No. 02-1343

IN THE
Supreme Court of the United States

ENGINE MANUFACTURERS ASSOCIATION AND
WESTERN STATES PETROLEUM ASSOCIATION,
Petitioners,

v.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, *ET AL.,*
Respondents.

On Writ of *Certiorari* to the United States Court of Appeals for the Ninth Circuit

AMICI CURIAE BRIEF OF AMERICAN ROAD & TRANSPORTATION BUILDERS ASSOCIATION, AMERICAN TRUCKING ASSOCIATIONS, INC., NATIONAL ASSOCIATION OF HOME BUILDERS, TAXICAB, LIMOUSINE & PARATRANSIT ASSOCIATION, AND CONSTRUCTION INDUSTRY AIR QUALITY COALITION IN SUPPORT OF PETITIONERS

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August 29, 2003

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IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

Amicus curiae American Road & Transportation Builders Association ("ARTBA"), a nonprofit trade organization, headquartered in Washington, D.C., represents the collective interests of the U.S. transportation construction industry before the national executive, legislative, and judicial branches of government. As an umbrella group for more than 5,000 members from all sectors and modes of the transportation construction industry (including public transit, airports, and waterways), ARTBA is the industry's primary advocate in environmental regulatory actions and litigation.

Amicus curiae American Trucking Associations, Inc. ("ATA"), a nonprofit District of Columbia corporation headquartered in Alexandria, Virginia, is the national trade association of the trucking industry. ATA has over 1,800 direct motor carrier members and, in cooperation with state trucking associations and affiliated national trucking conferences, represents more than 37,000 trucking companies. ATA represents every type and geographical scope of motor carrier operation in the United States, including for-hire carriers, private carriers, leasing companies, and others.

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[1] Pursuant to Rule 37.3 of the Rules of this Court, the parties have consented to the timely filing of all *amici curiae* briefs in this matter. The parties' letters of consent have been lodged with the Clerk of the Court. Pursuant to Rule 37.6 of the Rules of this Court, *amici curiae* state that no counsel for a party has written this brief in whole or in part and that no person or entity, other than the *amici curiae,* their members, or their counsel, has made a monetary contribution to the preparation or submission of this brief.

Amicus curiae Taxicab, Limousine & Paratransit Association ("TLPA"), headquartered in Kensington, Maryland, is a nonprofit trade organization for the private passenger transportation industry. TLPA's membership includes approximately 1,100 taxicab companies, executive sedan and limousine services, airport shuttle fleets, non-emergency medical transportation companies, and paratransit services worldwide. TLPA is the leading information, education, and legislative resource in the private, ground-passenger transportation industry.

Amicus curiae National Association of Home Builders ("NAHB"), headquartered in Washington, D.C., is a nonprofit trade organization representing over 211,000 builder and associate members throughout the United States. NAHB membership includes individuals and firms that construct and supply single-family homes, as well as apartments, condominium, commercial and industrial properties. In addition, NAHB represents a large number of land developers and remodelers. It is the voice of the American shelter industry. NAHB's goals are to promote home ownership; foster a healthy and efficient housing industry; and promote policies that will keep safe, decent, and affordable housing a national priority.

Amicus curiae Construction Industry Air Quality Coalition ("CIAQC"), headquartered in West Covina, California, is a non-profit trade association comprised of the four major construction and building industry associations in Southern California: the Associated General Contractors of California, the Building Industry Association of Southern California, the Engineering Contractors Association, and the Southern California Contractors Association. In all, CIAQC represents approximately 3,300 member companies throughout Southern California. CIAQC was formed in

1989 to promote the adoption and implementation of emission reduction measures that are both cost-effective and efficient, while minimizing adverse impacts on its construction and building industry members. Since its inception, CIAQC has actively participated in many of the important discussions on how to achieve both federal and California state air quality standards.

The rules at issue in this litigation require members of ARTBA, ATA, and TLPA to purchase vehicles from a more expensive and operationally burdensome subset of vehicles than is otherwise available for purchase in California. Moreover, if this Court affirms the decision below, respondent South Coast Air Quality Management District ("SCAQMD") and other local jurisdictions nationwide could adopt similar regulations, thereby imposing a patchwork of additional burdens on members of ARTBA, ATA, TLPA, NAHB, and CIAQC.

ISSUE PRESENTED

This case poses one purely legal issue: does the federal Clean Air Act, 42 U.S.C. §§ 7401-7671q (2000) ("FCAA"), preempt political subdivisions such as SCAQMD from restricting the types of FCAA-certified vehicles that a fleet operator (or any other person) may purchase?

SUMMARY OF ARGUMENT

Under FCAA § 209(a)'s sweeping language, "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." 42 U.S.C. § 7543(a) (emphasis added). FCAA § 209(b) authorizes only the *State* of

California to seek a waiver of this preemption for California vehicle standards that meet certain conditions. 42 U.S.C. § 7543(b). This broad preemption leaves no room for political subdivisions such as SCAQMD to adopt motor vehicle emission standards.

