Engine Manufacturers Ass'n v. South Coast Air Quality Management District: States Gain a New Avenue for Vehicle Emissions Regulation as the Market Participant Doctrine Allows an Escape from Preemption Under the Clean Air Act

I. OVERVIEW OF THE CASE

The Fleet Rules challenged in this action were developed in an effort to control air pollution in the South Coast Air Basin (Basin) of Southern California, the only area in the nation classified as an "extreme nonattainment area for ozone" by the Environmental Protection Agency (EPA).[1] The Fleet Rules, adopted in 2000 by the South Coast Air Quality Management District (District), "require operators of various kinds of vehicle fleets—such as street sweepers, garbage trucks, and airport shuttles—to choose vehicles meeting specified emissions standards or containing specified alternative-fuel engines when adding to their fleets."[2] The Fleet Rules impose these purchase requirements on various state, local, and federal agencies, as well as private fleet operators.[3]

The Plaintiff-Appellant, Engine Manufacturers Association (EMA) first challenged the Fleet Rules in federal district court shortly after their adoption, claiming that they were preempted by sections 209 and 177 of the Clean Air Act (CAA).[4] The district court granted summary judgment to the District, holding that the Fleet Rules were not preempted under section 209 because they regulated the purchase, rather than the sale, of vehicles.[5] The district court drew a purchase/sale distinction in its interpretation of "standard" under section 209, reasoning that section 209 only prohibited regulations imposed on automobile manufacturers, not

1. Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 498 F.3d 1031, 1035 (9th Cir. 2007). The Basin includes "the City of Los Angeles and portions of surrounding counties." *Id.*
2. *Id.*
3. *Id.*
4. *Id.* at 1037.
5. *See id.* at 1038.

on the purchase of vehicles already available for sale.[6] The United States Supreme Court reversed on appeal, holding that "standards" under Section 209 can be directed toward either manufacturers or purchasers.[7] Without deciding the ultimate issue of whether the Fleet Rules were preempted, the Court remanded the case to the district court for further proceedings.[8]

On remand, Appellants brought a "Motion for Order Implementing the Supreme Court's Decision," claiming that the Fleet Rules were preempted *in toto*.[9] The district court denied the motion, holding that the Fleet Rules were not entirely preempted because the provisions directed toward state and local government entities escaped preemption under the market participant doctrine.[10] Since Appellants failed in their facial challenge, the court declined to rule on the remaining provisions of the Fleet Rules.[11] The court dismissed the suit with prejudice, and Appellants appealed.[12] In the noted case, the United States Court of Appeals for the Ninth Circuit *held* that the provisions of the Fleet Rules directing the purchasing behavior of state and local government entities are not preempted, and remanded to the district court with instructions to determine whether the remaining provisions of the Rules are preempted. *Engine Manufacturers Ass'n v. South Coast Air Quality Management District*, 498 F.3d 1031, 1050 (9th Cir. 2007).

II. BACKGROUND

The CAA was enacted in 1955 to address the growing problem of air pollution in the United States.[13] While the original CAA did not include federal automobile emissions regulations, the promulgation by several states of their own separate vehicle emissions programs led Congress to amend the Act in 1967 to expressly preempt all state regulation of new motor vehicle emissions.[14] Section 209(a) of the Act presently prohibits states from enacting "any standard relating to the

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6. *See id.*

7. *See id.* The court said that while "it was 'likely that at least certain aspects of the Fleet Rules are preempted . . . [i]t does not necessarily follow . . . that the Fleet Rules are pre-empted *in toto*.'" *Id.*

8. *See id.*

9. *Id. In toto* means completely, or as a whole. BLACK'S LAW DICTIONARY 841 (8th ed. 2004).

10. *See Engine Mfrs. Ass'n*, 498 F.3d at 1038.

11. *See id.*

12. *Id.* at 1039.

13. Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 158 F. Supp. 2d 1107, 1112 (C.D. Cal. 2001), *aff'd*, 309 F.3d 550 (9th Cir. 2002), *vacated*, 541 U.S. 246 (2004).

