THE CLEAN AIR ACT IS DUE FOR A WASH: ENGINE MANUFACTURERS ASSOCIATION V. SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

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INTRODUCTION

Air pollution is a serious concern for the people of the Los Angeles air basin.[1] The average adult breathes 3000 gallons of air in a day.[2] Long-term exposure to air pollution can cause cancer, damage to the immune, neurological, reproductive, and respiratory systems, and even death.[3] The Environmental Protection Agency ("EPA") describes the Los Angeles air basin as one of the worst in the country with regard to air pollution abatement.[4] Vehicle emissions remain the primary cause of air pollution and a chief source of toxic pollutants to humans.[5]

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[1] Scorecard, Health Effects, *at* http://www.scorecard.org/env-releases/cap/rank-counties-risk.tcl?fips_state_code=-6 (last visited Feb. 9, 2005) (noting that Los Angeles ranks first of California counties for amount of health risks from criteria air pollutants). Health risks are measured in increased mortality, chronic bronchitis, respiratory and cardiac hospital admissions, asthma symptom days, days with acute respiratory symptoms, and children with bronchitis. *Id.*

[2] EPA, Air & Radiation Basic Information, *at* http://www.epa.gov/air/basic.html (last modified June 8, 2004).

[3] *Id;* Arnold W. Reitze Jr., *A Century of Air Pollution Control Law: What's Worked; What's Failed; What Might Work,* 21 ENVTL. L. 1549, 1552 (1991) (describing actions creating dangerous air pollution as antisocial conduct); EPA, Health Effects Notebook for Hazardous Air Pollutants, *at* http://www.epa.gov/ttn/atw/hlthef/hapindex.html (last modified Nov. 30, 2004) (providing health effects of known chemical air pollutants); California Air Resources Board, Health & Air Pollution, *at* http://www.arb.ca.gov/research/health/health.htm (last modified Aug. 3, 2004) (noting that over 90% of Californians breathe unhealthy levels of one or more air pollutants during some part of year).

[4] Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 158 F. Supp. 2d 1107, 1109 (C.D. Cal. 2001), *aff'd*, 309 F.3d 550 (9th Cir. 2002), *vacated by* 124 S. Ct. 1756 (2004) ; EPA, Greenbook, *at* http://www.epa.gov/oar/oaqps/greenbk/cncs.html#california (last modified Dec. 10, 2004) (explaining that Los Angeles basin is serious nonattainment area for carbon monoxide); EPA, Greenbook, *at* http://www.epa.gov.oar/oaqps/greenbk/index.html (last modified Dec. 10, 2004) The EPA describes the basin as a "non-attainment area." This is an area where air pollution levels consistently exceed the federal government's National Ambient Air Quality Standards. *See generally*, Scorecard, Nonattainment Areas, *at* http://www.scorecard.org/env-releases/cap/naa.tcl (last visited Feb. 13, 2005) (providing information about how various regions rank in terms of meeting these standards).

[5] 21 COUNCIL ON ENVTL. QUALITY, ANN. REP. 322 (1990) (noting EPA data showing transportation sector contributes nearly two-thirds of total carbon monoxide emissions); Michael P. Walsh, *Motor Vehicles and Fuels: The Problem*, 17 EPA J. 12, 14 (1991) (noting that in urban areas motor vehicles contribute close to ninety percent of carbon monoxide); *see also* EPA, The Plain English Guide to the Clean Air Act, *at* http://www.epa.gov/oar/oaqps/peg_caa/pegcaa04.html#topic4 (last modified May 13, 2002) (describing various toxic chemicals that cars emit and possible regulatory solutions to air pollution).

The Air Quality District in Los Angeles adopted the Fleet Rules in 2000 to reduce public exposure to vehicle emissions pollution.[6] The Fleet Rules required state employees to choose the cleanest vehicles on the market when they purchased vehicles for government use.[7] Implementation of the Fleet Rules would mean that common government vehicles, such as school buses and garbage trucks, would contain the cleanest engines available.[8] The United States Supreme Court, however, held that the Clean Air Act ("CAA")[9] pre-empted the Fleet Rules in *Engine Manufacturers Association v. South Coast Air Quality Management District*.[10]

This Note argues that the Supreme Court departed from traditional methods of statutory interpretation in *Engine Manufacturers*. It also contends that the Court reached a conclusion contrary to the spirit of the CAA. Part I examines the history and purpose of the CAA. Part II explains the facts, holding, and rationale of *Engine Manufacturers*. Part III demonstrates how the Supreme Court erred in its ruling. It argues that the Supreme Court's analysis in *Engine Manufacturers* has three main flaws. First, the Court incorrectly defined the word "standard" by using *Webster's Dictionary* rather than the statutory definition.[11] Second, the Court did not use the presumption against preemption that it normally applies to traditional state police powers, including air pollution prevention.[12] Third, the Court did not examine relevant CAA case law when analyzing *Engine Manufacturers*.[13] In addition, Part III proposes that Congress should amend the CAA to allow for the Fleet Rules.

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[6] South Coast Air Quality Management District, Fleet Rules, *at* http://www.aqmd.gov/tao/fleetrules/index.htm (last modified Aug. 11, 2005) (describing how Management District adopted rules to shift public agencies and certain private entities to using lower emission vehicles to reduce amount of toxic and smog-forming pollutants in air).

[7] CAL. HEALTH & SAFETY CODE § 40447.5(a) (West 2004):

> [R]equire operators of public and commercial fleet vehicles... when adding to or replacing vehicles... to purchase vehicles which are capable of operating on methanol or other equivalently clean burning alternative fuel and to require that these vehicles be operated, to the maximum extent feasible, on alternative fuel when operating in the south coast district.

Id.

[8] *Id.*

[9] 42 U.S.C. §§ 7401-7671q (2000).

[10] Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 124 S.Ct. 1756, 1765 (2004).

[11] *See infra* Part III.A.

[12] *See infra* Part III.B.

[13] *See infra* Part III.C.

I. BACKGROUND

The statutory and common law history of the CAA provides insight into the legal climate leading up to the *Engine Manufacturers* decision.[14] The CAA has evolved through both legislative and judicial acts.[15] Since passing the CAA in 1970, Congress has amended it several times and given the states greater power to prevent pollution.[16] Meanwhile, courts have interpreted and explained the goals of the CAA through cases such as *American Automobile Manufacturers Association v. Cahill* and *Oxygenated Fuels Association Inc. v. Davis.*[17]

A. The Clean Air Act

Before Congress enacted federal air pollution legislation, victims of uncontrolled vehicle emissions relied on private and public nuisance lawsuits against polluters.[18] States also sought to enhance tort causes of action through state air quality regulation.[19] By 1959, California determined that vehicle emissions were the biggest contributor to its air pollution problem.[20] California became the first state to enact laws establishing air quality standards and to determine levels of control over vehicle emissions to meet those standards.[21]

Following in California's footsteps, Congress set the first federal standards for vehicle emissions with the Motor Vehicle Air Pollution Control Act of 1965.[22] Congress broadened these standards by passing the Air Quality Act in 1967.[23] In 1970, Congress amended the Air Quality Act to create the CAA,

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[14] *See infra* Part I.A.

[15] *See infra* Part I.A-C.

[16] *See infra* Part I.A.

[17] Oxygenated Fuels Ass'n v. Davis, 331 F.3d 665, 668-69 (9th Cir. 2003); Am. Auto. Mfrs. Ass'n v. Cahill, 53 F. Supp. 2d 174, 183-85 (N.D.N.Y. 1999).

[18] PERCIVAL ET AL., ENVIRONMENTAL REGULATION LAW, SCIENCE, AND POLICY 495 (4th ed. 2003). For examples of nuisance actions, see New York v. New Jersey, 256 U.S. 296, 313-14 (1921) (holding that New Jersey cannot be estopped from dumping raw sewage into New York Bay due to insufficient magnitude of harm); Georgia v. Tennessee Copper Co., 206 U.S. 230, 238-39 (1907) (holding state common law nuisance claim cannot have injunction against sulfur dioxide emitting factory); Missouri v. Illinois, 200 U.S. 496, 526 (1906) (holding that Missouri's nuisance claim against Illinois, for dumping sewage in river upstream, lacked definite cause and effect).

[19] PERCIVAL, *supra* note 18, at 495 (noting how Oregon pioneered creation of state air regulation agency and California thereafter created air quality standard laws).

[20] *Id.* (noting how California's love affair with automobiles produced significant amounts of smog).

[21] *Id.* (noting how California's legislation predated federal air quality legislation).

[22] Motor Vehicle Air Pollution Control Act, 42 U.S.C. § 7521 (2000); THE CLEAN AIR ACT HANDBOOK, 280 (Robert J. Martineau, Jr. & David P. Novello eds., 1998) [hereinafter HANDBOOK].

