s assertion that “standard” as the majority defined it was so broad as to preempt even voluntary incentive programs, commenting that “nothing in the present opinion necessarily *entails* pre-emption of voluntary programs.”<sup>46</sup>

#### ANALYSIS

The Supreme Court’s interpretation of “standards” for the purposes of the CAA’s preemption provision is textually weak and runs contrary to both legislative intent and the historical interpretation of the term given by the Environmental Protection Agency (“EPA”). Furthermore, the opinion itself leaves many important questions unanswered, including which of the Fleet Rules are actually preempted, as well as what kinds of other state actions might be prohibited. At a time when the federal government is relaxing air quality regulations, California—and the states in general—have a strong interest in finding creative ways to solve persistent air quality problems. In light of this policy consideration, the District Court should limit the holding in *Engine Manufacturers* to apply only to fleet rules that impose mandates on private companies.

The Court’s broad interpretation of “standards” in section 209(a) falls short on a number of levels. First, it is unnecessary to look to a dictionary definition of “standards” when section 209 itself relates the term to another provision in the CAA, in which its meaning is clear. Section 202 sets guidelines for EPA to use in prescribing the national vehicle emis-

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<sup>42</sup> *Id.* at \*10. The second sentence of section 209 says that “[n]o State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle . . . as condition precedent to the initial retail sale, titling (if any) or registration of such motor vehicle, motor vehicle engine, or equipment.” 42 U.S.C. § 7543(a) (2000).

<sup>43</sup> *Engine Mfrs. Ass’n*, 2004 WL 893964, at \*10. Section 246 requires certain states with nonattainment areas to establish fleet rules or an EPA-approved alternative. 42 U.S.C. § 7586 (2000).

<sup>44</sup> *Engine Mfrs. Ass’n*, 2004 WL 893964, at \*10.

<sup>45</sup> *Id.* at \*5–\*6.

<sup>46</sup> *Id.* at \*7.

sions standards that apply to all states and preempt state standards.<sup>47</sup> Section 209(b) requires that to receive a waiver from these federal standards,<sup>48</sup> California's standards must be at least as strict as the federal standards created by section 202(a).<sup>49</sup> The only logical interpretation is that Congress intended the same definition of "standard" in both sections, as there would otherwise be no way to compare the two.<sup>50</sup> Throughout section 202, "standards" reference the maximum level of pollutants that may be emitted from new motor vehicle tailpipes,<sup>51</sup> and they apply only to manufacturers and not to purchasers.<sup>52</sup> Thus, the language of section 202, if applied to section 209, would preempt states only from imposing on manufacturers specific limitations for numerical amounts of tailpipe emissions.

Of course, as Justice Souter acknowledged in his dissent, "legislation can be untidy" and any attempt at interpretation will have strengths and weaknesses.<sup>53</sup> However, Justice Souter went on to point out that all the other factors in this case weigh in favor of South Coast. In addition to the legislative history of the CAA,<sup>54</sup> EPA's own historical understanding of "standards" for the purposes of section 209 comports with the definition

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<sup>47</sup> 42 U.S.C. § 7521 (2000). These standards do not apply to California and those states that have opted into using California's standards under the "piggyback provision." *See* 42 U.S.C. § 7507 (2000).

<sup>48</sup> Section 209(b) allows California (and only California) to opt out of federal vehicular emissions standards as long as it adopts standards that are at least as strict as national ones. 42 U.S.C. § 7543(b) (2000) ("The Administrator shall, after notice and opportunity for public hearing, waive application of this section to [California], if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards."). This waiver was enacted in recognition of California's unique air quality problems as well as the state's history of innovation in air pollution control. *See* Chanin, *supra* note 6, at 716–18. Under section 209(b), California, through CARB, must obtain EPA permission to enact its own emissions standards. 42 U.S.C. § 7543(b). South Coast did not attempt to obtain a waiver for the Fleet Rules, but all of the mandated vehicles were ones already approved for use in California.

<sup>49</sup> Specifically, section 209(b) says that, "[n]o such waiver shall be granted if the Administrator finds that . . . such State standards and accompanying enforcement procedures are not consistent with [section 202(a)] of this title." 42 U.S.C. § 7543(b)(1).

<sup>50</sup> Respondent's Brief, *supra* note 8, at 19–20. As the court in *American Automobile Manufacturers Ass'n v. Commissioner, Massachusetts Department of Environmental Protection* said, "it is unlikely that Congress intended the term 'standards' to have a different meaning when referring to state standards as compared to federal standards." 998 F. Supp. 10, 22 (D. Mass. 1997), *aff'd*, 208 F.3d 1 (1st Cir. 2000).