14. *Id.*

control of emissions from new motor vehicles or new motor vehicle engines subject to" the CAA.[15] The CAA provides a special exception for California in section 209(b), whereby California may adopt standards, more stringent than the federal standards, provided it obtains a waiver from the EPA.[16] Additionally, section 177 allows other states to opt-in to California's more stringent standards by adopting standards that are identical to California's, provided that the standards are adopted at least two years before the model year to which they are to apply.[17] Under the 1990 Amendments to the CAA, states opting-in under section 177 are prohibited from promulgating any standards that would require auto manufacturers to create a vehicle conforming to standards that are different from both the California standards and the federal standards—in other words, it prohibits mandating the production of a so-called "third vehicle."[18]

The preemption provisions of sections 209 and 117 have been a fertile source of litigation in recent years, forcing courts to engage in preemption analyses in the context of the CAA. The Supreme Court has stated general guidelines for determining the scope of preemption when presented with a statutory provision expressly preempting state law.[19] In *Medtronic, Inc. v. Lohr*, the Court stated that although determining the scope of preemption begins with the language of the statute, the analysis must also account for context by incorporating two presumptions relevant to preemption.[20] First, preemption analysis must "start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress."[21] Second, the analysis must consider the congressional purpose behind the statute "as revealed not only in the text, but through the reviewing court's reasoned understanding of the way in which Congress intended the statute and its surrounding regulatory

15. Clean Air Act § 209(a), 42 U.S.C. § 7543(a) (2000) ("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 engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.").

16. *See* Clean Air Act § 209(b), 42 U.S.C. § 7543(b)(1) (2000); *see Eng. Mfrs. Ass'n*, 158 F. Supp. 2d at 1112.

17. Clean Air Act § 177, 42 U.S.C. § 7507 (2000).

18. *See id.*

19. Medtronic, Inc. v. Lohr, 518 U.S. 470, 484-86 (1996) (analyzing preemption of state common law claims under the Federal Medical Device Amendments).

20. *Id.* at 484-85.

21. *Id.* at 485 (quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947)).

scheme to affect business, consumers, and the law."[22] The Court explained that while the plain meaning of the text on its own can show that preemption was or was not intended, the *scope* of preemption (i.e., whether the statute invalidates the precise state law at issue) is better determined in light of the statute as a whole and its intended purpose.[23]

The Ninth Circuit in *Exxon Mobil Corp. v. EPA* affirmed the importance of the principles laid out in *Lohr* in the context of CAA preemption analysis.[24] In determining that Nevada's oxygenated fuel standards were not preempted by the CAA, the court placed significant weight on Congress's intent to preserve state authority over air pollution regulation, as evidenced by the text of the CAA.[25] The court also went beyond the text to consider the statute's overall purpose and objectives, a consideration it recognized was "critical to preemption analysis."[26] "The overriding purpose of the Clean Air Act," the court said, "is to force the states to do their job in regulating air pollution effectively so as to achieve baseline air quality standards."[27] The court advised that when interpreting a statute, the "starting point . . . is the language of the statute itself."[28] When a statute is unclear or ambiguous, the reviewing court must look to the legislative history to determine Congress's intent in enacting the statute.[29] The court also re-affirmed the importance of a presumption against preemption when dealing with areas traditionally regulated by the states.[30] The court stated that in areas of traditional state control, including those within the historic police powers of states, federal law will not preempt state law "unless that was the clear and

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22. *Id.* at 485-86.

23. *Id.* at 484-86.

24. Exxon Mobil Corp. v. EPA, 217 F.3d 1246, 1255 (9th Cir. 2000).

25. *See id.* at 1254-56. The court cited several sections of the CAA that explicitly reserved state authority over air pollution regulation. These included the "Congressional Findings" section, which states that "air pollution prevention . . . and air pollution control at its source is the primary responsibility of States and local governments." *Id.* at 1254 (quoting 42 U.S.C. § 7401(a)(3) (2000)), as well as a provision entitled "Retention of State Authority," which states that, subject to exceptions for aircraft emissions, new motor vehicle emissions, and specified restrictions concerning fuel additives, "nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution." *Id.* at 1255 (quoting 42 U.S.C. § 7416).

