

In Depth: A Very Green Environmental Ruling, From The Green State

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Published September 28, 2007 06:21 PM

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On September 17, 2007, Judge William Sessions of the U.S. District Court in Vermont issued a landmark decision in the roiling legal and political debate over climate change. Aside from the U.S. Supreme Court's pioneering, April 2007 ruling in *Massachusetts v. USEPA*, Judge Sessions' decision last week in *Green Mountain Chrysler v. Crombie* is the most important court ruling in the still-nascent history of climate change litigation.

Like the Supreme Court's earlier *Massachusetts* decision, *Green Mountain Chrysler* is noteworthy not simply as an important legal development, but also for its impact on the broader policy debate surrounding climate change policy generally.

Green Mountain Chrysler represents a sweeping legal victory for state [environmental](#) regulators in both Vermont and California, and for the [environmental organizations](#) that intervened in the case to support state regulations designed to limit greenhouse gas emissions from motor vehicles. Conversely, Judge Sessions' ruling is a major legal and political setback to the coalition of domestic and foreign automobile manufacturers who have worked tirelessly to block the states from implementing their regulatory program.

But the *Green Mountain Chrysler* decision also resembles *Massachusetts v. USEPA* in another way: while the states and environmentalists have reason to celebrate their litigation victory, their long-term success in addressing vehicular sources of greenhouse gases is likely to be dependent on a favorable regulatory response from federal environmental regulators at the U.S. Environmental Protection Agency and their overseers in the Bush White House. And such a response is far from certain.

Background History of the Green Mountain Chrysler Litigation

The origins of the *Green Mountain* can be traced to five years ago, and 3,000 miles from Judge Sessions' courtroom in Montpelier, Vermont. In 2002, the California Legislature enacted landmark legislation, known as AB 1493 or the "Pavley legislation" (after the bill's number and its legislative sponsor, respectively), directing California's Air Resources Board (CARB) to adopt regulations to set [greenhouse gas emission](#) standards for new cars and light trucks sold in California. Specifically, the California legislation directed CARB to adopt the maximum feasible and cost-effective reduction of greenhouse gas (GHG) emissions from motor vehicles. (Alone among the 50 states, California has retained authority under the federal Clean Air Act to develop [air pollution](#) emission standards for vehicular sources. (CAA §209(b).))

CARB, after a lengthy rulemaking process, adopted the AB 1493 regulations in September 2004.

Those regulations were designed to take effect in 2006, and to apply to new passenger vehicles, SUVs and light trucks beginning in model year 2009. The standards are intended to phase in during the 2009-2016 model years.

CARB's regulations to implement AB 1493 were promptly challenged by a broad coalition of domestic and foreign automakers in a lawsuit filed in U.S. District Court in Fresno, California.

So: how did a legal fight over state greenhouse gas emission standards that originated in California wind up being litigated across the country, in a Vermont courtroom? The answer to that question can be found in another, key provision of the federal Clean Air Act, added by Congress 30 years ago, in the first round of substantive amendments to the CAA: section 177 allows other states to "opt into" California's air pollution standards for vehicular sources. Shortly after CARB adopted its AB 1493 regulations, Vermont and 12 other states did just that, choosing—in the face of federal inaction on the climate change front—to adopt California's AB 1493 regulatory program as their own. In response, the automobile industry expanded their legal attack on those regulations by filing federal lawsuits in Vermont and Rhode Island, paralleling the case brought in Fresno, California.

The federal courts in California and Rhode Island stayed the automakers' lawsuits in those jurisdictions, pending the Supreme Court's decision in *Massachusetts v. USEPA*. However, Judge Sessions saw no such need to delay the Vermont case. So, in April and May 2007, Judge Sessions presided over a 16-day trial, without a jury, to address the automakers' legal challenges to the Vermont iteration of the AB 1493 regulations. (And, since under CAA §177 those regulations are necessarily identical to California's, the Green Mountain Plymouth case anomalously represents the first legal test of California's regulatory strategy to control GHG emissions from vehicular sources under AB 1493.) On September 12th, Judge Sessions issued his ruling in the Green Mountain Plymouth case.

The Decision in Green Mountain Plymouth

U.S. District Judge Sessions' 240-page decision in the Green Mountain Chrysler case finds in favor of Vermont's [air quality](#) regulators, and the AB 1493 standards, in all pertinent respects.