<sup>51</sup> For example, under the "[r]evised standards for heavy-duty trucks," regulations "applicable to emissions of oxides of nitrogen (NO (INFERIOR x)) from gasoline and diesel-fueled heavy duty trucks shall contain standards which provide that such emissions may not exceed 4.0 grams per brake horsepower hour (gbh)," and "any standard . . . shall apply for a period of no less than 3 model years." 42 U.S.C. § 7521(a)(3)(B)-(C) (2000).

<sup>52</sup> *See, e.g.*, 42 U.S.C. § 7521(a)(6) (2000) ("The standards required under this paragraph shall apply to a percentage of each manufacturer's fleet of new light-duty vehicles beginning with the fourth model year after the model year in which the standards are promulgated.").

<sup>53</sup> *Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, No. 02-1343, 2004 WL 893964, at \*11 (U.S. Apr. 28, 2004) (Souter, J., dissenting).

<sup>54</sup> *See id.* at \*8.

South Coast asserted.<sup>55</sup> Interestingly, EPA itself was noticeably absent from the government's brief, and the Court made no reference to EPA in its opinion. The thrust of the government's argument was that South Coast had to submit a proposal to EPA to obtain a section 209(b) waiver before it could implement the Fleet Rules.<sup>56</sup> Thus the government presented the case as revolving around EPA's rights and duties under the CAA. A question naturally arises as to why EPA was not involved.

It seems likely that EPA was absent because there would be no way for it to enter on the side of EMA without openly contradicting itself. In 1979, in *Motor and Equipment Manufacturers Ass'n v. EPA*, EPA asserted that "the word 'standards' connotes a numerical value setting the quantitative level of permitted emissions of pollutants by a new motor vehicle."<sup>57</sup> More recently, EPA noted that for the purposes of section 209(a), a "standard" is a "requirement to produce a certain number or percentage of vehicles ('production requirement') to meet a numerical emissions limitation" or "a numerical emission limitation and the number of vehicles that are subject to that limitation."<sup>58</sup> When EPA promulgates an interpretation of ambiguous language in the CAA, it is normally given dispositive effect.<sup>59</sup> Last term, in *Alaska Department of Environmental Conservation v. EPA*, the Court affirmed that even a more informal EPA interpretation, as set forth in internal memoranda or other non-legal documents, "warrant[s] respect."<sup>60</sup> Presumably, EPA's interpretation would have been afforded a fair amount of weight had the agency entered the case. Rather than addressing the discrepancy between EPA's interpretation of "standard" and the one the Administration advanced, the government's brief simply omitted any reference to EPA's previous interpretation of "standard." This omission lends credence to the idea that South Coast was acting within the bounds of what both it and EPA considered permissible.

Aside from setting forth a debatable definition of "standards," the Court resolved very little.<sup>61</sup> In terms of both the Fleet Rules specifically and state action generally, the Court has given lower courts little guidance in how to resolve preemption issues in the context of the CAA. As for the Fleet Rules, "at least certain aspects . . . are pre-empted."<sup>62</sup> Although the Court did not specifically say what aspects are preempted, it did say that if some of the Fleet Rules "can be characterized as internal state pur-

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<sup>55</sup> See *infra* text accompanying notes 57 & 58.

<sup>56</sup> Brief for the United States, *supra* note 24, at 2.

<sup>57</sup> 627 F.2d 1095, 1111 (D.C. Cir. 1979).

<sup>58</sup> Respondent's Brief, *supra* note 8, at 23 (quoting a letter from Gary S. Guzy (EPA) to the Honorable Thomas F. Reilly (Sept. 15, 1999) at 8).

<sup>59</sup> *Alaska Dep't of Env'tl. Conservation v. EPA*, 124 S. Ct. 983, 1001 (2004).

<sup>60</sup> *Id.*

<sup>61</sup> Justice Scalia admitted, "We have not addressed a number of issues." *Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, No. 02-1343, 2004 WL 893964, at \*7 (U.S. Apr. 28, 2004).

<sup>62</sup> *Id.*

chase decisions . . . a different standard for pre-emption [might] appl[y].”<sup>63</sup> There is no discussion of what might qualify as an internal decision or what the different standard might be, but in a press release following the decision, South Coast asserted that internal decisions “may well encompass more than publicly owned fleets.”<sup>64</sup> Almost all of the provisions in the Fleet Rules apply to public fleets or to government contractors, so it seems likely that the majority of the rules could be characterized as internal purchase decisions.<sup>65</sup>

It is equally unclear what the effects of *Engine Manufacturers* will be beyond the Fleet Rules. Both the majority and the dissent address the issue of voluntary incentive programs. While the majority asserts that its holding does not “necessarily” entail pre-emption of voluntary programs,<sup>66</sup> the dissent rightly points out that because even a voluntary program must adopt “an emissions standard as the majority defines it,” such programs might in fact be preempted.<sup>67</sup>

The advantage to the vagueness of the *Engine Manufacturers* holding is that it leaves the District Court a great deal of flexibility in deciding how to apply it to the Fleet Rules. Despite giving an overly broad definition of “standard,” the Court seems to have exhibited an intent to allow some types of state air quality regulation. The Court’s insistence that its holding does not necessarily preempt internal state purchasing decisions or voluntary programs gives the District Court leeway to find that the majority of the Fleet Rules are not, in fact, preempted.