26. *Id.* at 1255 (citing N.Y State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645, 654 (1995)).

27. *Id.*

28. *Id.* at 1249 (citing Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980)).

29. *See id.* at 1251 (citing United States v. Daas, 198 F.3d 1167, 1174 (9th Cir. 1999)).

30. *See id.* at 1255.

manifest purpose of Congress" as expressed in the federal act.[31] Furthermore, the court said that "[a]ir pollution prevention falls under the broad police powers of the states, which include the power to protect the health of citizens in the state. Environmental regulation traditionally has been a matter of state authority."[32]

CAA preemption litigation in other circuits has departed from the framework developed in *Lohr*, and has rather centered on the precise meaning of the term "standard" as used in section 209(a) of the CAA.[33] The United States Courts of Appeals for the First and Second Circuits have held that sale mandates are "standards" under section 209(a) when they require that a certain percentage of new vehicle sales be sales of zero emissions vehicles (ZEVs).[34]

In *American Automobile Manufacturers Ass'n v. Cahill*, the Second Circuit held that New York sales requirements were "standards" under section 209 of the CAA when they required that a certain percentage of manufacturer's sales of new-light-duty vehicles be sales of ZEVs.[35] In reaching its decision, the court distinguished between "standards" and "enforcement mechanisms," reasoning that the New York sales requirements were standards because they were commands directly aimed at lowering emissions, as opposed to enforcement mechanisms, which ensure compliance with existing standards.[36] The court ultimately held that the New York standards were preempted by the CAA, noting that Congress's intent in allowing California, but not any other state, to enact its own emissions standards was to avoid "an undue burden on vehicle manufacturers" by subjecting them to multiple state standards.[37]

In *Association of International Automobile Manufacturers Inc., v. Commissioner of Massachusetts Department of Environmental Protection*, the First Circuit held that a similar mandate promulgated by Massachusetts, requiring auto manufacturers to develop ZEV technology and to introduce ZEV vehicles into the market, was a standard under section 209(a), and was thus preempted by the CAA.[38] The court reasoned that the sole purpose and effect of the mandate was to achieve a

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31. *Id.* (citing *Travelers Ins.*, 514 U.S. at 645-55).

32. *See id.*

33. *See* Am. Auto. Mfrs. Ass'n v. Cahill, 152 F.3d 196, 199 (2d Cir. 1998); Ass'n of Int'l Auto. Mfrs. v. Comm'r, Mass. Dep't of Envtl. Prot., 208 F.3d 1, 5 (1st Cir. 2000).

34. *See Cahill*, 152 F.3d at 200-01; *Ass'n of Int'l Auto. Mfrs.*, 208 F.3d at 6.

35. *Cahill*, 152 F.3d at 196-97.

36. *See id.* at 200. The court cited "periodic testing and maintenance requirements" as examples of "enforcement mechanisms" that would not be preempted under section 209. *Id.*

37. *Id.* at 201.

38. *See Ass'n of Int'l Auto. Mfrs.*, 208 F.3d at 3, 8.

reduction in emissions, and agreed with the Second Circuit's analysis contrasting these types of standards with "enforcement mechanisms."[39] The court reasoned that "numerical production requirements" like those in the mandate *must* be considered standards under section 209.[40]

In the preemption context, the market participant doctrine provides a well-established exception allowing state action within federally preempted fields when the state is acting not as a regulator, but rather as a direct participant in the market.[41] The Supreme Court has acknowledged "the distinction between government as regulator and government as proprietor," and has stated that "pre-emption doctrines apply only to state *regulation*."[42] In accordance with this, the United States Court of Appeals for the Fifth Circuit has developed an approach, subsequently adopted by the Ninth Circuit in *Chamber of Commerce of the United States v. Lockyer*, to determine whether the market participant doctrine applies by distinguishing between "proprietary" and "regulatory" state action.[43] Under the *Lockyer* approach, state action is proprietary rather than regulatory if it falls within one of two categories.[44] First, state action is deemed proprietary if it "essentially reflect[s] the entity's own interest in its efficient procurement of needed goods and services, as measured by comparison with the typical behavior of private parties in similar circumstances."[45] Second, the action is proprietary if "the narrow scope of the challenged action defeat[s] an inference that its primary goal was to encourage a general policy rather than address a specific proprietary problem."[46]

