

***MAYER, BROWN, ROWE & MAW'S  
SUPREME COURT DOCKET REPORT  
OCTOBER TERM, 2002 – NUMBER 14***

Today the Supreme Court granted certiorari in one case of potential interest to the business community. Amicus briefs in support of the petitioners are due on Thursday, July 24, 2003, and amicus briefs in support of the respondents are due on Thursday, August 28, 2003. Any questions about this case should be directed to John Sullivan (202-263-3238) in our Washington office.

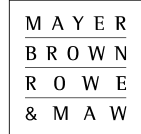
***Clean Air Act – Preemption.*** The Clean Air Act vests the federal government with exclusive authority to regulate motor vehicle emissions. Section 209(a) of the Act, 42 U.S.C. § 7543(a), expressly preempts state and local governments from promulgating “any standard relating to the control of emissions from new motor vehicles.” The Supreme Court granted certiorari in *Engine Mfrs. Assoc. v. South Coast Air Quality Management District*, No. 02-1343, to determine whether a local government’s rules prohibiting operators of fleets of vehicles from purchasing new diesel-fueled vehicles are preempted by the Clean Air Act.

There is one exception to the Clean Air Act’s preemption provision: Congress exempted California from Section 209(a) because of the air quality problems unique to that State. Under 42 U.S.C. § 7543(b)(1), California may adopt its own vehicle emission standards through the California Air Resources Board (“CARB”). Other states may adopt regulations identical to California’s, but are preempted from promulgating standards that differ from the federal or California standards.

In an attempt to improve air quality in southern California, the South Coast Air Quality Management District (a political subdivision of the State of California encompassing Los Angeles) enacted a series of regulations known as the “Fleet Rules.” The Fleet Rules require operators of fleets of fifteen or more motor vehicles to purchase only low-level emission or alternative-fuel motor vehicles. The Rules prohibit fleet operators from purchasing new diesel-fueled motor vehicles, even though the CARB standards followed elsewhere in California allow fleet operators to purchase those vehicles.

The Engine Manufacturers Association (“EMA”), later joined by the Western States Petroleum Association (“WSPA”), filed suit to enjoin the Fleet Rules, contending that they were preempted by the Clean Air Act. The district court disagreed, granting summary judgment in favor of the defendants. The court noted that Section 209(a) prohibits local governments from promulgating emissions standards that condition or limit the sale of new motor vehicles, but found that “[t]he Rules regulate the purchasing and leasing, not the sale, of vehicles by fleet operators.” 158 F. Supp. 2d 1107, 1117 (C.D. Cal. 2001). On appeal, the Ninth Circuit affirmed the district court’s decision and adopted its analysis. 309 F.3d 550 (2002).

## ***Supreme Court Docket Report***



The Ninth Circuit opinion conflicts with decisions of the First and Second Circuits, under which regulations requiring that a percentage of vehicles sold be zero-emission vehicles are preempted by the Clean Air Act. See *Association of Int'l Auto. Mfrs. v. Commissioner, Massachusetts Dep't of Env't'l Protection*, 208 F.3d 1, 7 (1st Cir. 2000); *American Auto. Mfrs. Ass'n v. Cahill*, 152 F.3d 196, 200 (2d Cir. 1998).

This case has important implications for all motor vehicle and engine manufacturers, as well as the energy industry, as the Court will determine the scope of federal preemption under the Clean Air Act.

Mayer, Brown, Rowe & Maw is counsel for petitioner WSPA.

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