By lifting and reordering disparate excerpts of statutory text and legislative history, the decisions below inappropriately narrow the preemptive scope of FCAA § 209. *SCAQMD v. EMA,* 158 F. Supp. 2d 1107 (C.D. Cal. 2001) ("*SCAQMD*"), *aff'd,* 309 F.3d 550 (9th Cir. 2002).[2] By contrast, when Congress enacted FCAA § 209 in 1967, it clearly and manifestly preempted local governments such as SCAQMD from subjecting vehicle manufacturers, dealers, consumers, and users to standards such as the challenged rules. Moreover, Congress legislated in a field (namely, automobile emission standards) without a history of state or local involvement and carved out a special role for the one state (California) that recently had pioneered regulation in that field.

Further, in *each* post-1967 amendment, Congress *reinforced* its clear distinctions between the standard-setting available to California, the adoption of identical such standards by other *states,* and the *complete preemption of local controls*. Thus, nowhere has Congress repealed by implication the clear and manifest preemption it expressly adopted in 1967. Finally, even assuming *arguendo* that the SCAQMD rules could survive FCAA § 209's express

[2] For clarity, *amici* cite to the district court decision, which the Ninth Circuit adopted in its two-sentence opinion. 309 F.3d 550 & n.1.

preemption, they nevertheless conflict with the FCAA's Clean Fuel Fleet Program, which therefore preempts them under conflict preemption.

REGULATORY BACKGROUND

Amici adopt the facts and background from petitioners' brief, *see* Pet. Br., at 8-13, but highlight here two specific examples to demonstrate how the SCAQMD rules create distinct standards. First, SCAQMD Rule 1194(d) requires certain airport ground access fleets to purchase only vehicles that meet or exceed California's standard for Ultra-Low Emission Vehicles ("ULEVs"), notwithstanding that other Californians may purchase vehicles meeting a wider range of emissions standards. Specifically, ULEVs must meet a nonmethane organic gas standard of 0.040 grams/mile, whereas California vehicles in the same class lawfully may emit more than three times that amount (0.125 grams/mile). Cal. Code Regs. tit. 13, § 1960.1(g)(1) (2002).

Second, SCAQMD Rule 1196(d) requires heavy-duty vehicle fleet operators to purchase only vehicles that are powered by fuels other than diesel and that meet California's standard for alternatively-fueled heavy-duty vehicles, notwithstanding that other Californians may purchase diesel vehicles and/or vehicles with higher emissions. *See* Cal. Code Regs. tit. 13, § 1956.8(a)(1) (2002). Further, although SCAQMD Rule 1196(d)(2) allows fleet operators to purchase vehicles powered by both diesel and an alternative fuel, the rule requires such "dual-fuel" vehicle to meet an otherwise optional statewide emission limits for oxides of nitrogen (currently 2.5 grams/brake horsepower-hour) in place of the otherwise applicable California limit (currently 4.0 grams/brake horsepower-hour). *See* SCAQMD Rule 1196(c)(3); Cal. Code Regs. tit. 13, § 1956.8(a)(1).

PREEMPTION STANDARD

Under the Supremacy Clause, federal law preempts state law whenever the two conflict. U.S. CONST. Art. VI, cl. 2. "State action may be foreclosed by express language in a congressional enactment, by implication from the depth and breadth of a congressional scheme that occupies the legislative field, or by implication because of a conflict with a congressional enactment." *Lorillard Tobacco Co. v. Reilly,* 533 U.S. 525, 541 (2001) (citations omitted).

In determining the preemptive scope of a federal statute, congressional intent controls. *Cipollone v. Liggett Group, Inc.,* 505 U.S. 504, 516-17 (1992); *United States v. Locke,* 529 U.S. 89, 106 (2000). Congressional intent may be "explicitly stated in the [federal] statute's language or implicitly contained in its structure and purpose." *Jones v. Rath Packing Co.,* 430 U.S. 519, 525 (1977). Where Congress states its preemptive intent explicitly, a court's only task is to determine the preemptive scope of the statute. *Cipollone,* 505 U.S. at 517. Preemption analysis begins with the plain wording of the federal statute, which "necessarily contains the best evidence of Congress' pre-emptive intent," *CSX Transp., Inc.* v. *Easterwood*, 507 U.S. 658, 664 (1993), and the ordinary meaning of statutory language presumptively expresses that intent. *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992).

When Congress legislates in a field that the states traditionally have occupied, courts will not assume preemption "unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.,* 331 U.S. 218, 230 (1947). As this Court recently recognized, however, *Santa Fe Elevator* applies only when the states traditionally have occupied the field and not when there is a

history of significant federal presence. *Locke,* 529 U.S. at 107-08 (*citing Santa Fe Elevator Corp.,* 331 U.S. at 230); *accord Buckman Co. v. Plaintiffs' Legal Committee,* 531 U.S. 341, 347 (2001).