The analytical approaches adopted by the circuit courts in resolving preemption claims under the CAA have been far from uniform. The Ninth Circuit has followed the analytical framework laid out in *Lohr* by adopting an initial presumption against preemption and emphasizing the overriding purpose and intent of the federal act in its analysis.[47] The result has been decidedly pro-state, with the analysis of congressional

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39. *See id.* at 7.
40. *Id.* at 6-7.
41. *See* Chamber of Commerce of the U.S. v. Lockyer, 463 F.3d 1076, 1082 (9th Cir. 2006).
42. Bldg. & Constr. Trades Council of Metro. Dist. v. Associated Builders & Contractors of Mass./R.I., Inc. (*Boston Harbor*), 507 U.S. 218, 227 (1993).
43. *See* Chamber of Commerce of the U.S. v. Lockyer, 463 F.3d 1076, 1084 (9th Cir. 2006) (citing Cardinal Towing & Auto. Repair, Inc. v. City of Bedford, 180 F.3d 686, 693 (5th Cir. 1999)).
44. *See id.*
45. *Id.*
46. *Id.*
47. *See* Exxon Mobil Corp. v. EPA, 217 F.3d 1246, 1255-56 (9th Cir. 2000).

intent focusing on the CAA's provisions that preserve states authority in the regulation of air pollution.[48] The First and Second Circuits, in contrast, have focused on the precise meaning of the language within the preemption provisions to determine the scope of preemption that was intended.[49] Rather than focusing on any perceived general intent to preserve state regulatory authority through the CAA, the First and Second Circuits have focused on the intent behind those provisions that *limit* state authority—namely sections 209 and 177.[50] The issue that has yet to be addressed by any court is how the market participant doctrine will apply, if at all, to a preemption claim under the CAA.

III. COURT'S DECISION

In the noted case, the court followed the framework for preemption analysis as laid out by the Supreme Court in *Lohr* and examined the applicability of the market participant doctrine to preemption under the CAA. This case presented a novel issue that was first considered by the district court deciding this case and which remained unresolved upon remand from the Supreme Court.[51] The court addressed two primary issues: first, whether provisions of the Fleet Rules that directed the purchasing decisions of government entities were preempted by the CAA; and second, whether the district court erred in refusing to consider whether the remaining provisions were preempted.[52]

The court began by addressing CAA preemption under the market participant doctrine, acknowledging that "the district court's decision in this case appears to be the first of any court to analyze the market participant doctrine under the federal Clean Air Act."[53] Recognizing that congressional intent is paramount to any preemption analysis, the court first looked to the CAA's text and purpose for any indication of congressional intent that the market participant doctrine should not apply to the Act, and found none.[54] The court noted that air pollution prevention is within the states' traditional police powers, and asserted that the CAA respects and maintains that power, as "[t]he overriding purpose of the Clean Air Act is to force the states to do *their* job in regulating air

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48. *See id.*

49. *See* Am. Auto. Mfrs. Ass'n v. Cahill, 152 F.3d 196, 200 (2d Cir. 1998); *see also* Ass'n of Int'l Auto. Mfrs., Inc. v. Comm'r, Mass. Dep't of Envtl. Prot., 208 F.3d 1, 16 (1st Cir. 2000).

50. *See Cahill*, 152 F.3d at 200; *see Ass'n of Int'l Auto Mfrs.*, 208 F.3d at 6.

51. *See* Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 498 F.3d 1031, 1042 (9th Cir. 2007).

52. *See id.* at 1039.

53. *Id.* at 1042-43.

