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Engine Manufacturer's Association v. South Coast Air Quality Management District: Using Market Participation to Achieve Environmental Goals

INTRODUCTION

Engine Manufacturer's Association v. South Coast Air Quality Management District is one of several recent battles California and its agencies have fought in order to promote state environmental policy. Although the Supreme Court vacated the lower court's judgment in favor of South Coast Air Quality Management District (SCAQMD), the Court opened the door for SCAQMD to win on remand by recommending that it argue its actions fell under the market participation doctrine. More significantly, the Court's suggestion may be used in future environmental litigation to legitimize other policies that might otherwise be preempted.

I. BACKGROUND

California has long been a leader in pollution control. For example, about a decade before the federal Motor Vehicle Air Pollution Control Act was passed by Congress in 1965, California had already established a plan to regulate automobile emissions. Despite this history of environmental consciousness, many areas of the state have continued to experience poor air quality. In the Los Angeles Basin (Basin), levels of several pollutants have exceeded healthy levels for many years.

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During the creation of the Clean Air Act (CAA), federal legislators recognized California’s unique pollution problems and its efforts to alleviate them. They carved out an exception in the CAA, section 209(b), to permit California to continue regulating the pollution created by mobile sources so long as they acquired a waiver from the Environmental Protection Agency (EPA). Congress recognized California’s concern that without the ability to use measures outside the federal program, the state would not be able to successfully combat its severe air quality problems. Other states were also permitted to copy the approved California standards under section 177. But, any other regulation of mobile sources by states through the imposition of “standard[s] relating to the control of emissions from new motor vehicles or new motor vehicle engines” was prohibited under section 209(a).

In 2000, the Basin’s pollution level was enough to cause cancer in an estimated fourteen hundred people per million over a lifetime. Additionally, 71.2 percent of the airborne cancer risk from outdoor ambient air toxic levels was created by diesel engine exhaust from mobile sources. Confronted with the continuing problem of pollution from mobile sources, the SCAQMD adopted a series of rules aimed at limiting pollution from vehicles on the road.

The Fleet Rules (FR) 1186.1 and 1191–96 were aimed at reducing pollution by placing emissions limits on vehicles in any way related to a government agency or use. The rules did not affect vehicles currently on the road, but impacted only vehicles newly acquired by any federal, state, county, or city department or agency, as well as private companies providing services to the government. The FR applied to virtually every vehicle related to public service: street sweepers (FR 1186.1), public fleet vehicles (FR 1191), public transit vehicles (FR 1192), garbage trucks (FR 1193), airport transportation vehicles (FR 1194), school buses (FR 1195), and heavy duty fleet vehicles (FR 1196).

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5. Horowitz, supra note 2, at 324.
7. Horowitz, supra note 2, at 324.
The SCAQMD did not seek a waiver from the EPA prior to enacting the Fleet Rules.\textsuperscript{15}

The Fleet Rules led to notable changes in the public service fleets in the Los Angeles area. By January 2004, almost nine thousand low-emissions vehicles had been added to the various fleets throughout the Basin.\textsuperscript{16} The SCAQMD estimated at the time that if the Fleet Rules remained intact, they would lead to a yearly reduction of 4,870 tons of emissions each year starting in 2010.\textsuperscript{17}

\section*{II. THE LITIGATION}

Not long after the adoption of the Fleet Rules, the Engine Manufacturer’s Association (EMA) brought suit against the SCAQMD.\textsuperscript{18} In \textit{Engine Manufacturer’s Association v. South Coast Air Quality Management District}, the EMA sought declaratory and injunctive relief, stating that the rules acted as state emission standards, and were therefore preempted by the CAA since no waiver had been granted.\textsuperscript{19} The district court granted summary judgment to the SCAQMD, reasoning that the SCAQMD rules were not emissions standards, since they only limited vehicles that could be purchased instead of vehicles that could be manufactured or sold, and were therefore beyond the prohibition of section 209(a).\textsuperscript{20} The judgment was appealed by the EMA. The Ninth Circuit Court of Appeals affirmed the district court with a strongly worded, one-sentence ruling, calling the lower court’s decision a “well-reasoned opinion.”\textsuperscript{21}

Despite the strong accord between the appellate and district courts, the Supreme Court vacated and remanded with an 8–1 decision in favor of the EMA.\textsuperscript{22} The majority opinion, written by Justice Scalia, attacked the district court’s decision, holding instead that regulations placing emissions requirements on vehicles to be purchased fell into the same category as regulations restricting the sales of vehicles, and therefore SCAMD’s rules \textit{did} fall under the section 209(a) prohibition against emission standards.\textsuperscript{23} The Court reasoned that the district court had erroneously placed its interpretation

\begin{flushleft}
14. \textit{Id.}
15. \textit{Engine Mfrs. Ass’n v. S. Coast Air Quality Mgmt. Dist. (Engine Mfrs. 1)}, 498 F.3d 1031, 1043 n.3 (9th Cir. 2007).
16. SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, supra note 13.
17. \textit{Id.}
20. \textit{Id.} at 1120.
23. \textit{Id.} at 252.
\end{flushleft}
of section 209(a) on the meaning of the word "standard." 24 A regulation on the power to purchase was, according to the majority, as much "an 'attempt to enforce’ a ‘standard’ as a command." 25 Although the Court vacated the judgment and remanded the case to the district court, it suggested an alternative ground for arguing the legality of the Fleet Rules. On the last page of the majority opinion, Justice Scalia raised the issue of "whether some of the Fleet Rules . . . can be characterized as internal state purchase decisions (and, if so, whether a different standard for preemption applies)." 26