I. THE AIR QUALITY ACT OF 1967 CLEARLY AND MANIFESTLY PREEMPTS STATE AND LOCAL EMISSION STANDARDS ON MOTOR VEHICLE MANUFACTURERS, DEALERS, CONSUMERS, AND USERS

Congress entered the field of motor vehicle emission controls in three phases over four years. First, in the Clean Air Act of 1963, Congress required the Secretary of Health, Education & Welfare to "encourage the continued efforts" of the automotive and fuel industries to develop devices and fuels that prevent the discharge of pollutants from "automotive vehicles." Pub. L. No. 88-206, § 6, 77 Stat. 392, 399 (1963). Two years later, Congress expanded the federal presence by requiring the Secretary to promulgate emission-control regulations for new motor vehicles. Pub. L. No. 89-272, § 202, 79 Stat. 992 (1965) (*codified as amended at* 42 U.S.C. § 7521). Finally, in the Air Quality Act of 1967, Pub. L. No. 90-148, 81 Stat. 485 (1967), Congress further expanded the federal presence and, for the first time, expressly preempted state and local emission-control standards for new motor vehicles:

> 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 title.

Pub. L. No. 90-148, § 208(a), 81 Stat. at 501 (*codified at* 42 U.S.C. § 7543(a)).[3] Because California had a uniquely severe air quality problem, and because California recently had pioneered vehicular air pollution controls, the 1967 amendments authorize the State of California – and only the *State* of California[4] – to adopt vehicle standards and to seek a waiver of federal preemption for those standards. S. Rep. No. 90-403, at 33 (1967); Pub. L. No. 90-148, § 208(b), 81 Stat. at 501 (*codified as amended at* 42 U.S.C. § 7543(b)).

Thus, Congress clearly preempted both *state and local* authority. *See* 42 U.S.C. § 7543(a). Where Congress provided for a possible limited waiver of the preemption, Congress did so only for a single *state.* *See* 42 U.S.C. § 7543(b). The clarity and consistency of this statutory distinction is fundamental to the preemption analysis.

> Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.

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[3] The Clean Air Act Amendments of 1970 recodified § 208 of the Air Quality Act of 1967 to its current location as FCAA § 209. Pub. L. No. 91-604, § 8(a), 84 Stat. 1676, 1976-77 (1970). For consistency, throughout this brief, *amici* refer to this provision as "FCAA § 209."

[4] Although the statutory waiver-of-preemption language applies generally to any state that adopted certain emission standards prior to 1966, only California had done so. S. Rep. No. 90-403, at 6, 33 (1967).

TRW, Inc. v. Andrews, 534 U.S. 19, 28 (2001) (*quoting Andrus v. Glover Constr. Co.,* 446 U.S. 608, 616 (1980)). Thus, before Congress amended it in 1970, 1977, and 1990, the Clean Air Act unmistakably preempted all states except California and all political subdivisions from adopting or enforcing any standards relating to emissions from new motor vehicles.

As used in FCAA § 209, the term "standard" has been held to include both a numerical limit on emissions, *Motor & Equipment Mfrs. Ass'n, Inc., v. Environmental Protection Agency,* 627 F.2d 1095, 1111-12 (D.C. Cir. 1979) ("*MEMA*"), *cert. denied sub nom., General Motors Corp. v. Costle,* 446 U.S. 952 (1980), and, more generally, any "regulatory measures intended to lower . . . emissions," *Motor Vehicle Mfrs. Ass'n v. Cahill,* 152 F.3d 196, 200 (2nd Cir. 1998).[5] Both fit within the plain meaning of the statutory phrase "any standard," *see, e.g.,* AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, 1690 (4th ed. 2000) ("measure of comparison for quantitative or qualitative value; a criterion"), which provides the best measure of congressional intent, *Morales*, 504 U.S. at 383.

Because the SCAQMD Fleet Rules selectively adopt a more-stringent subset of the applicable *California*

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[5] *Accord Association of Int'l Automobile Manufacturer v. Comm'n,* 208 F.3d 1, 6-7 (1st Cir. 2000) ("*AIAM*"). The *AIAM* court concurred with the *Cahill* court's definition of "standard," the same one proffered by the Environmental Protection Agency ("EPA") in an opinion filed at the AIAM court's request. *See id.* (*citing* EPA, "Opinion on Issues Raised by *AAMA v. Massachusetts DEP,*" 9-10 (Sept. 15, 1999)).

standards as the *only SCAQMD standard* applicable to fleet operators, SCAQMD has created new emission standards for those fleet operators. For example, as noted in the Regulatory Background, *supra*, an airport ground access fleet operator must meet an emission standard of 0.040 grams/mile, notwithstanding that the statewide limit is 0.125 grams/mile. Even where they do not expressly set a quantitative emission limit, however, the SCAQMD rules nevertheless constitute a qualitative standard intended to lower emissions. For example, the Fleet Rules all impose restrictions on the type of fuel a fleet vehicle may use. *See* Pet. Br., at 11-13. Fuel type, in turn, is a factor that the Clean Air Act expressly lists as a basis for defining the applicability of a vehicular emission standard to a particular class or category of vehicles. 42 U.S.C. § 7521(a)(3)(ii).

