Deconstructing the Clean Air Act: Examining the Controversy Surrounding Massachusetts’ Adoption of the California Low Emission Vehicle Program

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DECONSTRUCTING THE CLEAN AIR ACT:
EXAMINING THE CONTROVERSY SURROUNDING
MASSACHUSETTS'S ADOPTION OF THE CALIFORNIA
LOW EMISSION VEHICLE PROGRAM

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If my fellow citizens want to go to Hell I will help them. It’s my job.¹
Justice Oliver Wendell Holmes

I. INTRODUCTION

In response to the growing pollution problem in Massachusetts, the legislature of the Commonwealth of Massachusetts enacted M.G.L. c. 111, § 142k.² This law instructed the Department of Environmental Protection (DEP) to adopt a motor vehicle emissions standards and compliance program based on California's motor vehicle emissions standards and compliance program.³ The DEP was required to adopt the California program unless it determined that California's program would not achieve greater motor vehicle pollution reductions than the

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federal standards and compliance program set forth in the Clean Air Act. 4

On January 31, 1992, having determined that the California program would achieve greater reductions than the federal standards, the Commonwealth of Massachusetts adopted the California emission standards and compliance program. 5 The DEP, however, did not adopt the entire California program. 6 The DEP adopted only the "Low Emission Vehicle" (LEV) portion of the program, opting to exclude the "Clean Fuel" (CF) portion. 7

Shortly thereafter, the DEP found itself the defendant in a lawsuit. 8 The plaintiffs, the American Automobile Manufacturers Association, the Association of International Automobile Manufacturers, Inc., and the Massachusetts State Automobile Dealers Association, Inc. (collectively called the auto-manufacturers), challenged the DEP's adoption of the LEV program. 9

This Comment discusses this controversy between the auto-manufacturers and the DEP. Section II explicates the history and background which has led up to this controversy. Section IIA discusses the role of the federal and state governments in regulating air pollution. Section IIB examines the Clean Air Act, particularly focusing on the policy and intent behind the construction of the Act. Section IIC analyzes California's tailpipe emission-control program, and section IID discusses Massachusetts's adoption of the California LEV program.

In order to resolve this controversy, the courts must interpret the Clean Air Act. Section III develops a hermeneutical method by which


6 See Air Pollution Control Regulations, MASS. REGS. CODE tit. 310, § 7.40 (1992); see also Complaint, supra note 5, at 15; AAMA I, supra note 3, at *1.

7 See Memorandum from Department of Environmental Protection Relating DEP's Response To Comments Received During Public Hearing For 310 C.M.R. 7.40; Entitled Response To Comments, 310 C.M.R. 7.40, Massachusetts Low Emission Vehicles Standard 5-6 (Jan. 31, 1992); see also Complaint, supra note 5, at 15; AAMA I, supra note 3, at *1; Defendant's Memorandum, supra note 2, at 13.

8 See generally AAMA I, supra note 3, at *1; Complaint, supra note 5, at 1.

9 See, e.g., AAMA I, supra note 3, at *1; Complaint, supra note 5, at 1–5.
to do so. Following this discussion, section IV examines in detail the legal issues which have arisen in this controversy. This discussion focuses on the hermeneutic schemes utilized by the parties. Both the auto-manufacturers and the DEP seek to interpret the Clean Air Act to their own advantage. This section argues that both parties’ hermeneutical methods were improper. Finally, each legal issue is analyzed following the appropriate hermeneutical scheme.

II. UNPACKING THE CONTROVERSY SURROUNDING MASSACHUSETTS’S ADOPTION OF THE CALIFORNIA LOW EMISSION VEHICLE PROGRAM

A. Federal Preemption and State Freedom to Regulate Air Pollution

The Constitution of the United States asserts that “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land.” Accordingly, the Congress of the United States may preempt the entire field of air pollution regulation. As of yet, however, Congress has made no attempt to do so. Air pollution regulation has been, and continues to be, controlled by both the states and the federal government in what has been termed a “cooperative federalism.” In areas


11 See MVMA I, supra note 10, at 1336.

12 See 42 U.S.C. § 7407 (1988) (stating that each state shall have the primary responsibility for assuring air quality within the entire geographic area comprising such state by submitting an implementation plan which specifies the manner in which national primary and secondary ambient air quality standards will be achieved and maintained); see also Defendant’s Memorandum, supra note 2, at 5.