[23] Air Quality Act, 42 U.S.C. § 7401 (2000).

which the EPA continues to enforce.[24] Congress promulgated major revisions to the CAA in 1970, 1977, and 1990.[25] These revisions address the changing nature of pollution and allow new abatement strategies.[26]

The CAA established National Ambient Air Quality Standards ("NAAQS") for six main pollutants: particulate matter, sulfur dioxide, carbon monoxide, nitrogen oxides, ozone, and lead.[27] States control pollution within their jurisdiction in order to comply with the NAAQS.[28] To obtain cleaner air, states have focused their efforts on auto emissions, the main cause of smog.[29]

Section 209(a) of the CAA, the "anti state emissions standard" caveat, forbids any state from adopting new automobile emissions standards.[30] It contained a special waiver provision, however, which only California satisfies.[31]

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[24] 42 U.S.C. §§ 7401-7671q (2000); HANDBOOK, *supra* note 22, at 280-83.

[25] HANDBOOK, *supra* note 22; *see also* PERCIVAL, *supra* note 18, at 495.

[26] *Supra* note 23.

[27] Clean Air Act of 1990 §§ 108-09, 42 U.S.C. §§ 7408-09 (2000). For more information on the harms the criteria pollutants cause see, EPA, PARTICLE POLLUTION REPORT 1 (2003) *available at* http://www.epa.gov/airtrends/pm.html (last modified Feb. 8, 2005) (describing health and environmental impacts of particulate matter); EPA, THE OZONE REPORT 7 (2003) *at* http://www.epa.gov/airtrends/aqtrnd04/2003ozonereport/lookcloser.html#newlook (last modified Sept. 21, 2004) (describing trends in nitrogen oxides and their effects on ozone in atmosphere); EPA, Nature and Sources of Carbon Monoxide, *at* http://www.epa.gov/oar/airtrends/carbon.html (last modified Sept. 21, 2004) (describing that carbon monoxide enters bloodstream through lungs and reducing oxygen delivery to body's organs).

[28] Clean Air Act § 117, 42 U.S.C. § 7410 (2000). States have the option to create State Implementation Plans ("SIPs") in order to abide by the NAAQS. *Id.* SIPs operate by identifying polluting sources that the state ought to control to comply with the national standards. *Id.* States disinterested in preparing their own plans can have the federal government create a Federal Implementation Plan ("FIP") for them to follow in order to meet the NAAQS. *Id.*

[29] PERCIVAL, *supra* note 18, at 495.

[30] Clean Air Act § 209(a), 42 U.S.C. § 7543(a) (2000). Section 209 preempts state emissions regulations by providing that:

> 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.

Id.

[31] Clean Air Act § 209(b), 42 U.S.C. § 7543(b) (2000):

> Waiver. 1. The Administrator shall . . . waive application of this section to any State which has adopted standards . . . for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards . . . .

Id.; PERCIVAL, supra note 18, at 495.

Because California's early interest in air quality predated federal legislation, the EPA gave the state considerable leeway in developing its own regulations for motor vehicles.[32]

The "California Only" waiver has two requirements.[33] First, it stipulates that a state can keep its own standards for emissions controls on new cars if the standards predated March 30, 1966.[34] Second, the provision requires states to demonstrate compelling and extraordinary air quality conditions to qualify for waiver eligibility.[35] With this waiver, Congress acknowledged the benefits of allowing California to continue setting rigorous standards for emissions despite the industry's preference for one national standard.[36] It intended for California to serve as the nation's emissions control laboratory.[37]

The CAA also provides that states other than California can adopt the California standard, thereby "piggy-backing" on California's preemption exception.[38] Piggy-backing states must meet three requirements.[39] First, the states must adopt standards identical to California's.[40] Second, California must receive a waiver from the EPA for the standard that the piggy-backing state adopts.[41] Finally, both California and the piggy-backing state must adopt the

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[32] HANDBOOK, *supra* note 22 at 280. In the 1950s, CARB determined that vehicle emissions create smog. *Id.* at 280. Subsequently, the federal government provided California leeway in CAA section 209(b). *Id.*

[33] Clean Air Act § 209(b), 42 U.S.C. § 7543(b).

[34] *Id.*

[35] *Id.*

[36] H.R. REP. NO. 91-1146, at 5372 (1970) (noting that air pollution intrudes on quality of life in New York as well as California, thus New Yorkers should not be denied benefits of California standards); HANDBOOK, *supra* note 22, at 280.

[37] H.R. REP. NO. 91-1146, at 5373 (1970); Brief of Amici Curiae of the State of California at 4, Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 124 S. Ct. 1756 (2004) (02-1343); *see* Rachel L. Chanin, Note, *California's Authority to Regulate Mobile Source Greenhouse Gas Emissions*, 58 N.Y.U. ANN. SURV. AM. L. 699, 700 (2003) (discussing California's ambitious environmental regulation exemplified by Assembly Bill 1493, regulating greenhouse gas emissions from motor vehicles). The District of Columbia Circuit Court of Appeals interpreted Congress's enactment of the waiver provision as giving California extremely broad discretion to optimize its citizens' air quality. Motor Equip. Mfrs. Ass'n v. EPA, 627 F.2d 1095, 1110 (D.C. Cir. 1979).

[38] Clean Air Act § 177, 42 U.S.C. § 7507 (1990). The CAA states that:

> [A]ny State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 7543(a) of this title respecting such vehicles if 1) such standards are identical to the California standards for which a waiver has been granted for such model year, and 2) California and such State adopt such standards at least two years before commencement of such model year . . . .

Id.

[39] *Id.*

[40] *Id.*

[41] *Id.*

standard for at least two years before the automobile model year to which it applies.[42]

The CAA forbids piggy-backing states from taking additional initiatives in setting their own standards.[43] Congress wanted to prevent other states from pushing for a third standard for vehicle emissions that differed from the federal and California versions.[44] By enacting this section of the CAA, Congress responded to auto makers' fears of having to make multiple lines of cars to meet varying standards.[45] At the same time, by allowing piggy-backing, Congress recognized states' needs to enforce air quality at a higher standard than the CAA requires.[46] Courts also accommodated the states' need for higher air quality standards with a presumption against preemption.[47]

Historically, courts have presumed that Congress does not intend to preempt state laws that fall within the state's police powers unless Congress clearly states otherwise.[48] Police power is the right of a state to pass laws to protect its citizens' health, morality, comfort, safety, and peace.[49] Courts consider air

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[42] *Id.*

[43] *Id.*

[44] *Id*; H.R. REP. NO. 95-294, at 309-311 (1977) (noting concern over vehicle manufacturers being subject to fifty different sets of emission control requirements).

[45] H.R. REP. NO. 95-294, at 310 (1977) (noting Congressional interest in writing a balanced proposal to reconcile conflicting interests); Motor Vehicle Mfrs. Ass'n of United States v. New York State Dep't of Envtl. Conservation, 79 F.3d 1298, 1301 (2d Cir. 1996) (noting passage of CAA indicates Congress's intent to balance health concerns with protection of auto manufacturers from regulatory chaos).

[46] *See* Brief of Amici Curiae of the State of California at 15, Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 124 S. Ct. 1756 (2004) (02-1343) (noting benefit of allowing multi-state programs — costs imposed only on states with greater emissions problems rather than on country as whole).

[47] THE LAW OF PREEMPTION, NATIONAL ASSOCIATION OF ATTORNEYS GENERAL PREEMPTION WORKGROUP REPORT, 3 (2004) (on file with author) [hereinafter THE LAW OF PREEMPTION]. Preemption is when a court invalidates a state law that conflicts with a federal law, based on the belief that Congress intends to have solely federal law apply. *Id.*

[48] THE LAW OF PREEMPTION, *supra* note 47, at 7; *see* Medtronic, Inc. v. Lohr, 518 U.S. 470, 485 (1996) (holding that federal Medical Device Amendments do not preempt similar state or local requirements); Hillsborough County v. Automated Med. Labs., Inc., 471 U.S. 707, 715 (1985) (holding federal regulation of blood plasma donation process does not preempt local ordinance); Maryland v. Louisiana, 451 U.S. 725, 746 (1981) (holding that Congress did not intend to displace state law on natural gas taxation); *see also* City of Columbus v. Ours Garage & Wrecker Serv., Inc., 536 U.S. 424, 432 (2002) (holding that Congress did not explicitly preempt city towing ordinance); Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947) (holding that Federal Warehousing Act did not preempt similar state acts).

[49] Edgar A. Levy Leasing Co. v. Siegel, 258 U.S. 242, 245 (1922) (defining police powers in explaining that they include state law dealing with housing shortage); Chicago v. A.R. Co. v. Tranbarger, 238 U.S. 67, 77 (1915) (holding that Missouri statute requiring rail roads to take care of surface water on tracks is a police power); Lake Shore & M.S.R. Co. v. Ohio, 173 U.S. 285, 291 (1899) (upholding Ohio ordinance, under state's police powers, requiring trains to stop at all towns

pollution removal a traditional police power.[50] Preemption balances state autonomy against the need for uniform regulations.[51] No unified theory of when to apply preemption exists in the federal court system.[52] Lacking such guidance, each Supreme Court term can have widely varying views on state law challenges.[53] Two federal cases, *American Automobile Manufacturer's Association v. Cahill* and *Oxygenated Fuels Association v. Davis,* illustrate preemption issues that arise in the CAA context.[54]

B. American Automobile Manufacturer's Association v. Cahill

A pivotal case in CAA preemption law, *American Automobile Manufacturer's Association v. Cahill*, dealt with New York's Compilation Code section 218-4.1.[55] This section affected the sales requirements for automobiles.[56] It required that, starting in 1998, two percent of all the new automobiles sold in New York each year be zero emission vehicles ("ZEVs").[57] In the ensuing litigation, the American Automobile Manufacturer's Association ("AAMA") argued that the CAA section 209, the anti-state emission standard caveat, preempted the requirement.[58] AAMA also argued that New York

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with over 3,000 inhabitants).