The suggestion was not lost on the SCAQMD’s counsel. On remand, the EMA again mounted their attack on the Fleet Rules, but the defendants argued that the actions of the SCAQMD avoided preemption under the market participant doctrine. 27 The market participant doctrine arose as a category of state activity that would not be preempted by the dormant commerce clause. 28 The doctrine empowers states, and subdivisions thereof, to avoid preemption when they act in the capacity of a purchaser or seller in the economy. 29 Additionally, where a state action in the market also advances a police power of the state, it is only preempted where there is clear and manifest purpose of Congress to preempt the state proprietary action. 30

The market participation doctrine had never before been used to legitimize a restriction on mobile sources otherwise preempted by the CAA. Still, the district court found that the SCAQMD’s actions were of a proprietary nature and also promoted a police power of the state—ensuring the health and safety of its citizens. 31 Since only mobile source “regulations” are prohibited, the district court found no manifest purpose in the CAA to preempt market participation, and consequently granted summary judgment in favor of the SCAQMD. 32

The case was again appealed. While the Ninth Circuit agreed with the application of the market participation doctrine, it found that the district court should not have declined to break down the multiple provisions within each Fleet Rule to determine if any could be classified as non-proprietary action. 33 The court therefore affirmed the validity of the Fleet Rules dealing directly with the actions of state and local entities, and vacated and remanded those

24. Id. at 252–53.
25. Id. at 255.
26. Id. at 259.
32. Id. at 16.
portions of the rules that did not. Shortly after the decision, the parties settled.

III. RAMIFICATIONS

Though the SCAQMD lost the Supreme Court battle against the EMA, the Court, perhaps intentionally, armed them to win the war on remand by suggesting the possibility of characterizing the Fleet Rules as internal state purchase decisions. The SCAQMD's use of the market participation doctrine as a tool in combating pollution gives local governments a method for circumventing the previously insurmountable wall of CAA preemption of efforts to control mobile source pollution. Because California is the only state permitted to create its own mobile source standards (with EPA approval), it benefits the least from the decision. Other states, which only had two choices in regulating mobile source pollution, the California standard or the Federal standard, now have the ability to regulate all vehicles used in relation to public service. Additionally, local governments, especially those that purchase many vehicles for public service, can now set standards of their own to address unique emission situations they might face.

Still, limitations on using this power to promote more stringent standards than the CAA remain. First, states are still limited to enforcing standards, so long as their conduct does not clearly appear regulatory. Specifically, requiring private entities to purchase particular vehicles would be treated as regulatory by the court. States will therefore be restricted to imposing emission standards on vehicles operating on behalf of the state.

The market of commercially available vehicles creates another restriction on the viability of the market participation doctrine. The Fleet Rules adopted by the SCAQMD contain provisions requiring the government to purchase vehicles at or below the required emissions standard only if they are commercially available. This limitation prevents the FR from becoming manufacturing mandates. If the required emissions levels were below what is available on the market, auto companies would be required to manufacture new vehicles to meet the new level. Such a result would render Fleet Rules regulations rather than standards, as understood by the Supreme Court, and the Rules would lose market participant protection and be preempted under the CAA.

In spite of these limitations, state and local governments trying to increase use of low emissions vehicles still have a strong tool. Increasing incentives for companies to work toward increasing their fuel efficiency and emissions will

34. Id. at 1049.
push auto manufacturers to augment production of vehicles with lower emissions than the federal government requires. In addition to deploying the market participation doctrine to justify pollution control, states may also use the preemption exception to reduce greenhouse gas emissions, another problem that the federal government has been dragging its feet in resolving. This idea is particularly relevant following the EPA's rejection of a California request for a waiver under section 209(b), which would have mandated greenhouse gas reductions from mobile sources—the first time the EPA has rejected a waiver request in the history of the CAA.

CONCLUSION

Given California's history of pursuing higher standards for limiting mobile source pollution, it seems fitting that a case expanding the powers of non-federal actors to reduce emissions comes from this state. Although the power is limited, the ability of local governments to use the doctrine to implement emission standards without having to seek approval from the EPA is significant. Just how important a role the doctrine will play in advancing nationwide emissions control will be something to observe in the coming years.

—Elliott Henry

40. NAT'L RESEARCH COUNCIL supra note 3, at 137.