

California Clean Cars Campaign

Global Warming Solutions for a Healthy California

www.calcleancars.org

American Lung Association
of California

Bluewater Network

California League of
Conservation Voters

CLCV Education Fund

California Public Interest
Research Group

Center for Energy Efficiency
and Renewable
Technologies

Coalition for Clean Air

Environment California

Environmental Defense

National Parks
Conservation Association

Natural Resources
Defense Council

Planning and Conservation
League

Sierra Club

Steven and Michele Kirsch
Foundation

Union of Concerned
Scientists

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MEDIA ADVISORY

FRESNO COURT HEARING ON MOTION TO DISMISS LAWSUIT AGAINST CALIFORNIA'S LANDMARK CLEAN CARS LAW

When: Friday, September 15, 2006; 9:00 a.m. (PDT)

Where: U.S. District Court, Eastern District of California
2500 Tulare Street, Fresno
Honorable Anthony W. Ishii, presiding

What: Hearing on State of California and environmental intervenors' motion to dismiss automaker lawsuit challenging California's Clean Cars Law. The law implements AB 1493 (Pavley), vehicle emissions standards.

Attorneys for the California Attorney General and the environmental intervenors will argue that the federal Clean Air Act authorizes, and no other law preempts, California's regulations to reduce global warming pollution from vehicles.

Who: Attorneys for the state and environmental intervenors:
Marc Melnick, State of California, Office of Attorney General Bill Lockyer

David Doniger, Natural Resources Defense Council, representing NRDC, Environmental Defense, Sierra Club, Bluewater Network, Rainforest Action Network and Global Exchange

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See Additional Background, following pages

Additional Background Fresno Court Hearing on Motion to Dismiss

Significance of September 15 Fresno Hearing

This hearing is on the state's and environmental intervenors' "motion for judgment on the pleadings." The motion asks the court to dismiss the automakers' lawsuit on the grounds that they failed to state a legally valid claim.

The defendants and environmental intervenors will argue that California has the authority under the Clean Air Act to adopt vehicle global warming pollution standards to protect public health, and neither the federal fuel economy law nor any other federal law pre-empts California from taking this action.

The judge will hear arguments, and, likely at a later date, issue a decision. If the state's and the environmentalists' motion wins (if the judge rules to dismiss the case), California will be free to begin implementing the Clean Cars Law. If the judge rules against the motion, however, it does not mean that the state loses the case. Rather, the case will proceed to trial, scheduled to begin in January 2007.

More information on the lawsuit against the California Clean Cars Law, including downloadable court documents, is available on the California Clean Cars Campaign Web site: www.calcleancars.org

Legal Challenges to California's Clean Cars Law

On December 7, 2004, the major automakers filed lawsuits in state and federal court in Fresno to block California from implementing its landmark vehicle global warming pollution regulation. Thirteen Central Valley car dealers joined the Alliance of Automobile Manufacturers, which represents GM, Ford, DaimlerChrysler, Toyota and others, as plaintiffs in the federal suit.

The automakers' legal challenge is an attack on the state's right to protect its citizens from auto air pollution.

There are two groups of environmental intervenors. Sierra Club, Natural Resources Defense Council, and Environmental Defense have joined as one group. Bluewater Network, Global Exchange and Rainforest Action Network have joined as another intervenor.

More information on the lawsuit against the California Clean Cars Law, including downloadable court documents, is available on the California Clean Cars Campaign Website: www.calcleancars.org

Q & A: Response to Auto Industry Claims in Clean Cars Lawsuit
Prepared by lawyers for NRDC, Environmental Defense, Sierra Club

Clean Air Act

Auto Industry Claim: EPA has determined that Congress did not authorize EPA to regulate CO₂ or any other greenhouse gas under Section 202(a) of the Clean Air Act, and this “precludes” EPA granting the required “waiver of preemption” for these regulations under Section 209(b).

RESPONSE: EPA’s decision is clearly wrong, and this issue is now before the U.S. Supreme Court in a case called *Massachusetts v. EPA*, to be argued this fall. Under the plain language of the law (which EPA has completely ignored), both EPA and California have Clean Air Act authority to regulate greenhouse gases. (See more on the *Massachusetts* case below.)

Corporate Average Fuel Economy (CAFE)

Auto Industry Claim: California’s vehicle global warming regulations are preempted by the federal CAFE fuel economy standards because they are “related to” fuel economy and would “frustrate the accomplishment of federal objectives.”