13 Compare 42 U.S.C. § 7409 (1988) (discussing the national primary and secondary ambient air quality standards as set by the federal government) with 42 U.S.C. § 7410 (1988) (discussing the states’ role in adopting plans which provide for the implementation, maintenance, and enforcement of the national primary and secondary ambient air quality standards). See Zygmunt J.B. Plater et al., Environmental Law and Policy: Nature, Law and Society 776 (1992) (This text uses and defines the term “cooperative federalism.” Under the plan of cooperative federalism, the states are charged with developing a State Implementation Plan setting forth the pollution control strategies it will use to bring its air quality into compliance with the NAAQS and to maintain such compliance thereafter. The text then states that the federal government’s role would be threefold. First, it would set the standards that must be met. Second, it would review SIPs to insure that plans would result in the attainment of the mandated degree of air quality. Third, it would supplant the states as primary regulators if the
the federal government has not preempted, the states have been given the freedom to regulate air pollution in any necessary and sufficient manner.14

B. The Clean Air Act

1. Mobile Source Pollution Contribution

Mobile sources of air pollution have long been recognized as major contributors to health problems in the United States.15 Currently, mobile sources are the single most important cause of ozone pollution in the United States.16 Ozone, the main ingredient in urban smog, is created when hydrocarbons (HCs) and other volatile organic compounds (VOCs) react with nitrogen oxides (NOx) in the presence of sunlight.17 Mobile sources contribute approximately fifty percent of the nation's HC and VOC emissions and only a slightly smaller percent of the nation's NOx emissions.18 Ozone pollution and urban smog
are particularly harmful to humans. They are respiratory irritants that cause among other things "chest pains, shortness of breath, coughing, nausea, throat irritation, and increased susceptibility to respiratory infections." The young, elderly, and those who suffer from bronchitis, emphysema, and asthma are particularly susceptible to these afflictions.

Mobile sources are also the single largest contributor of carbon monoxide (CO) pollution, contributing seventy percent of the carbon monoxide pollution nationwide and approximately ninety percent in urban areas. Carbon monoxide presents a major health risk to individuals because it prevents the transfer of oxygen to the blood stream, thereby depriving the brain of oxygen.

Mobile sources are also the nation's largest contributor of toxic emissions. These cancer causing emissions include diesel particulates, butadiene, benzene, and formaldehyde. Lastly, mobile source air pollution contributes both to the acid rain problem currently afflicting certain areas of the United States, and to the problems of ozone depletion and global warming. Acid rain, ozone depletion, and global warming all have their own attendant health risks.
2. A History of the Clean Air Act: A Commitment to Public Health

In response to the growing problem of air pollution and its attendant health risks, Congress first enacted the Air Pollution Act (APA) of 1955.\(^{27}\) The APA directed the Surgeon General to investigate the air pollution problem and to provide assistance to the states in their attempt to abate it.\(^{28}\) In 1960, the Surgeon General was once again required to investigate the air pollution problem.\(^{29}\) This time, however, Congress explicitly stated that the health problems resulting from air pollution were to be a primary focus.\(^{30}\) Continuing the growing trend of federal control of air quality, in 1963, Congress once again expanded the role of the federal government. The Department of Health, Education and Welfare (HEW) was directed to identify pollutants that cause adverse health effects and to establish air quality criteria in relation to those pollutants.\(^{31}\) State compliance with the air quality standards, however, was not made mandatory.\(^{32}\) Then, in 1967, in response to growing recognition of the significant contribution that mobile sources make to air pollution, Congress further broadened federal control.\(^{33}\) Preempting state authority, Congress directed the HEW to develop federal emission standards for motor vehicles.\(^{34}\)

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\(^{27}\) Air Pollution Control-Research and Technical Assistance Act of 1955, Pub. L. No. 84-159, 69 Stat. 322 (1955); see A Clean Air Act Primer: Part I, supra note 13, at 10,161 ("The first federal initiative, the Air Pollution Control Act of 1955, focused on research and on financial and technical support for state programs."); MVMA III, supra note 10, at 524 ("The original Clean Air Act, enacted by Congress in 1955, was aimed primarily at increasing federal research and assistance in air pollution prevention."); cf. PLATER ET AL., supra note 13, at 760 ("In 1955, Congress passed a five-year Air Pollution Act that had no practicable regulatory provisions.").


\(^{30}\) Motor Vehicle Exhaust Study Act of 1960, Pub. L. No. 86-493, 74 Stat. 162 (1960); see Train, 421 U.S. at 63 ("In 1960, Congress directed the Surgeon General to focus his attention on the health hazards resulting from motor vehicle emissions.").

\(^{31}\) The Clean Air Act of 1963, Pub. L. No. 88-206, 77 Stat. 392 (1963); see A Clean Air Act Primer: Part I, supra note 13, at 10,161 (stating that the 1963 Act expanded the role of the federal government, and that the HEW was authorized to establish air quality criteria); Edmund S. Muskie, The Clean Air Act: A Commitment To Public Health, THE ENVTL. F. 13, 14 (Jan./Feb. 1990) (stating that in the 1963 Act, Congress directed the development of air quality criteria to identify pollutant levels that cause adverse health effects).