To further broaden the scope of preempted state and local regulation, Congress preempted not just any emission-control standard, but "any standard *relating to* the control of emissions." *See* 42 U.S.C. § 7543(a) (emphasis added). Acknowledging that "relates to" preemption does not "extend to the furthest stretch of indeterminacy," *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co.,* 514 U.S. 645, 655 (1995), this Court pragmatically reviews such cases for state requirements with a "forbidden connection" to the federal law, considering the federal statute's objectives and the effect of the state requirement on the federal statute. *Egelhoff v. Egelhoff,* 532 US 141, 147 (2001).[6] Given that

[6] Although *Egelhoff* concerned a Washington statute, the "relating to" analysis applies equally to all state and local government actions that relate to emissions. A reading that preempts only actions

(Footnote cont'd on next page)

both SCAQMD's rules and FCAA § 209 concern motor vehicle emissions and (as discussed, *infra*) that FCAA preemption protects users and consumers, the SCAQMD rules all have a "forbidden connection" to FCAA § 209(a).

Like the statutory text, the legislative history leaves no doubt that Congress clearly and manifestly intended to preempt state and local regulation of vehicular emission standards:

> The Congress is therefore presented directly with the question of the extent to which the Federal standards should supersede State and local laws on emissions from motor vehicles. . . . . Rather than leave this question to the uncertainties involved in litigation, the committee has agreed . . . that State *laws applicable to the control of emissions* from new motor vehicles or new motor vehicle engines *are superseded*. The committee feels that a provision such as this is necessary in order to prevent a chaotic situation from developing in interstate commerce in new motor vehicles.

(Footnote cont'd from previous page.)

that affirmatively prescribe emission rates "simply reads the words 'relating to' out of the statute. Had the statute been designed to pre-empt state law in such a limited fashion, it would have forbidden the States to 'regulate [emissions],'" *Morales,* 504 U.S. at 385, rather than prohibiting their adopting or enforcing any standard that relates to the control of emissions.

H.R. Rep. No. 90-728 (1967) (*reprinted in* 1967 U.S.C.C.A.N., 1956) (emphasis added).

The legislative history is equally clear that the FCAA's broad preemption protects not only manufacturers, but also dealers, consumers, and users:

> [I]t would be more desirable to have national standards rather than for each State to have a variation in standards *and requirements* which could result in chaos insofar as manufacturers, dealers, *and users* are concerned.

H.R. Rep. No. 90-728 (1967) (*reprinted in* 1967 U.S.C.C.A.N. 1956) (*citing* S. Rep. No. 89-192, at 6) (emphasis added); *see also* S. Rep. No. 90-403, at 33 (FCAA preemption protects the "general consumer" from the California standards).[7] Thus, in 1967, FCAA § 209(a) protected not only manufacturers, but also consumers, users, and dealers under the scope of its preemption.

The decisions below emphasize that FCAA recognizes that air pollution is primarily a state and local responsibility. *See SCAQMD,* 158 F. Supp. 2d at 1111 (*citing* 42 U.S.C. § 7401(a)(3)). Indeed, Congress

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[7] The conference committee adopted the House bill, H. Conf. Rep. No. 90-916 (*reprinted in* 1967 U.S.C.C.A.N. 1986), which had adopted the Senate bill's preemption provisions *verbatim.* *Compare* Pub. L. No. 90-148, § 208, 81 Stat. at 501 (§ 208 of enacted bill) *with* S. Rep. 403 at 81 (§ 208 of Senate Bill); *see also MEMA,* 627 F.2d at 1121 (discussing history).

recognized state and local primacy in the Clean Air Act of 1963. Pub. L. No. 88-206, § 1(a)(3), 77 Stat. at 393 (*codified at* 42 U.S.C. § 7401(a)(3)). Against that backdrop, however, the Air Quality Act of 1967 specifically preempted state and local motor vehicle emission standards. Thus, the 1967 statute represents a clear departure from the 1963 statute. With reference to motor vehicle emissions standards, Congress determined that federal authority would supplant state authority, and the specific preemption from 1967 controls the general provision from 1963. *See Morton v. Mancari,* 417 U.S. 535, 550-51 (1974) ("a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment"). Where (as here) the specific statute *postdates* the general one, the point carries even more force. *See, e.g., Morales,* 504 U.S. at 384-85 (the canon is "particularly pertinent" where a specific preemption provision post-dates a general provision that is a "relic of the . . . no pre-emption regime").