RESPONSE:

1. California’s Clean Cars law is not related to fuel economy. The law reduces the amount of global warming pollutants that can be emitted from new cars, it does not regulate fuel economy. Automakers can reduce greenhouse gas emissions in a variety of ways including by using alternative fuel vehicles, by changing improving air conditioning systems, or by improving fuel economy.
2. Congress has authorized California to set emission standards—including global warming regulations—even if they have an effect on fuel economy. The CAFE statute explicitly requires that NHTSA take California auto emission standards that are approved under the Clean Air Act into account when setting CAFE standards
3. Because the CAFE standards are actually only “minimum” standards, federal objectives would be “frustrated” only if the automakers were unable to comply with CAFE as a result of the global warming regulations. However, even the automakers admit that by complying with the California global warming standards they would merely exceed the current minimum CAFE standards.

The Commerce Clause

Auto Industry Claim: Because the global warming regulation (a) increases the retail price of cars, and (b) provides no environmental benefit, these regulations violate the Commerce Clause of the Constitution by “excessively burdening” interstate commerce.

RESPONSE:

1. Because California’s standards are authorized by federal law, there can be no claim that the state has violated the Commerce Clause.
2. The costs imposed are not “excessive”; in fact, these cars will result in savings to consumers over the life of the vehicle. There are also significant environmental benefits resulting from implementation of these regulations. Thus, this argument doesn’t hold water on the facts either.

Federal Foreign Policy

Auto Industry Claim: CARB’s “unilateral efforts” would “frustrate established foreign policy,” interfering with the President’s and Congress’s exclusive authority over foreign affairs.

RESPONSE: There is no “established foreign policy” that says states cannot take action to curb global warming pollution within their borders. In fact, several states have taken actions to reduce global warming pollution, including imposing limits on emissions from power plants, and no such claims have been filed—let alone upheld—in those instances.

Sherman Act

Auto Industry Claim: The global warming regulations violate federal antitrust law because they provide that “where one automaker owns 10% or more of the shares of another, the two companies may only meet their GHG obligations by coordinating key strategic decisions.”

RESPONSE: This is an absolutely frivolous argument; the automakers have put forward no evidence or legal analysis that such “coordination” violates the Sherman Act.

U.S. Supreme Court Hearing – December 2006

In a related case, the U.S. Supreme Court has agreed to take up the issue of global warming—over the objection of the Bush administration. The court this fall will consider the question of whether CO₂ is an air pollutant subject to regulation by the Clean Air Act. The U.S. EPA and Bush administration in 2003 rejected a petition by environmentalists to regulate CO₂. The U.S. Court of Appeals for the District of Columbia Circuit upheld the administration position in 2005. The Supreme Court will now consider the case, which has

significant implications for California and the 10 other states that have adopted California's vehicle global warming standards

The legal argument is simple:

- Section 302(g) of the Clean Air Act defines an "air pollutant" to include "any chemical ... substance or matter emitted into the ambient air." CO₂ and other greenhouse gases clearly meet this definition.
- Section 202(a)(1) of the Act authorizes EPA to regulate any pollutant emitted by motor vehicles that the agency determines "may reasonably be anticipated to endanger public health or welfare."
- In Section 302(h), Congress explicitly defined "welfare" to include "effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, *weather*, visibility, and *climate*." So threats to the "climate" are expressly included in dangers to our "welfare."

Implications for Other States

In the absence of federal action, individual states are following California's lead in adopting policies to bring cleaner vehicles to consumers. Ten states have adopted California's vehicle emission standards, and several others are actively considering adopting these standards. Together they comprise about one-third of the U.S. auto sales market.

More information on efforts by other states to adopt the Clean Cars Law is available on the national Clean Cars Campaign Web site: www.cleancarscampaign.org

California Clean Cars Law Primer

Signed into law in 2002, Assembly Bill 1493 (Pavley) directed the California Air Resources Board (ARB) to adopt regulations that require carmakers to reduce global warming emissions from new passenger cars and light trucks beginning in 2009.

The ARB adopted regulations in September 2004 that meet the intent of the original legislation: the law ensures the maximum feasible and cost-effective to the consumer reduction of greenhouse gases emitted by passenger vehicles. Under the plan, carmakers must meet increasingly stringent standards that phase in between 2009 and 2016.

The California Clean Cars Campaign is a coalition of environmental public health and public interest groups supporting the state as it defends its groundbreaking vehicle global warming law. www.calcleancars.org