[50] Hancock v. Train, 426 U.S. 167, 186 (1976) (noting states' inherent right to exercise police power in area of air pollution); Village of Belle Terre v. Boraas, 416 U.S. 1, 9 (1974) (commenting that police powers include laying out zones of clean air that are sanctuaries for people); Huron Portland Cement Co. v. Detroit, 362 U.S. 440, 442 (1960) (holding that legislation designed to free pollution from air that people breathe clearly falls within state police powers).

[51] *See* U.S. CONST. art VI, cl. 2 (mandating uniformity of state and federal regulations by proclaiming that federal law is supreme law of land); Cipollone v. Liggett Group, Inc., 505 U.S. 504, 516 (1992) (noting that balance favors federal power when federal law so completely occupies legislative field that one can reasonably infer that Congress meant to leave nothing to states to regulate); *Automated Med. Labs.*, 471 U.S. at 712-13 (noting that federal law can supersede state law when state law interferes or conflicts with it); *Maryland*, 451 U.S. at 746 ("[C]onsideration under the Supremacy Clause starts with the basic assumption that Congress did not intend to displace state law").

[52] THE LAW OF PREEMPTION, supra note 47, at 2. Federal preemption over a plethora of state laws has raised concern over states' abilities to function as politically accountable sovereigns. KENNETH STARR ET AL., THE LAW OF PREEMPTION 47, 56 (1999); *see generally* Betsy J. Grey, *Make Congress Speak Clearly: Federal Preemption of State Tort Remedies*, 77 B.U. L. REV. 559 (1997) (noting that Supreme Court's vacillation on use of preemption deprives lower courts of firm guidance).

[53] THE LAW OF PREEMPTION, *supra* note 47.

[54] Oxygenated Fuels Ass'n v. Davis, 331 F.3d 665, 668-69 (9th Cir. 2003); Am. Auto. Mfrs. Ass'n and Ass'n of Int'l Auto. Mfrs. v. Cahill, 973 F. Supp. 288, 297 (N.D.N.Y. 1997) *rev'd by* 152 F.3d 196, 183-85 (2d Cir. 1998).

[55] *Cahill*, 973 F. Supp. at 296.

[56] N.Y. COMP. CODES R. & REGS. tit. 6, § 218-4.1 (2004); *Cahill*, 152 F.3d at 197.

[57] N.Y. COMP. CODES R. & REGS. tit. 6, § 218-4.1; *Cahill*, 152 F.3d at 197.

[58] *Cahill*, 152 F.3d at 200. Clean Air Act section 209(a) prohibits states other than California

violated the piggy-back provision because section 218-4.1 did not identically match the California standards.[59]

The District Court of New York for the Northern District held that section 218-4.1 did not violate section 209(a) or the piggy-back provision.[60] The court found that the ZEV requirements were enforcement procedures, not emissions standards.[61] It explained that emissions standards would violate the CAA while enforcement procedures would not.[62] The ZEV statute did not need to match the California standards to avoid preemption because section 218-4.1 did not define the requirement as a "standard."[63]

The district court held that the ZEV sales requirement was an enforcement procedure because section 218-4.1 did not specifically limit the emissions of new vehicles.[64] Rather, section 218-4.1 required manufacturers to sell a percentage of their total fleet as ZEVs.[65] If unwilling to comply, the manufacturers had two options.[66] First, they could limit conventional auto sales to increase the percentage of ZEV sales industry-wide in the state.[67] Alternatively, they could purchase ZEV credits from other manufacturers.[68] Because the court did not classify the requirement as a standard, it held that the requirement could not violate the piggy-back provision of the CAA.[69]

The *Cahill* district court also took note of *Motor Vehicle Manufacturers Association v. New York State Department of Environmental Conservation* (*"MVMA III"*), a prior Second Circuit decision which distinguished between standards and enforcement mechanisms.[70] The *MVMA III* Court had held that the CAA requires states to comply with either California or federal emissions standards.[71] The CAA does not, however, place a restriction on how states

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from creating their own standards for automobile emissions. Clean Air Act § 209(a) (2000); 42 U.S.C. § 7543(a) (2000).

[59] *Cahill*, 152 F.3d at 200.

[60] Am. Auto. Mfrs. Ass'n and Ass'n of Int'l Auto. Mfrs. v. Cahill, 973 F. Supp. 288, 306-08 (N.D.N.Y. 1997), *rev'd by* 152 F.3d 196, 183-85 (2d Cir. 1998).

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *Id.* at 308.

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] Motor Vehicle Mfrs. Ass'n v. New York State Dep't of Envtl. Conservation (MVMA III), 17 F.3d 521 (2d Cir. 1994) (holding that ZEV sales requirement does not specifically limit emissions of new motor vehicles); *Id.* at 306.

[71] *MVMA III*, 17 F.3d at 536.

chose to *enforce* those standards.[72] The *MVMA III* Court found that enforcement techniques will necessarily vary from state to state.[73]

On appeal, however, the Second Circuit Court of Appeals reversed the *Cahill* district court and held that CAA section 209(a) did preempt section 218-4.1, for two reasons.[74] First, it held that the ZEV sales requirement was a clear standard relating to the control of emissions, and not merely an enforcement measure.[75] According to the court, this would violate the anti-state emissions standard caveat of CAA section 209(a).[76] The court stated that "ZEV, after all, stands for 'zero-emission vehicle'."[77] It held that the CAA necessarily preempts the sales requirement because such a requirement is a standard.[78]

Second, the court found that the ZEV sales requirement did not fall within the piggy-back waiver provision of CAA section 177.[79] Section 218-4.1 did not apply to medium-duty vehicles as the California provision did, and was therefore not identical.[80] Additionally, the court found that California had not enforced its ZEV requirement for automobiles starting in the model year 1998.[81] By enforcing ZEV requirements for 1998 car models, New York did not replicate California's standard.[82] Thus, the New York standard did not identically match the California standard, and thereby violated the piggy-back provision.[83]

C. *Oxygenated Fuels Association Inc. v. Davis*

Oxygenated Fuels provides an excellent framework for analyzing environmental preemption cases by focusing on the purpose behind regulations.[84] Responding to fears of groundwater pollution, the California Air

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[72] *Id.*

[73] *Id.* at 537; *see also* Motor and Equip. Mfrs. Ass'n v. EPA (MEMA), 627 F.2d 1095, 1108 (D.C. Cir. 1979) (noting that the District of Columbia's enforcement techniques differed from California's).

[74] Am. Auto. Mfrs. Ass'n and Ass'n of Int'l Auto. Mfrs. v. Cahill, 152 F.3d 196, 201 (2d. Cir. 1998).

[75] *Id.* at 197.

[76] Clean Air Act § 209(a), 42 U.S.C. § 7543(a) (2004); *Id.*

[77] *Cahill*, 152 F.3d at 200.

[78] *Id.; see also* Ass'n of Int'l Auto. Mfrs. v. Commissioner 208 F.3d 1, 6 (1st. Cir. 2000) (finding ZEV state legislation as standards within section 209 and section 177 of CAA).

[79] *Cahill* 152 F.3d. at 197.

[80] *Id.* at 201.

[81] *Id.*

[82] *Id.*

[83] *Id.* at 200.

[84] Oxygenated Fuels Ass'n v. Davis, 163 F. Supp. 2d 1182, 1184 (E.D. Cal. 2001), *aff'd* 331 F.3d 665 (9th Cir. 2003).

Resources Board ("CARB") banned the use of the fuel additive MTBE.[85] MTBE, an oxygenate similar to ethanol, increases the amount of oxygen in gasoline.[86] CAA section 211 requires that gasoline sold in certain areas have an oxygen content of at least two percent by weight.[87] This requirement and the addition of MTBE to gasoline help reduce vehicle emissions.[88] Unfortunately, MTBE also causes serious groundwater pollution.[89] Oxygenated Fuels Association ("Oxygenated Fuels") sued the state of California, claiming that the CAA preempted the ban.[90] Furthermore, Oxygenated Fuels argued that the MTBE ban conflicted with the objectives of the CAA.[91]

Because of California's special status in the CAA, the district court granted CARB's motion to dismiss.[92] The Ninth Circuit affirmed this decision on appeal.[93] In making the determination that preemption did not apply to California here, the Ninth Circuit first examined the purpose of the MTBE ban.[94] It found that California banned MTBE solely to protect ground and drinking water.[95] The court held that since the reason explained in the ban differs from the CAA's purposes, the CAA does not expressly preempt the MTBE mandate.[96]

Next, the court examined the effects of the MTBE ban.[97] Oxygenated Fuels asserted that the MTBE ban would disrupt the gasoline market.[98] It also claimed that one goal of the CAA was to provide inexpensive gasoline.[99] The Ninth

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[85] CAL. CODE REGS. tit. 13, § 2262.6 (2003).