The decisions below also invoke the *Santa Fe Elevator* presumption against preemption, which is equally misplaced. First, as just set forth, the statute's plain language and its legislative history both express a clear and manifest intent to preempt, thus rendering the *Santa Fe Elevator* presumption inapposite. Second, and just as important, however, the *Santa Fe Elevator* presumption applies only where "the field which Congress is said to have pre-empted has been traditionally occupied by the States." *Locke,* 529 U.S. at 107-08 (*quoting Rath Packing Co.,* 430 U.S. at 525). Here, the federal government entered the field (*i.e.,* motor vehicle emission standards) contemporaneously with California and more than 30 years before SCAQMD. *See MEMA,* 627 F.2d at 1108-09 (discussing history of vehicular emission controls). Thus, even without Congress' clear and manifest intent to preempt state and local motor

vehicle standards, the *Santa Fe Elevator* presumption would remain inapposite by its terms. *See Locke,* 529 U.S. at 107-08 (*citing Santa Fe Elevator Corp.,* 331 U.S. at 230) (presumption applies where there is a history of state regulation and no corresponding federal presence); *accord Buckman,* 531 U.S. at 347. Put simply, *Santa Fe Elevator* protects longstanding state and local laws, not dormant state or local police power.

II. SUBSEQUENT AMENDMENTS REINFORCE THE 1967 ACT'S UNAMBIGUOUS PREEMPTION

Since enacting the Air Quality Act of 1967, Congress enacted three major amendment to the Clean Air Act, in 1970, 1977, and 1990.[8] Nowhere in these amendments or their legislative histories did Congress evince the slightest intent to undo the protections that FCAA preemption provided to dealers, consumers, and users of motor vehicles or to authorize *local* imposition of standards on motor vehicles. To the contrary, all of the post-1967 amendments to FCAA's preemption provisions draw the same deliberate distinctions between broadly preempting *both state and local authority* and – when making *any* exceptions – making limited exceptions only for *states.*[9]

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[8] Pub. L. No. 91-604, 84 Stat. 1676 (1970); Pub. L. No. 95-95, 91 Stat. 685 (1977); Pub. L. No. 101-549, 104 Stat. 2520 (1990).

[9] *See, e.g.,* 42 U.S.C. § 7543(c) (preempting state and local authority to regulate FCAA-regulated parts during a vehicle's useful life, but preserving California's authority to do so); 42 U.S.C. § 7543(e) (preempting state and local authority over nonroad vehicle standards, but

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Absent Congress' affirmative showing of an intent to repeal the express preemption it created in 1967, the SCAQMD rules can survive only if the original FCAA preemption provisions are *"irreconcilable"* with the FCAA as amended. *Morton v. Mancari,* 417 U.S. at 550 (repeal by implication is disfavored). Far from irreconcilable, however, the post-1967 amendments fully reinforce the preemption that Congress clearly and manifestly enacted in 1967.

A. Clean Air Act of 1970

In the 1970 amendments, Congress enacted two provisions relevant to the preemption of motor vehicle standards: (1) the FCAA's savings clause, FCAA § 116, and (2) FCAA § 233, which preempts state and local emission standards for aircraft and aircraft engines. Pub. L. No. 91-604, §§ 116, 233, 84 Stat. at. 1689, 1704 (*codified at* 42 U.S.C. §§ 7416, 7573). Consistent with the distinction between state and local authority in the 1967 act, both provisions also expressly distinguish between states and political subdivisions. *See* 42 U.S.C. §§ 7416, 7573.[10]

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preserving the State of California's authority to set such standards and authorizing other states to adopt the California standards); 42 U.S.C. § 7416 (preserving state and local authority generally, but not to standards preempted by FCAA § 209); 42 U.S.C. § 7573 (preempting state and local authority to set aircraft emission standards); 42 U.S.C. § 7586 (authorizing states to seek EPA approval of state fleet rules).

[10] The district court deferred to a summary of congressional intent for aircraft preemption in *People of State of Cal. ex rel. State Air Resources Board v. Dep't of Navy,* 431 F. Supp. 1271, 1285 (N.D. Cal. 1977) (*Navy I*), *aff'd,* 885 (9th Cir. 1980) (*Navy II*). The *Navy* cases

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B. Clean Air Act Amendments of 1977

In the 1977 amendments, Congress enacted two provisions relevant to the preemption of motor vehicle standards: (1) the FCAA § 177 opt-in clause for other nonattainment states to adopt California standards, and (2) the "parts preemption" provision of FCAA § 209(c), which preempts state and local governments from imposing requirements on FCAA-regulated parts for "in-use" motor vehicles during their "useful life." Pub. L. No. 95-95, §§ 129(b), 207, 91 Stat. at 750, 755, 762 (*codified at* 42 U.S.C. §§ 7507, 7543(c)).

1. Section 177 and the "Undue Burden" Test

FCAA § 177 authorizes states with areas not attaining the national ambient air quality standards to adopt California vehicle standards in lieu of the otherwise-applicable federal standards. 42 U.S.C. § 7507. Because this provision applies to states, but not political subdivisions, it, too, preserves the clear distinction between the authority afforded to California, the other states, and all political subdivisions.

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concern a later-enacted section (42 U.S.C. § 7573) applicable to a different type of vehicle (aircraft), where the later enactment has only limited legislative history, *Navy II,* 624 F.2d at 888 n.4, and preserves the earlier statute's clear distinction between state and local authority. Accordingly, *amici* contend that the *Navy* cases and the 1970 aircraft preemption amendment cannot repeal by implication the motor-vehicle preemption that Congress clearly and manifestly adopted in 1967.