54. *See id.*

pollution effectively so as to achieve baseline air quality standards, the [national ambient air quality standards ('NAAQS')]."[55] The congressional findings of the CAA affirmed the important role of states, stating that "'air 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.'"[56] Additionally, neither of the relevant provisions of the CAA contained any indication that Congress intended to preempt state proprietary action in addition to regulatory action.[57] Although section 209 prohibits states from imposing vehicle emissions standards that differ from the federal standards, the court found no indication that Congress intended for that prohibition to extend to a state's decision to use its *own* funds to purchase vehicles that conform to higher standards.[58] The court stated that extending the preemptive reach this far would be inconsistent with the presumption against preemption and with the Act's allocation of significant authority to the states in the prevention of air pollution.[59] Similarly, while section 177 enables states to adopt emissions standards that are identical to California's, it does not indicate any intention to preempt a state's proprietary action in that area.[60] In light of these CAA provisions, the congressional findings, and the overall statutory purpose of the Act, the court found that Congress did not intend for sections 209 and 177 to preempt state proprietary action.[61] Thus, the market participant exception applied to preemption under these sections.[62]

Having concluded that the market participant exception does apply, the court next considered whether the provisions of the Fleet Rules that required state and local government entities to purchase cleaner vehicles than required by the federal standards constituted direct participation in the market by the state, which would place them within the market participant exception.[63] The court found that these provisions constituted "proprietary action" rather than "regulatory action" under the test laid out in *Lockyer*.[64] The provisions fell under *Lockyer*'s first category, as they

55. *Id.* at 1042 (quoting Exxon Mobil Corp. v. EPA, 217 F.3d 1246, 1255 (9th Cir. 2000)).
56. *Id.* (citing 42 U.S.C. § 7401(a)(3) (2000)).
57. *See id.* at 1043.
58. *See id.*
59. *See id.*
60. *Id.*
61. *Id.* at 1044.
62. *See id.*
63. *See id.* at 1044-45.
64. *Id.* at 1045.

"essentially reflect the [state] entity's own interest in its efficient procurement of needed goods and services, as measured by comparison with the typical behavior of private parties in similar circumstances."[65] The "needed goods and services" whose procurement was governed by these provisions included street sweepers, public transit fleets, garbage trucks, airport shuttles, and other fleet vehicles purchased by state entities or their political subdivisions.[66]

The court rejected EMA's contention that the provisions were not geared toward "efficient procurement" under the *Lockyer* test because their goal was to reduce air pollution.[67] The court reasoned that EMA interpreted the term "efficient" too narrowly and that "efficient procurement" can mean procurement that serves a multitude of purposes, not just cost reduction.[68] Much like a private party acting in the market, the state can direct its purchasing decisions to accomplish a variety of purposes, and consideration of factors like reduction of air pollution does not negate the state's participation in the market.[69]

EMA also argued that validating the Fleet Rules would threaten the uniformity that section 209 intended to create because the purchases governed by the Fleet Rules constituted "a very substantial segment of the market."[70] The court found this argument unconvincing, noting that EMA failed to cite any authority supporting a relation between the market share of government entities and a refusal to apply the market participant doctrine.[71] The court concluded that the provisions of the Fleet Rules governing the purchasing decisions of state and local government entities were not preempted by the CAA, as they constituted proprietary action under *Lockyer*'s first category, and were therefore saved from preemption by the market participant doctrine.[72]

The court then briefly considered the second issue on appeal, addressing EMA's contention that even if the Fleet Rules governing state and local government entities are not preempted, the district court should have determined which, if any, of the remaining provisions of the Rules are preempted.[73] The district court below refused to consider these

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65. *Id.* (quoting Chamber of Commerce of the U.S. v. Lockyer, 463 F.3d 1076, 1084 (9th Cir. 2006)).
66. *See id.*
67. *See id.* at 1046.
68. *See id.* at 1046-47.
69. *See id.*
70. *Id.* at 1048.
71. *Id.*
72. *See id.*
73. *See id.* at 1049.