[86] Oxygenated Fuels Ass'n v. Davis, 331 F.3d 665, 667 (noting that MTBE and ethanol are two most widely used oxygenates).

[87] Clean Air Act § 211, 42 U.S.C. § 7545 (2000).

[88] *Oxygenated Fuels*, 331 F.3d at 667.

[89] *Id.*

[90] Oxygenated Fuels Ass'n v. Davis, 163 F. Supp. 2d 1182, 1182 (E.D. Cal. 2001), *aff'd* 331 F.3d 665 (9th Cir. 2003). Preemption issues often arise when states regulate methyl tertiary-butyl ether ("MTBE"). *See Oxygenated Fuels*, 331 F.3d at 665 (holding that CAA does not preempt California's limits on MTBE because limit was imposed to protect groundwater rather than air); In re Methyl Tertiary Butyl Ether ("MBTE") Products Liability Litigation, 341 F. Supp. 2d 386, 403 (S.D.N.Y. 2004) (explaining that CAA does not entirely preempt state laws on fuel content, and specifically does not preempt claims for groundwater contamination).

[91] *Oxygenated Fuels*, 163 F. Supp. 2d at 1188.

[92] *Id.*

[93] *Oxygenated Fuels*, 331 F.3d 665 at 673.

[94] *Id.* at 672.

[95] *Id.* at 669.

[96] *Id; see* Clean Air Act § 211(c)(4)(B), 42 U.S.C. § 7545(c)(4)(B) (2000). Section 7545(c)(4)(B) states, "Any State for which application of section 7543(a) of this title has at any time been waived . . . may at any time prescribe and enforce, for the purpose of motor vehicle emission control, a control or prohibition respecting any fuel or fuel additive." *Id.*

[97] *Oxygenated Fuels*, 331 F.3d at 672.

[98] *Id.* at 673.

[99] *Id.*

Circuit found no such goal stated within the CAA, nor did Oxygenated Fuels provide support for the claim.[100] The court therefore applied a presumption against preemption of the state's right to control environmental regulation.[101]

II. ENGINE MANUFACTURERS ASSOCIATION V. SCAQMD

Analyzing a similar environmental preemption case, the Supreme Court went against the Ninth Circuit's presumption and invalidated a state air quality regulation in favor of the CAA.[102] The Supreme Court decided *Engine Manufactures v. South Coast Air Quality Management District* in April 2004.[103] The case marks a departure from previous CAA decisions, and emphasizes the importance of state control over environmental pollution regulation.[104]

A. Facts and Procedure

The South Coast Air Quality Management District ("SCAQMD") is responsible for air pollution control in the Los Angeles area.[105] SCAQMD aims to achieve and maintain state and federal air quality standards.[106] To effectuate this goal, SCAQMD enacted six Fleet Rules in 2000.[107] These Fleet Rules prohibited public and private fleet operators from purchasing or leasing vehicles that did not comply with specific emission requirements.[108] The Fleet Rules applied to the purchase of government vehicles such as city and school buses, garbage trucks, airport shuttles, and street sweepers.[109] Four of the Fleet Rules

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[100] *Id.*

[101] *Id.*

[102] Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 124 S. Ct. 1756, 1764 (2004).

[103] *Id.*

[104] *Engine Mfrs.*, 124 S. Ct. at 1765-67; *see infra* Part III.D.

[105] *Id.* at 1759; S. Coast Air Quality Management District, Introducing AQMD, *at* http://www.aqmd.gov/aqmd/intraqmd.html#whataqmddoes (last modified April 28, 2004) (explaining that SCAQMD is air pollution control agency for Orange County which includes Los Angeles and Riverside).

[106] South Coast Air Quality Management District, Introducing AQMD, *at* http://www.aqmd.gov/aqmd/intraqmd.html#whataqmddoes (last modified April 28, 2004) (explaining SCAQMD's goals); *see* CAL. HEALTH & SAFETY CODE § 40402(e) (West 1996)) (defining SCAQMD's goals as meeting National Ambient Air Quality Standards and state standards).

[107] CAL. HEALTH & SAFETY CODE § 40447.5 (West 2004).

[108] CAL. HEALTH & SAFETY CODE § 1193 (West 2004) (requiring fleet operators to purchase only alternative-fueled vehicles, defined as engines powered by compressed or liquefied natural gas, liquefied petroleum gas, methanol, electricity, or fuel cells); *Engine Mfrs.*, 124 S. Ct. at 1759 (2004). Fleet operators are public employees who manage groups of vehicles for government use. *Id.* at 1759.

[109] South Coast Air Quality Mgmt. Dist., Fleet Rules 1186.1, 1192, 1193, 1196 (2000); *Engine Mfrs.*, 124 S. Ct. at 1759.

required the purchase or lease of alternative-fuel vehicles.[110] The other two Fleet Rules mandated the purchase of either alternative-fueled vehicles or vehicles that met certain emissions specifications set by CARB.[111]

Engine Manufacturers Association ("EMA"), a trade association of diesel-fueled engine manufacturers, challenged the legality of the Fleet Rules.[112] EMA brought suit against SCAQMD, claiming that the anti-state emissions standard caveat of section 209(a) preempted the Fleet Rules.[113] In the ensuing litigation, the district court endorsed the Fleet Rules for four reasons.[114]

First, the court held that air pollution prevention is a police power and, thus, state regulation is presumed valid.[115] The court agreed with SCAQMD that the Fleet Rules authorized it to require fleet operators to purchase only new vehicles powered by clean burning alternative fuels.[116] The California legislature created the Fleet Rules because authorities classified the South Coast Air Basin as an extreme ozone non-attainment area.[117] The court also noted that Congress did not intend section 209(a) to hamper a state's effort to reduce pollution.[118] Rather, it intended for section 209(a) to prevent fifty different standards from burdening interstate commerce.[119] The court acknowledged that air pollution prevention clearly falls within the state's traditional police power of protecting

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[110] *Engine Mfrs.*, 124 S. Ct. at 1759; South Coast Air Quality Mgmt. Dist., Fleet Rules 1186.1, 1192, 1193, 1196 (2000).

[111] Fleet Rules 1191, 1194; *Engine Mfrs.*, 124 S. Ct. at 1759.

[112] Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 158 F. Supp. 2d 1107 (2001), *aff'd* 309 F.3d 550 (9th Cir. 2003), *vacated by* 124 S. Ct. 1756 (2004); South Coast Air Quality Mgmt. Dist., Fleet Rules 1186.1, 1192, 1193, 1196 (2000).

[113] PERCIVAL, *supra* note 29 (quoting text of 209(a)); *Engine Mfrs.*, 158.F. Supp. 2d at 1116 (explaining that Engine Manufacturer's Association filed its first amended complaint for declaratory and injunctive relief challenging constitutionality of Fleet Rules).

[114] *Engine Mfrs.*, 158 F. Supp. 2d. 1107.

[115] *Id.* at 1119 (citing Medtronic, Inc. v. Lohr, 518 U.S. 470, 475 (1996) and holding that State has authority in matters of public health and safety in negligence action against pacemaker manufacturer); *see* Metrop. Life Ins. Co. v. Massachusetts, 471 U.S. 724, 756 (1985) (holding Massachusetts statute not preempted by Employee Retirement Income Security Act nor by National Labor Relations Act due to broad police powers of State); Slaughter-House Cases, 83 U.S. (16 Wall) (noting State's traditional powers as to "the protection of the lives, limbs, health, comfort, and quiet of all persons"); Exxon Mobile Corp. v. United States EPA, 217 F.3d 1246, 1255 (9th Cir. 2000) (holding Nevada's State Implementation Plan valid - not preempted by the CAA - because air pollution prevention falls under broad police powers of state).

[116] *Engine Mfrs.*, 158 F. Supp. 2d at 1118-19.

[117] *Id* at 1118.

[118] *Id.* at 1110; *see, e.g.*, Motor Vehicle Mfrs. Ass'n v. New York State Dep't. of Envtl. Conservation, 17 F.3d 521, 536 (2d Cir. 1994) (holding that Congress did not intend for federal law to hamper New York zero emission vehicle ordinance); Allway Taxi, Inc. v. City of New York, 340 F. Supp. 1120, 1124 (S.D.N.Y. 1972) (holding that purpose of federal rules is not to hamper New York ordinance mandating use of low level lead gasoline).