Notwithstanding the provision's facially clear meaning, its legislative history has led some courts to limit the scope of FCAA preemption to only those standards that cause an "undue burden" on manufacturers. *SCAQMD,* 158 F. Supp. 2d at 1110 (*citing Motor Vehicle Mfrs. Ass'n v. New York State Dep't of Envtl. Conservation,* 810 F. Supp. 1331 (N.D.N.Y. 1993)). But that legislative history cannot bear the weight placed on it by these courts. Instead, the cited House report simply states that FCAA § 177's new authority for other states to adopt California's standards "should not place an undue burden on vehicle manufacturers." *See* H.R. Rep. No. 95-294, at 310-11 (1977) (*reprinted in* 1977 U.S.C.C.A.N., 1388-89). In adopting the holding of *Motor Vehicle Mfrs. Ass'n,* the district court implicitly interpreted "should" to mean "shall" and, therefore, concluded that the House report narrowed the preemptive scope of FCAA § 209(a) to only those standards that impose an "undue burden" on manufacturers.

To the contrary, however, the House report merely opines that states opting into the California standards "should not" (*i.e.,* likely will not) unduly burden manufacturers because manufacturers already must design and produce the same vehicles for sale in California. A single vague word in the House report on FCAA § 177 in 1977 cannot repeal the preemption that FCAA § 209(a) and its legislative history already expressly provided to motor vehicle dealers, consumers, and users in 1967. *Morton v. Mancari,* 417 U.S. at 550.[11]

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[11] Given that 1977 House report's single vague word (namely, "should") can be read in harmony with the express statutory text and

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2. Section 209(c) Retains the Clear Distinction between State and Local Standards for Parts Preemption

Subsection 209(c) preempts states other than California and all political subdivisions from regulating any FCAA-regulated vehicle part for the part's "useful life." 42 U.S.C. § 7543(c). As such, this amendment retains the earlier statutes' clear distinctions between California, other states, and all political subdivisions, thereby further reinforcing that Congress did not narrow the scope of the preemption it adopted in 1967.[12]

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express legislative history of the 1967 act, it certainly does not rise to the level that this Court previously has found to warrant repeal by implication. *See*, *e.g., United States v. Fausto,* 484 U.S. 439, 452-53 (1988) (allowing "repeal by implication of a legal disposition *implied* by a statutory text") (emphasis added); *Vermont Agency of Natural Resources v. United States,* 529 U.S. 765, 786 & n.17 (2000) (allowing repeal by implication to avoid a "most peculiar" result); *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 133 (2000) (allowing subsequent and *more specific statute* to govern where necessary for harmony and to avoid violating rules of common sense).

[12] The district court cites *Allway Taxi* for the proposition that local governments retain authority to regulate motor vehicle emissions, provided they do not burden interstate commerce. *SCAQMD,* 158 F. Supp. 2d at 1110 (*citing Allway Taxi v. City of New York,* 340 F. Supp. 1120 (S.D.N.Y.), *aff'd,* 468 F.2d 624 (2nd Cir.1972)). *Allway Taxi* held that – because the Clean Air Act preempts standards only for *new* motor vehicles – local government could regulate vehicles *after their initial purchase.* 340 F.Supp. at 1124; *accord Washington v. General Motors Corp.,* 406 U.S. 109, 115 n.4 (1972) (*dicta*). The district court failed to recognize that the 1977 "parts preemption" amendment abrogates the

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C. Clean Air Act Amendments of 1990

In the 1990 amendments, Congress enacted three provisions relevant to the preemption of motor vehicle standards: (1) language clarifying FCAA § 177, (2) preemption provisions for nonroad vehicles, and (3) the Clean Fuel Fleet Program ("CFFP"). Pub. L. No. 101-549, §§ 229(a), 232, 104 Stat. at 2511-2529.

1. Clarifying Section 177 and the "Undue Burden" Test Revisited

The Conference Committee added explanatory language to the end of FCAA § 177:

> Nothing in this section or in subchapter II of this chapter shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a "third

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1972 holding in *Allway Taxi* and *eliminates* the residual authority of states (other than California) and of all political subdivisions to impose post-purchase emission controls on vehicles during their federally regulated useful life. *See* 42 U.S.C. § 7543(c).

> vehicle") or otherwise create such a "third vehicle".

Pub. L. No. 101-549, § 232, 104 Stat. at 2529 (*codified at* 42 U.S.C. § 7507).

In reviewing this addition, the district court focused exclusively on the "third vehicle" phrase and ignored the balance of the amendment. *See SCAQMD,* 158 F. Supp. 2d at 1119-20. Specifically, the district court ignored that the language prohibiting states from limiting (directly or indirectly) the *manufacture* of California-certified vehicles applies equally to the *sale* of such vehicles. 42 U.S.C. § 7507. Moreover, in the text quoted above, an "or" separates the prohibition on indirect limitations on sales from the prohibition on third vehicles. *Id.* As such, the two are distinct proscriptions against distinct types of state actions, and the district court erred in reducing them to a single "third vehicle" standard. Clearly, prohibiting the purchase of a vehicle *"indirectly limits"* the sale of that vehicle.