While the automakers who brought the Vermont lawsuit originally advanced numerous legal theories in challenging the AB 1493 regulations, by the time of trial those theories were essentially reduced to two: 1) that the regulatory program is preempted by federal law, specifically, the federal [Energy Policy](#) and Conservation Act (EPCA); and 2) that the regulations intrude on the foreign policy prerogatives of the President and Congress, and are thus invalid under the related constitutional doctrine of "foreign policy preemption."

Judge Sessions' lengthy opinion analyzed both of the automakers' theories, and finds them equally unpersuasive. He first rejected the automakers' claim that EPCA—which directs the federal government to adopt fuel economy standards—preempts states' ability to address climate change concerns by limiting GHG emissions from mobile sources. Sessions found without merit the automakers' expansive interpretation of EPCA as superseding any state [pollution control](#) efforts that have even an incidental impact on fuel economy (as the AB 1493 emission limits concededly do). Congress, he determined, did not intend such a sweeping result when it enacted either the CAA or EPCA.

Perhaps even more significantly, the district court dismissed industry claims that the AB 1493

standards should be deemed preempted due to their technological and economic infeasibility.
Concluded Judge Sessions:

“Plaintiffs have not carried their burden to show that compliance with the regulation is not feasible; nor have they demonstrated that it will limit consumer choice, create economic hardship for the automobile industry, cause significant job loss, or undermine safety.”

Turning to the automakers’ “foreign policy preemption” arguments, the district court found them foreclosed by the U.S. Supreme Court’s recent decision in *Massachusetts v. USEPA*. There the Bush Administration had made the same argument—that regulating GHGs domestically might impair the federal government’s ability to conduct foreign policy designed to achieve the same objective globally. The Supreme Court disagreed, as did Judge Sessions in the Vermont case:

“California’s GHG regulation, far from charting a divergent, potentially disruptive or embarrassing course, fits squarely within the nation’s [emission reduction](#) policies. Far from representing an intrusion into the ‘field’ of foreign affairs entrusted exclusively to the national government, Vermont’s regulation stands out as exemplifying a cooperative federal state approach to the global issues of climate change.”

In addition to these crucial rulings on the auto industry’s constitutional claims, the Green Mountain Chrysler decision has several other noteworthy components:

At trial, the automakers had objected to the admissibility of testimony offered by several scientific experts who testified on behalf of Vermont—among them, NASA scientist James Hansen, perhaps the nation’s most well-known climatologist. Not only did Judge Sessions overrule the industry’s evidentiary objections, in a detailed discussion he made it clear that he found Vermont’s expert scientists more credible and reliable than those sponsored by the automakers. This is significant, inasmuch as Green Mountain Chrysler apparently represents the first case in the U.S. in which a “battle of experts” has been fought in a court trial. In this case, the clear winner was the climate experts offered by Vermont to demonstrate the existence and generally adverse consequences of climate change.

When the U.S. Supreme Court decided the Massachusetts case last April, many observers predicted that that decision would assist states and environmental organizations pursue numerous other climate change lawsuits pending in the lower courts. Green Mountain Chrysler, the first such decision, proved the accuracy of that prediction. Judge Sessions repeatedly cited and relied on the earlier Supreme Court in rejecting the automakers’ legal claims.

The Vermont decision strongly endorses the role of state and local governments in advancing climate change regulatory initiatives, in the face of persistent inaction by the national government. Judge Sessions in his decision repeatedly cited the appropriate role of the states, as independent sovereigns in our federal system, with authority to act. And his decision cites with approval the State of California’s pioneering role as a “proving ground for new technology that would later be introduced nationwide pursuant to federal [air quality] regulations.”

Judge Sessions’ opinion rather scornfully rejected the automakers’ arguments as to why the California/Vermont GHG regulations are technically and economically infeasible. He spent considerable time and text pointing out the perceived flaws in those arguments, noting for example that the auto manufacturers’ claims at trial were often directly contrary to those they’ve advanced in other forums—e.g., in their advertising.

Perhaps most significantly, Judge Sessions quite obviously drafted his lengthy decision in *Green Mountain Chrysler* with an eye toward the U.S. Court of Appeals. It is likely that the automakers will seek to appeal the unfavorable district court ruling, and Judge Sessions took great pains to explain carefully and in detail the evidentiary and legal bases for his ruling. That makes the odds rather long that the automakers will obtain a different, more favorable ruling from the appellate court.