[119] *Engine Mfrs.*, 158 F. Supp. 2d at 1110.

the health of citizens in the state.[120] It noted prior cases where the Supreme Court declared that federal rules generally do not preempt state police powers.[121] Furthermore, the court noted that Congress structured the CAA in such a way that each state held primary responsibility for assuring its own air quality.[122] The court acknowledged that the CAA would be irrational if it required state legislatures to enforce restrictions on the type of vehicle an entity may purchase while prohibiting these restrictions because they are standards.[123] Therefore, the State legitimately used its police powers by enacting the Fleet Rules in the interest of public health.[124]

Second, the court upheld the Fleet Rules because it determined that they did not qualify as standards under the CAA.[125] EMA argued that the Fleet Rules violated CAA section 209(a) because they were standards controlling vehicle emissions, which the CAA prohibits the states from creating.[126] The court held that standards are numerical controls on new vehicles, and the Fleet Rules regulated only the purchase of previously certified vehicles.[127] It noted that Congress intended to protect manufacturers from having to comply with many different standards.[128] The court found that because the Fleet Rules do not impose new emissions requirements on manufacturers, they do not violate Congress's purpose behind preemption.[129]

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[120] *Id.*; *see supra* THE LAW OF PREEMPTION, note 47; *see generally Exxon Mobile Corp.*, 217 F.3d at 1255 (mentioning that environmental regulation is traditional state police power); Massachusetts v. United States Dep't of Transp., 93 F.3d 890, 894 (D.C. Cir. 1996) (holding that dropping off and picking up hazardous waste is traditional police power and thus presumption against preemption applies).

[121] *Engine Mfrs.*, 158 F. Supp. 2d at 1111 (noting that Supreme Court analysis begins with presumption that local police powers are not preempted); *see also* United States v. Morrison, 529 U.S. 598, 617 (2000) (noting that Constitution created federal government of limited powers while reserving general police powers to states); Medtronic, Inc. v. Lohr, 518 U.S. 470, 475 (1996) (discussing states' historical control over matters of local concern); Train v. Natural Res. Def. Council, Inc., 421 U.S. 60, 64 (1975) (describing wide latitude states have in air pollution prevention and control).

[122] *Engine Mfrs.*, 158 F. Supp. 2d at 1111 (citing Train v. Natural Res. Def. Council, Inc., 421 U.S. 60, 64 (1975)).

[123] *Id.* at 1118.

[124] *Id.* at 1119.

[125] *Id.* at 1117.

[126] *Id.*; *see* Ass'n of Int'l Auto. Mfrs. v. Commissioner, 208 F.3d 1 (1st Cir. 2000) (holding that CAA preempted local zero emission vehicle ordinance); Am. Auto. Mfrs. Ass'n v. Cahill, 152 F.3d 196 (2d Cir. 1998) (finding that ordinance requiring sale of zero emission vehicles is invalid).

[127] *Engine Mfrs.*, 158 F. Supp. 2d at 1117.

[128] *Id.* (citing State of Cal. *ex rel.* State Air Res. Bd. v. Dep't of Navy, 431 F. Supp. 1271, 1285 (N.D. Cal. 1977), *aff'd by* 624 F.2d 885 (9th Cir. 1980)).

[129] *Id.* at 1118.

Third, the court rejected EMA's argument that the Fleet Rules violated the CAA's piggy-back provision.[130] It found that Congress wrote the piggy-back provision to prevent states other than California from creating their own emissions standards.[131] It determined that Congress wanted to avoid over-burdening auto manufacturers.[132] The Fleet Rules, however, posed no requirement to build engines not already available on the market.[133] The court noted that the "third vehicle" problem does not exist in this situation because the piggy-back provision allows other states to mirror the California vehicle emissions standards.[134] Since California enacted the Fleet Rules, states that chose to mirror these Fleet Rules would not create additional requirements.[135]

Fourth, the court held that the Fleet Rules regulated the *purchase* of vehicles, whereas the statute bars the regulation of *sales*.[136] Therefore, the Fleet Rules complied with the CAA's purchase regulations.[137] In fact, the court noted that the CAA specifically requires fleet operators to purchase clean-fuel vehicles.[138] The court agreed with SCAQMD's argument that it would be illogical for the CAA to authorize purchase restrictions while also prohibiting the adoption of standards.[139]

The district court granted summary judgment to SCAQMD, thereby upholding the Fleet Rules.[140] EMA appealed to the Ninth Circuit Court of Appeals.[141] The Ninth Circuit affirmed the district court's holding in a very short opinion.[142] EMA again appealed.[143] The United States Supreme Court vacated and remanded the decision, thus invalidating the Ninth Circuit's and

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[130] *Id.* at 1119; H.R. REP. NO. 91-1146, *supra* note 37 (discussing CAA section 177 which bars emissions requirements for states other than California).

[131] *Engine Mfrs.*, 158 F. Supp. 2d at 1120 (quoting Am. Auto. Mfrs. Ass'n v. Comm'r, 998 F. Supp. 10, 13 (D. Mass. 1997).

[132] *Id.*

[133] *Engine Mfrs.*, 158 F. Supp. 2d at 1120.

[134] *Id.* The "third vehicle" problem is when the automobile manufacturers would have to make vehicles complying with federal standards, California standards, and now this possible third standard as well.

[135] *Id.*

[136] *Id.* at 1118.

[137] *Id.* at 1120.

[138] *Id.* at 1118. Clean Air Act § 246, 42 U.S.C. § 7586(b) (2000) (stating, "[A] specified percentage of all new covered fleet vehicles . . . purchased by each covered fleet operator in each covered area shall be clean-fuel vehicles and shall use clean alternate fuels. . . .").

[139] *Engine Mfrs.*, 158 F. Supp. 2d at 1118.

[140] *Id.* at 1107.

[141] Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 309 F.3d 550 (9th Cir. 2002), *vacated by* 124 S. Ct. 1756 (2004).

[142] *Id.*

[143] Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 124 S. Ct. 1756 (2004).

district court's judgments.[144]

B. Holding and Rationale

The United States Supreme Court held that the CAA categorizes the Fleet Rules as standards; thus the CAA preempts the Fleet Rules.[145] Justice Antonin Scalia, joined by seven other justices, wrote a short opinion for the majority.[146] Justice Souter was the sole dissenter.[147] The majority overturned the previous rule for one main reason: it disagreed with the lower courts' interpretation of the word "standard" in section 209(a).[148]

The Court held that CAA section 209(a) prohibits states and political subdivisions from enforcing any standards which control emissions from new vehicles.[149] It stated that the word "standard" does not call for a distinction between purchase restrictions and sales restrictions.[150] The Court ruled that if one state could enact its own Fleet Rules, then every other state would, and the result would go against Congress's intent in the CAA.[151] Therefore, since the Fleet Rules are standards, the CAA necessarily prohibits them.[152]

Furthermore, the Court did not apply the traditional presumption against preemption, which assumes that states have the authority to protect the health of its citizens.[153] In addition, the Court did not refer to legislative history in its analysis.[154] The Court noted, however, that the Fleet Rules may avoid preemption if characterized as internal state purchasing decisions.[155]

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144 *Id.*

145 *Id.* at 1761-65.

146 *Id.* at 1759-65.

147 *Id.* at 1765.

148 *Id.* at 1761.

149 Clean Air Act § 209(a) (2000), 42 U.S.C. § 7543(a) (2000); *Engine Mfrs.*, 124 S. Ct. at 1763.

150 *Engine Mfrs.*, 124 S. Ct. at 1762.

151 *Id.*

152 *Id. at 1763.*

153 *Id.*

154 *Id.*

155 *Id.* at 1764.

In his dissent, Justice Souter wrote that the court should respect the presumption against preemption, as it has with prior police powers cases.[156] Justice Souter explained that legislative history showed that Congress intended to preempt the states by only limiting what manufacturers could sell.[157] He noted that section 202 of the CAA prohibited certain acts by vehicle manufacturers but left purchasers and users unregulated.[158] Justice Souter interpreted section 202 of the CAA to mean that section 209(a) does not regulate a buyer's choice through the use of purchase restrictions.[159]

Justice Souter also pointed out that the Fleet Rules only required the purchase of cleaner engines if such engines are already available on the market.[160] If no one sells cleaner engines, purchasers may buy any vehicle.[161] He noted that the Fleet Rules merely generate an artificially high demand for cleaner vehicles, which manufacturers can choose to provide.[162]

III. ANALYSIS

The Supreme Court incorrectly decided *Engine Manufacturers* for two main reasons. First, the Court incorrectly defined the word "standard," as used in the CAA.[163] Second, the Court ignored the long-held presumption against preemption.[164]

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[156] *Id.* at 1765 (quoting Medtronic, Inc. v. Lohr, 518 U.S. 470, 485) ; *see, e.g.,* THE LAW OF PREEMPTION, *supra* note 47 (listing several cases upholding presumption against preemption); Wisconsin Public Intervenor v. Mortier, 501 U.S. 597, 605 (1991) (applying presumption against preemption to local regulation); Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n, 461 U.S. 190, 206 (1983) (holding that Atomic Energy Act does not preempt California Code regarding storage of nuclear fuel rods, because such storage falls under traditional police powers).

[157] *Engine Mfrs.,* 124 S. Ct. at 1766.

[158] *Id.*

[159] *Id.* at 1767.

[160] *Id.*

[161] *Id.*

[162] *Id.*

[163] *Id.* at 1761; PERCIVAL, *supra* note 29 (providing text of CAA § 209(a) which uses word "standard").