At the center of its analysis of FCAA § 177, the district court relies on legislative history, which it attributes to the Senate Committee on Public Works, equating the "third vehicle" provision to the "undue burden" test. *SCAQMD,* 158 F. Supp. 2d at 1120 (*quoting* Senate Comm. on Pub. Works, 103d Cong., 1st Sess., A Legislative History of the Clean Air Act Amendments of 1990, Serial No. 103-38, Vol. 1 at 1022); *see also id.* at 1110 (*citing Motor Vehicle Mfrs. Ass'n v. New York State Dep't of Envtl. Conservation,* 810 F. Supp. 1331, 1337 (N.D.N.Y. 1993)). In fact, however, that Committee merely served as the *publisher* of the bound legislative history for the 1990 amendments, and a single senator provided the district court's "legislative history" in a floor statement. 136 Cong.

Rec. S16,969, S16,976 (daily ed. Oct. 27, 1990) (*reprinted in* Senate Comm. on Pub. Works, 103d Cong., 1st Sess., A Legislative History of the Clean Air Act Amendments of 1990, Serial No. 103-38, Vol. 1, at 1000, 1021-23) (statement of Sen. Baucus). In his personal statement, Senator Baucus makes the same flawed reading of the 1977 House Report that *amici* discuss in Section II.B.1, *supra.*

Surprisingly, in an earlier Ninth Circuit ruling not brought to the district court's attention, substantially the same parties as respondents litigated *Coalition for Clean Air v. Southern Cal. Edison Co.,* 971 F.2d 219 (9th Cir. 1992), *cert. denied sub nom., EPA v. Coalition for Clean Air,* 507 U.S. 950 (1993), which found the very same floor statement entitled to "little if any weight." 971 F.2d at 227-28. Even if respondents had no obligation to advise the district court of the Ninth Circuit's ruling in their prior litigation and even if that prior ruling does not preclude respondents' reliance on the previously disregarded floor statement,[13] the statement of a single senator does not provide authoritative legislative history. *E.g., Chrysler Corp. v. Brown,* 441 U.S. 281, 311 (1979); *Consumer Product Safety Commission v. GTE Sylvania, Inc.,* 447 U.S. 102, 117 (1980).

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[13] The Ninth Circuit's 1992 decision bound SCAQMD, the Sierra Club, and the Coalition for Clean Air. *See* 971 F.2d 219. Even though respondents now include three additional parties (Communities for a Better Environment, the Natural Resources Defense Council, and the Planning & Conservation League), the 1992 litigation binds them too because they intervened as defendants to support SCAQMD's rules. *See City of Tacoma v. Taxpayers of Tacoma,* 357 U.S. 320, 340-341 (1958).

2. Section 209(e) Retains the Clear Distinction between State and Local Standards for Nonroad Preemption

In 1990 for the first time, Congress added authority for vehicular emission standards for nonroad equipment such as construction equipment, locomotives, and farming equipment, and preempted "any standard or other requirement relating to the control of emissions" from nonroad equipment. 42 U.S.C. §§ 7543(e), 7547. In doing so, Congress again provided California with authority to seek a waiver of preemption for certain controls, authorized other states to adopt those California controls, and completely preempted local controls. 42 U.S.C. § 7543(e).

Significantly, the Environmental Protection Agency has promulgated a regulation that identifies state and local "fleet average standards" as prohibited "standards and other requirements" under FCAA § 209(e). *See* 40 C.F.R. § 85.1603(c)(2). As respondents noted in their opposition to this Court's granting a writ of *certiorari*, however, FCAA § 209(e) broadly preempts "any standard *or other requirement*" relating to emission controls. Assuming (as the phrase suggests) that the EPA-proscribed "fleet average *standards*" are *standards,* and not *other requirements,* under FCAA § 209(e), they presumptively also are standards under FCAA § 209(a). *See, e.g., Department of Revenue of Oregon v. ACF Indus., Inc.,* 510 U.S. 332, 342 (1994) (same words in same statute presumptively share the same meaning).

3. Section 246 Does Not Recognize Residual State Authority to Regulate Fleets

In the 1990 amendments, Congress established the CFFP to require states with ozone nonattainment areas designated as serious or worse to require certain fleet operators to operate a carefully balanced clean-fuel fleet program . 42 U.S.C. §§ 7511a(c)(4), 7586. In the district court's view, the CFFP expressly recognizes states' authority to regulate fleets, which California has delegated to SCAQMD via the California Health & Safety Code. *See SCAQMD,* 158 F. Supp. 2d at 1118. The district court considered it "not rational" to read the FCAA to authorize fleet purchase restrictions under the CFFP, while expressly preempting them as standards under FCAA § 209(a). In *amici*'s view, the district court failed to consider an alternate reading, which puts the CFFP in harmony with the express preemption of FCAA § 209(a). Even if this Court agrees with the district court, however, FCAA § 246 nevertheless impliedly would preempt the SCAQMD Fleet Rules under a conflict-preemption analysis.