remaining provisions on the grounds that EMA had brought an unsuccessful facial challenge, the failure of which justified dismissal.[74] In the Supreme Court's words, a facial challenge to a statute is "the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid."[75] EMA had clearly brought a facial challenge in this case, as evidenced by its First Amended Complaint and its oral argument before the Supreme Court, both of which explicitly claimed total preemption of the Fleet Rules.[76] The court here sympathized with the district court's ruling, given the failure of the facial challenge, but held that the district court should have considered the remaining provisions to determine whether they too were preempted.[77] The court interpreted a facial challenge as imposing a slightly different requirement when the challenged Act has multiple provisions that may be severable.[78] While a facial challenge ordinarily requires a plaintiff to show that the particular *provision* being challenged is invalid in every possible application, it does not, in the court's opinion, "require a plaintiff to show that every provision within a particular multifaceted enactment is invalid."[79] In other words, the multiple provisions within an act can be severable and a court must sometimes rule on the validity of each provision independently to determine which parts of the act, if any, survive. Upon this determination, the court remanded to the district court with instructions to decide whether the remaining provisions of the Fleet Rules are preempted under the CAA.[80]

IV. ANALYSIS

The validation of the Fleet Rules as applied to state and local government agencies in this case expands the power of state governments to reduce the effects of automobile emissions on a state level. Since the market participant exception is applicable to all states, not just California, it opens the door for any state to mandate the purchase of cleaner vehicles when purchasing vehicles with state funds. A statutory mandate, as opposed to internal purchasing decisions made by states, has the benefit of regulating a multitude of state and local entities, and can

74. *See id.*
75. *Id.* (quoting United States v. Salerno, 481 U.S. 739, 745 (1987)).
76. *See id.*
77. *See id.* at 1049-50.
78. *Id.* at 1049.
79. *Id.* at 1049-50.
80. *Id.* at 1050.

outlast the current administration to regulate subsequent ones. By choosing the avenue of market participation, a state can not only increase the number of cleaner vehicles on the road, but can also create an increased demand on the market for cleaner vehicles, and reward those manufacturers that choose to produce cleaner vehicles.

This decision comports with the purpose and intent of the CAA, because it maintains the important role of the states in controlling and preventing air pollution, yet does not impose an undue burden on automobile manufacturers by compelling conformance with production standards apart from the California or federal standards.[81] The Fleet Rules do not require manufacturers to produce any particular type of vehicle. They only require purchasers to choose among vehicles that are already commercially available. Any effect upon manufacturers would be the result of supply and demand, and in this way the state acts precisely like any other private purchaser on the market. The potential breadth of a state's purchasing power, as the court rightly acknowledged, does not take away its right to purchase freely on the open market in consideration of goals it deems valid.[82]

When the district court considers on remand the possible preemption of the remaining provisions of the Fleet Rules, it will be difficult, if not impossible, to validate the provisions directed toward private fleet operators. In light of the Supreme Court's decision, it appears clear that those provisions are "standards" in the eyes of the Court, and the market participant doctrine will be unable to save these nonstate actions from preemption. No other theory has yet been advanced which could save the remaining provisions if they are definitively "standards" under section 209. Thus, if the South Coast Air Quality Maintenance District wishes to retain these remaining provisions, it must petition Congress to amend the CAA to specify what is meant by the term "standard" in section 209.

V. CONCLUSION

The noted case marks the opening of a new avenue for states to attempt to control vehicle emissions through direct market participation.

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81. Exxon Mobil Corp. v. EPA, 217 F.3d 1246, 1255 (9th Cir. 2000) ("[T]he overriding purpose of the Clean Air Act is to force the states to do *their* job in regulating air pollution effectively so as to achieve baseline air quality standards, the [National Ambient Air Quality Standards ('NAAQS')].") (emphasis added); Am. Auto. Mfrs. Ass'n v. Cahill, 152 F.3d 196, 201 (2nd Cir. 1998) (holding that Congress's purpose behind Section 209 was to avoid an "undue burden on vehicle manufacturers" by subjecting them to multiple state standards).

82. *Engine Mfrs. Ass'n*, 498 F.3d at 1048.

In holding that internal purchasing mandates of states may directly regulate the purchasing decisions of state and local agencies, the Ninth Circuit affirms the strong role of states in air pollution prevention that was intended by the CAA. However, since the Supreme Court did not expressly rule on this issue, it remains to be seen whether other circuits will follow suit. In light of the widely differing circuit opinions concerning the fundamental aims and effects of the CAA, as well as the Ninth Circuit's uniquely progressive stance in this arena, it is more likely that this decision represents the beginning of the debate than the end of it.

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