[164] *Engine Mfrs.,* 124 S. Ct. at 1763 (noting that majority's interpretive method does not invoke presumption against preemption); *see* Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947) (applying presumption against preemption to suit against company charging unjust rates for storage and transportation of grain); Allen-Bradley Local v. Wisconsin Employment Relations Bd., 315 U.S. 740, 749 (1942) (applying presumption against preemption to unfair employment practices); Napier v. Atl. Coast Line Rail Co. 272 U.S. 605, 611 (1926) (applying presumption against preemption to Georgia act requiring automatic door on railcars to preserve health of engineers and firemen).

The Court should have followed the more sophisticated analysis of prior CAA case law.[165] Instead, the Court's ruling effectively works against the spirit of the CAA.[166] Therefore, Congress should amend the CAA to allow the Fleet Rules.

A. Engine Manufacturers Incorrectly Defined the Word "Standard" as Employed by CAA Section 209

The Court did not follow traditional rules of statutory interpretation when deciding *Engine Manufacturers.*[167] Instead, it relied on the Webster's dictionary definition of the word "standard" and declined to consult legislative history.[168] Several cases describe preferred methods of statutory interpretation, such as analyzing of statute sections in the context of the whole statute and its legislative history.[169]

Since section 209 does not define "standard," the court should have looked first to the context of the CAA.[170] Congress uses the term "standard" throughout section 202 of the CAA.[171] Section 202 describes these standards as numerical

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[165] For prior cases correctly interpreting the CAA, see Train v. Natural Res. Def. Council, Inc., 421 U.S. 60, 63-65 (1975) (using history and purpose of CAA in interpreting possible postponements in variance permitting); California *ex rel.* Air Ress. Board v. Dept. of Navy, 431 F. Supp. 1271, 1275 (N.D. Cal. 1977) (noting that regulation of moving sources of air pollution generally reside in states); Allway Taxi, Inc. v. City of New York, 340 F. Supp. 1120, 1124 (S.D.N.Y.), *aff'd,* 468 F.2d 624 (2d Cir. 1972) (noting that both history and text of CAA show intent of congress to allow localities to fight air pollution).

[166] *Engine Mfrs.,* 124 S. Ct. at 1764-65.

[167] *See, e.g.,* Gade v. Nat'l Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 96 (1992) (explaining that statutory interpretation begins with statutory language, structure, and purpose); Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 138 (1990) (determining Congress's intent in ERISA by looking at statutory language, structure, and purpose); Dowling v. United States, 473 U.S. 207, 218 (1985) (interpreting poorly worded criminal statute by looking to legislative history and purpose of statute); Park 'N Fly, Inc. v. Dollar Park & Fly, Inc., 469 U.S. 189, 194 (1985) (meaning of language used by Congress assumed to express legislative purpose); Aslanidis v. United States Lines, 7 F.3d 1067, 1073 (2d Cir. 1993) (stating that legislative history and tools of interpretation beyond plain meaning of statute should be used when statutory language is ambiguous).

[168] *Engine Mfrs.,* 124 S. Ct. at 1761. The Court used Webster's Second New International Dictionary (1945), which defined "standard" as that which is "established by authority, custom, or general consent, as a model or example; criterion; test." WEBSTER'S NEW INTERNATIONAL DICTIONARY 2455 (2d ed. 1945), A modern Webster's defines "standard" as "something set up and established by authority as a rule for the measure of quantity, weight, extent, value, or quantity." WEBSTER'S COLLEGIATE DICTIONARY 1145 (10th ed. 1998). This modern definition supports SCAQMD's understanding that the Fleet Rules are not a standard. *Id.*

[169] PERCIVAL, *supra* note 163 (listing cases that describe statutory interpretation examining legislative history and purpose of statute).

[170] Clean Air Act § 209(a), 42 U.S.C. § 7543(a) (2000).

[171] Clean Air Act § 202, 42 U.S.C. § 752 (a)(3)(A)(i) (2000).

maximum levels of pollutant emission that new vehicles may not exceed.[172] It specifically targets various emissions of chemicals and calls for the largest degree of emission reduction achievable.[173] Section 209(b) describes a waiver provision whereby California must show that its proposed standards meet the requirements set forth in section 202.[174] Thus, Congress intended the word "standard" to have the same meaning in section 209(b) as it does in section 202.[175] Additionally, when the EPA previously granted section 209(a) waivers, it interpreted the word "standard" to mean numerical values, such as emitted grams per vehicle mile.[176] The context of the statute shows that it defines "standard" as a numerical value.[177]

Furthermore, in a prior preemption case, the Court specifically stated that questions of statutory intent should begin with the language employed by Congress.[178] It noted that the meaning of such language expresses the legislative purpose.[179] Here, legislative history shows that Congress intended "standard" to mean quantitative levels of emissions rather than vehicle certification or maintenance restrictions.[180] The Air Quality Act of 1967 gave rise to the

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[172] *Id.*

[173] Clean Air Act § 202(3)(A)(i). This section states that:

> [R]egulations under paragraph (1) of this subsection applicable to emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, and particulate matter from classes or categories of heavy-duty vehicles or engines manufactured during or after model year 1983 shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.

Id.

[174] *Supra* note 30 (citing text of section 209(b), which allows waivers only to states that adopted standards prior to March 30, 1966 which are at least as protective of public health as federal standard).

[175] Brief of Amici Curiae of the State of California at 18, Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 124 S.Ct. 1756 (2004) (02-1343).

[176] *See id.* (noting that text and structure of Act suggest numerical values such as grams of given pollutants as "standards"); Motor & Equip. Mfrs. Ass'n, v. EPA, 627 F.2d 1095, 1111-12 (D.C. Cir. 1979) (rejecting concept that "standards" means any motor vehicle regulation); *see also* 42 U.S.C. § 7543(b)(1)(c) (2004). This section of the CAA states that for California to create its own emissions regulations, those standards must comply with numerical standards in section 202. *Id.* An example of a standard is a requirement that heavy duty trucks not emit more than 4.0 grams of Nitrous Oxide per brake horsepower hour. *Id.*

[177] *Supra* note 174.

[178] Morales v. Trans World Airlines, Inc., 504 U.S. 374, 383 (1992) (beginning with statutory language in determining whether state's consumer protection laws were preempted by Americans with Disabilities Act).

[179] *Id.*

[180] Brief of Amici Curiae of the State of California at 18, Engine Mfrs. Ass'n v. S. Coast Air

CAA.[181] Senate Reports on the Air Quality Act mention standards for chemicals, such as hydrocarbons, nitrogen oxides and carbon monoxide, which clearly refer to numerical levels.[182] Thus, the context of section 209(b) and legislative history show that that the non-numerical Fleet Rules were not standards. Therefore, the Court should have found that the CAA could not preempt them.

Critics may argue that statutory interpretation begins with the plain language, and that the Supreme Court correctly turned to *Webster's Dictionary* for that plain meaning.[183] They may say that the court must construe Congress's intent using the terms in the statute itself.[184] They also might argue that the terms of the statute explain Congress's intent better than an analysis of the purpose of the statute.[185] These critics would argue that the best way to decipher the meaning of a statute's terms is by turning to a dictionary.[186]

Quality Mgmt. Dist., 124 S. Ct. 1756 (2004) (02-1343).

[181] HANDBOOK, *supra* note 22 at 280; *see* Paul Rogers, *The Clean Air Act of 1970*, EPA JOURNAL, January/February 1990 (pointing out early obvious shortfalls in tackling national air pollution problems with regional controls).

[182] 136 CONG. REC. S2835 (1990). For example, statues typically express standards for heavy-duty engine emissions in grams per brake-horsepower hour, a numerical standard. *See* 40 C.F.R. § 86.007-11 (2004). Some emissions standards are expressed by other numeric terms such as evaporative emissions. *See* 40 C.F.R. § 86.008-10(b) (2004).

[183] *See, e.g.*, John Doe Agency v. John Doe Corp., 493 U.S. 146, 153 (1989) (noting Blackmun's use of *Webster's Dictionary* to define word "complied"); LAWRENCE M. SOLAN, THE LANGUAGE OF JUDGES (University of Chicago Press 1993) (arguing that definition of "enterprise" in statute was insufficient, thus turning to Oxford English Dictionary). Other justices have used reference material to define key words. George Kannar, *The Constitutional Catechism of Antonin Scalia*, 99 YALE L.J. 1297, 1333 (1990) (noting Blackmun's use of Wigmore's *Evidence* to define word "confrontation").

[184] Rodriguez v. United States, 480 U.S. 522, 525 (1987) (stating that when statutory language is clear court need not examine additional policy considerations).

[185] Bd. of Governors v. Dimension Fin. Corp., 474 U.S. 361, 374 (1986) (stating that invoking plain purpose of legislation at expense of terms in statute prevent effectuation of congressional intent).

[186] *See supra* note 178.