By its terms, FCAA § 209(a) preempts states and political subdivisions from adopting or enforcing standards relating to the control of emissions subject to "this part," 42 U.S.C. § 7543(a), with "this part" meaning Part A of Title II of the Clean Air Act. Part A consists of sections 202-219, 42 U.S.C. §§ 7521-7554, whereas the CFFP resides in Part C of Title II, which consists of sections 241-250, 42 U.S.C. §§ 7581-7590. Thus, when adopting fleet regulations pursuant to the CFFP, a state does not violate FCAA § 209(a), which does not apply by its terms to standards under Part C. On the other hand, a state adopting fleet regulations *outside the CFFP* necessarily could not rely on the CFFP to justify those fleet regulations, which would fall

under the express preemption of FCAA § 209(a). Further, to the extent that they conflict with CFFP, the state regulations also would be preempted under this Court's conflict-preemption jurisprudence. *Geier v. American Honda Motor Co.,* 529 U.S. 861, 873 (2000) (neither savings clause nor express preemption provision bars working of "conflict preemption"); *Buckman Co. v. Plaintiffs' Legal Committee,* 531 U.S. 341, 352 (2001) (same).

Because California has opted out of the CFFP,[14] it cannot submit the SCAQMD fleet rules to EPA for approval under the CFFP. Even if California could submit them, however, the SCAQMD rules conflict irreconcilably with at least five fundamental aspects of the carefully balanced CFFP. *First,* the CFFP caps the maximum percentage of heavy-duty (50%) and light-duty (70%) trucks that a state can require a fleet operator to purchase. 42 U.S.C. § 7586(b). SCAQMD requires such operators to purchase *only* clean-fuel vehicles (*i.e.,* 100%). *Second,* the CFFP defines a "clean-fuel vehicle" as a vehicle meeting the *least stringent* California standard applicable to that class of vehicle, 42 U.S.C. § 7583(e)(2), and requires states to provide credits to fleet operators that purchase a higher number of clean-fuel vehicles than the CFFP requires or that purchase vehicles that meet emission standards more stringent than the CFFP requires. 42 U.S.C. § 7586(f)(1), (f)(4); *accord* 40 C.F.R. § 88.304—94(c)(1)(ii)-(iii) (2002). The SCAQMD rules fail to do so. *Third,* although state and

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[14] *See* 42 U.S.C. § 7511a(c)(4)(B) (authorizing states to opt out of CFFP); 64 Fed. Reg. 46,849 (Aug. 27, 1999) (*codified at* 40 C.F.R. § 52.220(c)(201)(i)(A)(1) (2002)) (EPA approval of California opt out).

local governments must not directly or *indirectly* limit the sale of clean-fuel vehicles, 42 U.S.C. § 7507,[15] the SCAQMD rules prohibit fleet operators from purchasing such vehicles. *Fourth,* the fuel-neutral CFFP defines "clean alternative fuel" to include both reformulated gasoline and diesel, 42 U.S.C. § 7581(2), and leaves the choice of fuel to the fleet operator, 42 U.S.C. § 7586(d), but the SCAQMD rules severely restrict diesel-fueled vehicles. *Fifth,* states must waive state and local time-of-day and day-of-week restrictions for clean-fuel vehicles, 42 U.SC. § 7586(h), which the SCAQMD rules do not.

For the foregoing reasons, even if not standards, the SCAQMD Fleet Rules conflict with the CFFP, which therefore preempts those rules under a conflict-preemption analysis. *Geier,* 529 U.S. at 873; *Buckman Co.,* 531 U.S. at 352. Any other reading would frustrate Congress' purpose in the intricately balanced CFFP by allowing states to opt out of the CFFP under 42 U.S.C. § 7511a(c)(4)(B) and then to submit a replacement measure that robs fleet operators of the benefits that Congress required the states to provide.

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[15] Unlike FCAA § 209(a), which applies only to new motor vehicles subject to *Part A* of Subchapter II, FCAA § 177 provides that "Nothing in this section or in *subchapter II* of this chapter shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards." 42 U.S.C. § 7507 (emphasis added). Thus, FCAA § 177 applies not only to Part A, but also to the CFFP in Part C. As such, the district court violated the express terms of FCAA § 177 by holding that the CFFP implicitly recognizes SCAQMD's authority to adopt purchase restrictions, *SCQAMD,* 158 F.Supp 2d at 1118, when FCAA § 177 actually prohibits any indirect restrictions on sales, 42 U.S.C. § 7507.

CONCLUSION

In 1967, Congress clearly and manifestly preempted political subdivisions such as SCAQMD from imposing vehicle emission standards on manufacturers, consumers, and dealers. Consistent with every amendment, Congress preserved that preemption by expressly distinguishing between the standard-setting authority for California, the adoption of those California standards by other states, and the complete preemption of local entities such as SCAQMD. For the foregoing reasons, therefore, *amici curiae* respectfully submit that FCAA § 209(a) preempts the SCAQMD Fleet Rules.

August 29, 2003

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