The Long-Range Implications & Significance of Green Mountain Chrysler

Standing in isolation, *Green Mountain Chrysler* is a most important chapter in a legal and policy debate over climate change that is still in its infancy. But the decision's significance is enhanced by its relationship to—and potential effect on—other climate change cases pending in other courts across the nation.

Most prominently, and as noted above, the coalition of automobile manufacturers who filed the Vermont lawsuit have brought parallel legal challenges to block implementation of the AB 1493 regulatory program in two other federal courts, in Rhode Island and California. The question logically arises: what impact will the Vermont court's decision in *Green Mountain Chrysler* have on those related lawsuits, as they proceed to decision?

The federal judges who preside over the California and Rhode Island versions of the automakers' legal challenge are not required to follow Judge Sessions' reasoning and decision. But it is likely that his detailed and thorough treatment of the relevant issues will be influential to his judicial brethren. At a minimum, lawyers for the States of California and Rhode Island will rely heavily on the *Green Mountain Chrysler* decision as they defend the parallel lawsuits in those states.

More broadly, there are numerous other cases pending in state and federal courts around the country that could well be influenced by the decision in *Green Mountain Chrysler*. While those cases do not directly involve the legality of the AB 1493 GHG regulations, they do raise several other, broader issues at the heart of the Vermont case: whether federal law preempts state initiatives designed to address the impacts of climate change; the reliability of scientific evidence concerning the fact and consequences of global warming; etc.

An Important, Cautionary Note

Green Mountain Chrysler doubtless represents an important legal and policy victory—both for the State of Vermont and for the AB 1493 regulatory program originally devised and promulgated in California by CARB. But the final chapter in the legal saga over the future of the AB 1493 regulations in California, Vermont and a dozen other states has yet to be written. And the ultimate decision may not emanate from judges and courtrooms but, instead, from USEPA administrators in Washington, D.C.

Recall that under the CAA, California has the unique ability to enact state air pollution control regulations for vehicular sources, and that other states (such as Vermont) may “opt into” those California standards. But California's ability to proceed with such an independent regulatory strategy is subject to an important qualification: it may do so only if USEPA's Administrator grants a “waiver” under section 209(b) of the CAA. The USEPA Administrator must grant the waiver if s/he determines that California's proposed standards are at least as protective of public health and welfare as otherwise-applicable federal standards, and if certain other statutory requirements are met. Over the 37-year history of the CAA, USEPA has routinely granted such waivers when they've been sought by California air quality regulators.

That may be about to change. CARB submitted a waiver request for the AB 1493 regulations in December 2005. Nearly two years later, USEPA still has not acted on that request. Both California Governor Schwarzenegger and Attorney General Jerry Brown have expressed considerable frustration over USEPA's inaction—to the point of publicly vowing to sue USEPA if the agency does not act on California's waiver petition by October 2007.

How does this relate to the Green Mountain Chrysler litigation and decision? Judge Sessions assumed, for purposes of trial and his decision, that USEPA would grant California's waiver petition, and that the only impediment to Vermont's implementation of the AB 1493 regulations was the automakers' legal challenge. Conversely, the automakers and Vermont agreed that if the waiver petition were denied, the AB 1493 regulations would be preempted by federal law and therefore unenforceable.

In short, Vermont (and California) could quite possibly win the litigation battle in Green Mountain Chrysler and still lose the larger war over the AB 1493 GHG emission standards.

Conclusion

Indisputably, the recent decision in Green Mountain Chrysler is a major judicial pronouncement on the subject of climate change, and one of the most important, recent environmental law decisions generally. Judge Sessions' exhaustive ruling represents a forceful rejection of the automakers' sweeping legal claims; reflects a strong judicial endorsement of the basic science cited and relied upon by climate change regulators and environmentalists; and embraces the notion that states have an important role in our federal system in formulating a regulatory response to the myriad challenges posed by climate change.

At the same time, the recent federal court ruling in Green Mountain Chrysler is not the end of the already long saga surrounding the AB 1493 GHG regulatory program. Far from it. The automakers, unsuccessful in the trial court, are likely to appeal this adverse decision to the U.S. Court of Appeals, in an effort to obtain a reversal of Judge Sessions' ruling. And, as noted above, the ultimate fate of the AB 1493 regulations—in California, Vermont and the numerous other states that have "opted into" the California AB 1493 standards—may not be decided in any courtroom but, instead, within the inner sanctum of USEPA.

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