Statutory definitions, however, are superior to dictionary definitions because a statute contains Congress's intent, while a dictionary does not.[187] Therefore, the plain meaning of "standard," as used in section 202, should apply to all of section 209[188] In addition, when a statute's meaning is ambiguous, such as the meaning of "standard," the court should look to legislative history and prior jurisprudence.[189] The *Engine Manufacturers* court failed to either conduct legislative history analysis or examine prior case law.[190]

B. Engine Manufacturers Incorrectly Disregarded the Presumption Against Preemption

A thorough analysis of the CAA's legislative history and prior courts' application of the presumption against preemption illustrates that the *Engine Manufacturers* Court erroneously invalidated the Fleet Rules. The Supreme Court, however, declared that its analysis included neither legislative history nor the presumption against preemption.[191] It stated that the Court has historically disagreed about when to apply the two principles.[192] It further stated that,

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[187] *See* Babbitt v. Sweet Home Chapter of Cmtys. of a Great Oregon, 515 U.S. 687, 717-18 (1995) (noting Justice Scalia's use of word "take" in Endangered Species Act was broader than *Webster's Dictionary* definition); Int'l Bhd. of Teamsters et al. v. Daniels, 439 U.S. 551, 558 (1979) (describing starting place in every case involving construction of statute as language itself); Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 756 (1975) (noting that statutory construction begins with language in statute); N.Y. Currency Research Corp. v. Commodity Futures Trading Comm'n, 180 F.3d 83, 89 (2d Cir. 1999) (noting that statutory interpretation begins by examining statutory language); Wood v. Zoning Bd. of Appeals of Town of Somers, 258 Conn. 691, 701 (Conn. 2001) (resorting to dictionary definition because statutory definition had circular logic); 73 AM. JUR. 2d: STATUTES § 69 (2004) (explaining that when statutory definition is absent, court may turn to dictionary definition to interpret statute); 2 AM. JUR. 2d ADMIN. LAW § 246 (2004) (explaining that after court has used statutory construction, legislative history, and prior case law, it may then turn to dictionary to analyze statute).

[188] *Supra* note 162; *see also* United States Nat'l Bank of Oregon v. Indep. Ins. Agents of Am., 508 U.S. 439, 454-55 (1993) (advising that on interpreting text of statute, "we must not be guided by single sentences or member of a sentence, but look to the provision of the whole law, and to its object and policy . . . Statutory construction is a holistic endeavor.").

[189] *See* Neal v. United States, 516 U.S. 284, 295 (1996) (describing importance of adherence to prior case law when interpreting statute); Lechmere, Inc. v. Nat. Labor Relations Bd., 502 U.S. 527, 537 (1992) (describing how rulings on statutes should look to prior rulings on same statute); Maislin Indus., U.S., Inc. v. Primary Steel Inc., 497 U.S. 116, 131 (1990) (noting that process of analyzing prior determinations of statute at hand is longstanding and well-entrenched tradition).

[190] Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 124 S. Ct. 1756 (2004). Some critics argue that the majority's holding is quintessential "new textualism", a wave of judicial interpretation finding text, and only text, binding. Michael Herz, *Judicial Textualism Meets Congressional Micromanagement: A Potential Collision in Clean Air Act Interpretation,* 16 HARV. EVTL. L. REV. 175, 183-86 (1992). Problems arise if Congress errs when legislating details, and textualist judges cannot correct the mistakes. *Id.*

[191] *Engine Mfrs.*, 124 S. Ct. at 1763.

[192] *Id.*

regardless, these two principles made no difference to the outcome of this case and an analysis is therefore unnecessary.[193] On the contrary, both the approach to legislative history and the presumption are determinative of the outcome.[194] The Federal District Court for the Central District of California and the Ninth Circuit relied heavily upon them in order to correctly interpret the CAA.[195]

The *Engine Manufacturers* Court's justification for not applying the presumption is inconsistent with the Court's prior preemption cases.[196] In prior cases, when writing for the majority, Justice Scalia himself employed the presumption against preemption in his analysis.[197] He has also dissented where the majority refused to apply the presumption and preempted state law in a traditionally state-regulated area.[198] The prior cases involved subjects of traditional state police powers — a gang control ordinance and immunity for local government employees.[199] Courts have consistently classified air quality control as a traditional state police power to protect the health of its citizens.[200] The Court should have assumed a presumption against preemption in *Engine Manufacturers* because the presumption affects the outcome and the Court evoked it in similar situations.[201]

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[193] *Id.*

[194] *Id.* at 1764 (invalidating Fleet Rules by ignoring legislative history and presumption against preemption); *cf.* Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 158 F. Supp. 2d 1107, 1119-20 (upholding Fleet Rules after considering legislative history and presumption against preemption).

[195] Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 309 F.3d 550, 551 (9th Cir. 2002), *vacated by* 124 S. Ct. 1756 (2004) (holding that CAA does not preempt Fleet Rules); *Engine Mfrs.*, 158 F. Supp. 2d at 1120 (holding that CAA does not preempt Fleet Rules).

[196] *Engine Mfrs.*, 124 S. Ct. at 1762 (listing cases supporting presumption against preemption); *see, e.g.*, Kentucky Ass'n of Health Plans, Inc. v. Miller, 538 U.S. 329, 341-42 (2003) (holding that preemption does not apply to state insurance regulation); BFP v. Resolution Trust Corp., 511 U.S. 531, 546 (1994) (extending deference to "long-established tradition of state regulation" when Congressional intent to override state bankruptcy law was in question).

[197] *Supra* note 188 (listing cases supporting the presumption against preemption).

[198] Am. Ins. Ass'n v. Garamendi, 539 U.S. 396, 426-27 (2003) (holding that California statute compelling insurance companies to disclose policies issued to Holocaust victims was preempted by foreign policy); City of Chicago v. Morales, 527 U.S. 41, 72-73 (1999) (holding Cook County gang loitering ordinance unconstitutionally vague in failing to provide fair notice of prohibited conduct); Richardson v. McKnight, 521 U.S. 399, 401 (1997) (holding that qualified immunity does not preempt local liability for employee guards at private for-profit prison corporation in action by injured prisoner).

[199] *Supra* note 196 (listing cases where the court applied the presumption against preemption to issues of traditional state police power).

[200] *Supra* note 48 (citing cases that described air quality control as traditional state police power).

[201] *Id.*

Critics may argue that the principle of presumption against preemption does not apply to *Engine Manufacturers* and therefore the Court reached the correct conclusion by invalidating the Fleet Rules.[202] These critics may agree with EMA that the CAA preempts the Fleet Rules.[203] The Court, however, suggested that the Fleet Rules may avoid preemption if characterized as internal state purchasing decisions.[204] The Fleet Rules may also avoid preemption if dealing with used or leased vehicles rather than new ones.[205] The Court ultimately left these decisions for the lower courts.[206] It did not explain why re-characterizing the Fleet Rules would render them valid, even though they would have the same effect on fleet operator vehicle choice.[207]

C. *Engine Manufacturers Should Have Relied upon More Thorough Analysis from Prior CAA Cases*

The *Engine Manufacturers* rationale lacked a solid background of historical jurisprudence.[208] In deciding the case, the Supreme Court should have employed the more thorough logic demonstrated by prior CAA case law.[209] The Ninth Circuit in *Oxygenated Fuels* and the Federal District Court for the Northern District of New York in *Cahill* embrace the spirit of the CAA by looking to its purpose.[210] The Supreme Court should have followed their lead.

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[202] *See, e.g.*, California *ex rel.* State Air Res. Bd. v. Dep't of the Navy, 431 F. Supp. 1271, 1275 (N.D. Cal. 1977) (noting that despite state's broad power to set standards, CAA preempts certain state regulation for moving sources of pollution). The EPA has exclusive authority in setting emissions limits for new vehicles, sale of motor vehicle fuels and fuel additives. *Id; see also* Oncale v. Sundowner Offshore Servs. Inc., 523 U.S. 75, 79 (1998) (stating that we are ultimately governed by provisions of laws, rather than principles); Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253-54 (1992) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.").

[203] *See generally supra* note 201.

[204] Engine Mfrs., 124 S. Ct. 1756, 1764.

[205] *Id.*

[206] *Id.*

[207] *Id.*

[208] *See supra* text accompanying note 145 (describing decision as being short).

[209] *See, e.g.*, Neal v. United States, 516 U.S. 284, 295 (1996) (adhering to prior cases' interpretations of drug distribution statute); United States v. Selby, 333 F. Supp. 2d 367, 370 (D. Md. 2004) (explaining that court may examine body of case law to construe meaning of rape statute); David v. Beeler, 966 F. Supp. 483, 489 (E.D. Ky. 1997) (holding that judicial review should consider prior case law when interpreting violent crime and enforcement statute).

[210] Oxygenated Fuels Ass'n v. Davis, 331 F.3d 665, 672 (9th Cir. 2003); Am. Auto. Mfrs. Ass'n & Ass'n of Int'l Auto. Mfrs. v. Cahill, 973 F. Supp. 288, 308 (2d Cir. 1997).