There are a number of policy reasons for why the District Court should allow California agencies such as South Coast to continue their innovations in regulation and control of air pollution. With recent amendments to the CAA, including the weakening of the New Source Review provisions,<sup>68</sup> states are facing an uphill battle in curbing air pollution. In California, high levels of ozone and particulate matter threaten the state’s ability to reach federal attainment standards and thereby threaten the health of its citizens.<sup>69</sup> According to a study conducted by CARB, more than ninety percent of Californians are exposed to unhealthy levels of air pollutants at some time during the year.<sup>70</sup> These high levels of air pollution can cause a range of health problems, from increased risk of asthma to birth defects and cancer.<sup>71</sup>

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<sup>63</sup> *Id.*

<sup>64</sup> South Coast Air Quality Management District, *AQMD Will Seek to Continue Implementing Fleet Rules*, at [http://www.aqmd.gov/news1/2004/scotus\\_opinionpr.html](http://www.aqmd.gov/news1/2004/scotus_opinionpr.html) (on file with the Harvard Environmental Law Review).

<sup>65</sup> *Id.*

<sup>66</sup> *Engine Mfrs. Ass’n*, 2004 WL 893964, at \*7.

<sup>67</sup> *Id.* at \*10 (Souter, J., dissenting).

<sup>68</sup> For an interesting history of New Source Review and an overview of the recent changes, see Bruce Barcott, *Changing All the Rules*, N.Y. TIMES, Apr. 4, 2004, § 6 (Magazine), at 38.

<sup>69</sup> CARB, *supra* note 10, at 5.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 7–8.



Furthermore, the CAA, which has been characterized as a “bold experiment in cooperative federalism,”<sup>72</sup> has always relied on maintaining a balance between the interests of the federal government in creating national air quality standards and the interests of the states in choosing how to meet those standards. One of the benefits of cooperative federalism is the ability of willing states to act as laboratories, conducting novel regulatory experiments without risk to the rest of the country.<sup>73</sup> California, in its long history of actively combating air pollution, has served as such a laboratory time and again. Many of our federal air pollution laws are modeled on programs pioneered by California; in 1981, the National Commission on Air Quality noted that California’s standards tend to lead federal standards by two to five years.<sup>74</sup>

A particularly good example of California’s penchant for innovation is AB-1493, the Global Warming Bill. As the state’s most far-reaching and controversial air pollution program to date, the Global Warming Bill requires that greenhouse gas emissions from passenger vehicles be reduced to the maximum economically feasible extent starting in 2009.<sup>75</sup> Auto industry groups have promised to fight AB-1493 on the grounds that it is preempted by the Energy Policy and Conservation Act (“EPCA”), thus raising the question of whether EPCA can bar California from regulating fuel efficiency standards despite California’s explicit waiver privilege in section 209(b) of the CAA.<sup>76</sup> If the auto industry is successful, virtually any attempt to regulate vehicle emissions in California could conceivably be preempted, leaving California with fewer options for reaching the air quality standards mandated by the CAA. Given that California could be barred from continuing independently to regulate fuel efficiency standards, it is especially important that such “standards” be construed as narrowly as possible, to allow the state some regulatory room.

Although the Fleet Rules will not make or break California’s chances at reaching federally mandated air quality standards, they are an important tool for combating air pollution in California, and they provide a good state model for self-regulation. The District Court should uphold California’s right to protect its air through regulation of its own public vehicle purchases.

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<sup>72</sup> *Connecticut v. EPA*, 696 F.2d 147, 151 (2d Cir. 1982).

<sup>73</sup> Brief of Amicus Curiae of the State of California in Support of South Coast Air Quality Management District at 13–14, *Engine Mfrs. Ass’n* (No. 02-1343), available at 2003 WL 22766721.

<sup>74</sup> *Id.* at 14.

<sup>75</sup> CAL. HEALTH & SAFETY CODE ANN. § 43018.5(a) (West Supp. 2002).

<sup>76</sup> See Christopher T. Giovinazzo, *California’s Global Warming Bill: Will Fuel Economy Preemption Curb California’s Air Pollution Leadership?*, 30 *ECOLOGY L.Q.* 893, 896–97 (2003).