Unlike *Oxygenated Fuels,* the *Engine Manufacturers* Court did not examine the purpose or effect of the CAA.[211] *Oxygenated Fuels* found that the purpose of the CAA was to reduce air pollution.[212] In *Engine Manufacturers,* only Justice Souter, the sole dissenter, agreed with this interpretation and added that the CAA intended to reduce air pollution while not directly limiting what manufacturers could sell.[213] The Fleet Rules mirror this purpose and would have decreased demand for gasoline cars while increasing demand for cleaner vehicles.[214] Because the *Engine Manufacturers* Court did not look to the purpose of the CAA and effects of its decision, it did not recognize the goal: cleaner air.[215]

Unlike the *Cahill* court, the *Engine Manufacturers* Court did not distinguish standards from CAA enforcement procedures.[216] *Engine Manufacturers* incorrectly disregarded *Cahill's* enforcement procedure analysis.[217] It should have delved deeper into Congress's meaning of "standards" instead of satisfying itself with the Webster's Dictionary definition.[218] The *Cahill* court found that ZEVs were standards, but the *Engine Manufacturers* Court, using the same analysis, would have determined the Fleet Rules were enforcement procedures.[219] Because the Court misinterpreted prior cases and the statute

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[211] *Engine Mfrs.*, 124 S. Ct. at 1765-1766; *Oxygenated Fuels*, 331 F.3d 665, 669-670.

[212] *Oxygenated Fuels*, 331 F.3d at 6661.

[213] *Engine Mfrs.*, 124 S. Ct. at 1765-66. Congress explains the purpose of the CAA in Clean Air Act section 101 (2000): "[T]o protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. 7401(b)(1) (2000).

[214] Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 158 F. Supp. 2d 1107, 1117-20 (C.D. Cal. 2001), *aff'd,* 309 F.3d 550 (9th Cir. 2002), *vacated by* 124 S. Ct. 1756 (2004); South Coast Air Quality Mgmt. Dist., Fleet Rules 1186.1, 1191, 1192, 1193, 1194, 1196, (2000); *see generally* S. Michael Gray, *Can State Regulation of Renewable Electricity Achieve Discriminatory Effects on Interstate Trade Without Triggering the Dormant Commerce Clause?*, 44 S. TEX. L. R. 783, 784 (2003) (explaining how windy states could artificially increase demand for wind power by enacting green energy laws); Richard B. Stewart, *Symposium: Environmental Regulation and International Competitiveness*, 102 YALE L.J. 2082, 2093 (1992) (noting ability of market-based incentives to encourage "green" technologies); Note, *Reassessing Rent Control: Its Economic Impact in a Gentrifying Housing Market*, 101 HARV. L.R. 1835, 1843 (1988) (explaining how artificial market restriction in form of rent control causes increase in demand for housing).

[215] *Engine Mfrs.*, 124 S. Ct. 1756.

[216] Am. Auto. Mfrs. Ass'n & Ass'n of Int'l Auto. Mfrs., Inc., v. Cahill, 973 F. Supp. 288, 308 (N.D.N.Y. 1997).

[217] *Engine Mfrs.* ,124 S. Ct. 1756.

[218] *Id.* at 1761.

[219] The Second Circuit Court of Appeals held that standards describe regulatory measures intended to lower the level of automobile emissions. Am. Auto. Mfrs. Ass'n & Ass'n of Int'l Auto. Mfrs. v. Cahill, 152 F.3d 196, 200 (2d Cir. 1998). The zero emission vehicle program is an example of a standard. *Id.* The court noted that that program imposes precise overall quantitative limits on levels of emissions. *Id.* Unlike the zero emission vehicle program, the Fleet Rules did not contain

itself, Congress should amend the CAA so the Court cannot make similar mistakes in the future.

D. Congress Should Amend the CAA to Allow For More State Flexibility

The CAA requires frequent revisions to reflect changing air quality levels and pollution abatement technologies.[220] When originally enacted in 1970, Congress intended to revise the CAA every five years.[221] This, however, has not happened.[222] Congress has not amended the CAA since 1990.[223] Although unable to implement the Fleet Rules, California retains the option to get a waiver from the EPA for similar rules in the future.[224]

Recall that critics argue that the Fleet Rules could result in a "third car" problem.[225] This argument fails, however, because the Fleet Rules do not require auto manufacturers to make a new vehicle or engine.[226] Upholding the Fleet Rules would increase demand for cleaner engines.[227] Moreover, it would force automakers to internalize the costs of air pollution that more polluting vehicles create.[228] Finally, it would result in cleaner air, which is the primary goal of the CAA.[229]

The real remaining problem is that states other than California do not have the option to apply for a waiver. Although solving the "third car" problem, this system restrains states which need to deal with mobile source pollution in ways different from California. Congress enacted the waiver provision based on old data, when California really was the only state with a drastic air quality problem.[230] Now, however, many states are struggling with declining air quality.[231] Congress should amend the CAA to allow states more flexibility to

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quantitative limits. CAL. HEATH & SAFTEY CODE § 40447.5 (West 2004).

[220] *Id.*

[221] PERCIVAL, *supra* note 18, at 506 (noting that EPA is required to revise air quality criteria and NAAQS at five-year intervals, but has avoided revisions claiming they are too much administrative burden).

[222] *Id.*

[223] 42 U.S.C. § 7401-7671q (2004); PERCIVAL, supra note 18, at 499.

[224] Clean Air Act § 209(b), 42 U.S.C. § 7543 (2004).

[225] *See supra* text accompanying note 130.

[226] Clean Air Act § 177, 42 U.S.C. §7507 (2000).

[227] Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 124 S. Ct. 1756, 1766 (2004).

[228] *Id.*

[229] Clean Air Act § 101, 42 U.S.C. 7401 (2000) (stating purpose of encouraging or promoting pollution prevention).

[230] *See supra* note 24.

[231] Jennifer Lee, *Seven States to Sue E.P.A. Over Standards on Air Pollution*, N.Y. TIMES, Feb. 21, 2003, at A (describing plaintiff states filing action against E.P.A. demanding that twenty-year old air pollution standards be updated to halt release of global warming pollutants.)

deal with mobile source air pollution problems.

If more states can set their own mobile source standards, critics might argue that the "third car" problem will inevitably arise. Arguably, automobile manufacturers should not have to make fifty different types of cars to meet fifty standards.[232] To avoid this, Congress can amend the CAA to bundle states into six broad air quality zones. These zones can determine how to best meet their own air quality standards. The CAA can require the zones to compare strategies before implementation. Due to zone competition for clean air, political pressure from their constituents, and because implementation of these rules requires no funding, the zones are likely to all implement the most stringent of the presented standards. The new standards may be stricter than the current California standard, which means that all states have more flexibility and the automakers are not making fifty types of cars.

CONCLUSION

The United States Supreme Court incorrectly decided *Engine Manufacturers*. The case departs from Congress's intent for the CAA: to attain healthy air quality.[233] The purpose of the Fleet Rules parallels that of the CAA, air pollution abatement, and California need the Fleet Rules to achieve air quality standards.[234] *Engine Manufacturers* suggests that the underlying goal of the CAA is contingent on minimal disturbance to the automobile industry.[235] This was never Congress's intent.[236] The *Engine Manufacturers* Court implied that the automobile industry's interests supersede a state's right to enforce air pollution restrictions.[237]

To honor the spirit of the CAA, the Court should have conducted its analysis differently.[238] In defining the word "standard" in section 209(a), the Court should have first examined the word's use throughout the CAA.[239] Second, the Court also should have abided by the presumption against

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[232] *See supra* note 43.

[233] *See supra* note 204.

[234] Clean Air Act § 101, 42 U.S.C. § 7401 (2000) (stating purpose of encouraging or promoting pollution prevention); CAL. HEALTH & SAFETY CODE § 40402(e) (West 1996) (stating purpose to "achieve and maintain state and federal air quality standards"); Exxon Mobile Corp., v. United States EPA, 217 F.3d 1246, 1255-56 (9th Cir. 2000) ("The overriding purpose of the Clean Air Act is to force states to do their job in regulating air pollution effectively so as to achieve baseline air quality standards").

[235] *Engine Mfrs.*, 124 S. Ct. at 1765-66.

[236] *See supra* note 207.

[237] *Engine Mfrs.*, 124 S. Ct. at 1766.

[238] *See supra* Part III.A-C.

[239] *See supra* Part III.A.

preemption.[240] Finally, the Court should have looked to prior case law and legislative history to interpret the CAA.[241] Instead, the Court neglected to abide by the purpose of the CAA and failed to realize the detrimental effect of its holding.[242]

The *Engine Manufacturers* decision signals to Congress that the time has come for another amendment to the CAA. The current statute has allowed the Court to ignore the true goals of the CAA.[243] Congress should alleviate this ambiguity by defining the word "standard" with numerical language that mirrors section 202 of the CAA.[244] More broadly, Congress should amend the CAA to allow states to create internal purchasing guidelines that prioritize cleaner vehicles. Congress should take air pollution regulation from the hands of the Court, and return it to the states.

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[240] *Supra* Part III.B.

[241] *See supra* note 197 (explaining importance of analyzing prior similar cases).

[242] *See supra* Part III.C.

[243] *Engine Mfrs.*, 124 S. Ct. at 1762.

[244] *See supra* Part III.A.