\(^{34}\) See The Air Quality Act of 1967, Pub. L. No. 90-148, 81 Stat. 485 (1967); see also MVMA III, supra note 10, at 525 (stating that the 1967 Act imposed federal preemption over motor
exception, however, was made with regard to state preemption. California, which had tougher emission standards than the federal standards, maintained its sovereignty.\textsuperscript{35}

By 1970, it was clear that the previous efforts to control air pollution and improve air quality were inadequate.\textsuperscript{36} Senator Muskie, the chief author of the 1970 Clean Air Act and the purported champion of the new environmental movement, stated that “air pollution continued to threaten public health.”\textsuperscript{37} There was “little doubt . . . that the country was facing an air pollution crisis.”\textsuperscript{38} Hence, Congress got down to business and developed the 1970 Clean Air Act,\textsuperscript{39} with the chief goal being that “all Americans in all parts of the country . . . have clean air to breathe.”\textsuperscript{40} Protection of public health was the legally defensible premise upon which the 1970 Act was constructed.\textsuperscript{41}

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\textsuperscript{35}See The Air Quality Act of 1967, Pub. L. No. 90-148, 81 Stat. 485 (1967); see also MVMA III, supra note 10, at 525 (stating that California was exempted from the preemption over the adamant objections of the automobile industry which sought a single national standard); Muskie, supra note 31, at 14 (suggesting that the California exemption was given because California had tougher emission standards than the federal standards, and because the size of the California automobile market would prevent the exemption from becoming too much of a hardship on the auto-manufacturers); PLATER ET AL., supra note 13, at 760–61.

\textsuperscript{36}See A Clean Air Act Primer: Part I, supra note 13, at 10,161 (stating that the federal air quality program was considered flawed because the statute did not clearly define its goals, there were no federal air pollution standards, and the statute did not provide for effective federal enforcement); Train, 421 U.S. at 64 (stating that the response of the states was disappointing); Muskie, supra note 31, at 14 (stating that despite the 1967 Act, air pollution continued to threaten public health); PLATER ET AL., supra note 13, at 761 (stating that the 1967 Act, along with the previous Acts, did little to remedy the problem of auto air pollution).

\textsuperscript{37}Muskie, supra note 31, at 14. Technically, the 1970 Amendments are just that, amendments. However, the amendments were so pervasive that most people, when referring to the Clean Air Act, are referring to the 1970 Act. Hence, the 1970 Act is now commonly referred to as the Clean Air Act. See PLATER ET AL., supra note 13, at 773 n.3.


\textsuperscript{41}See Muskie, supra note 31, at 14–15.

I was convinced that strict federal air pollution regulation would require a legally defensible premise. Protection of public health seemed the strongest and most appropriate such premise. . . . The decisions on which pollutants to regulate and at what level they were to be regulated are based on health and welfare criteria. . . . The division between primary and secondary standards also reflects the emphasis on health-related issues.

\textit{Id.}; see also Schoenbrod, supra note 15, at 746 (stating that the 1970 Act seemed to avoid compromise by stating an absolute duty to achieve a set of goals—the protection of health, welfare, and natural air quality); Train v. Natural Resources Defense Council, 421 U.S. 60, 65
Through the 1970 Act, Congress expanded the cooperative federalism developed under the previous clean air legislation. The Environmental Protection Agency (EPA) was directed to develop national ambient air quality standards (NAAQS) for pollutants which “cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.” Public health and welfare were the established basis for deciding which pollutants to regulate and the extent of the regulations. Congress, however, did preserve the primary role of the states. Under the Act, each state was given “the primary responsibility for assuring air quality within the entire geographic area comprising such state.” The states may adopt any measure necessary to ensure compliance with the federally mandated air quality standards. Compliance, though, was no longer optional. The Act required states to submit to the EPA implementation plans designed to show how the state intended to attain and maintain the air quality standards.

Realizing that current technology was inadequate to prevent further air quality degradation, Congress, in addition to expanding the cooperative federalism, sought to stimulate new technology. New technology was seen as essential to address the growing threat of air pollution. Congress, through the 1970 Act, sought to stimulate new technology by requiring states to adopt and submit to the EPA implementation plans designed to show how they intended to attain and maintain the air quality standards.

(1975) (stating that the primary standards were to protect public health and the secondary standards were to protect public welfare).

42 Compare 42 U.S.C. § 7409 (1988) (discussing the national primary and secondary ambient air quality standards as set by the federal government) with 42 U.S.C. § 7410 (1988) (discussing the states’ role in adopting plans which provide for the implementation, maintenance, and enforcement of the national primary and secondary ambient air quality standards). See A Clean Air Act Primer: Part I, supra note 13, at 10,161 (stating that Congress envisioned a new kind of federal and state partnership, with the federal government gaining greater influence, but at the same time preserving the primary role of the states).


44 See Muskie, supra note 31, at 15; see also 42 U.S.C. § 7409(b) (1988) (stating that the national primary ambient air quality standards are requisite to protect the public health, and the secondary ambient air quality standards are requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutants in the ambient air).

45 42 U.S.C. § 7407 (1988); see Train, 421 U.S. at 64.

46 See 42 U.S.C. § 7410 (1988); see also Train, 421 U.S. at 65.

47 See 42 U.S.C. § 7410 (1988) (each state is required to submit a state implementation plan); see also Train, 421 U.S. at 64-65 (stating that the states were no longer given any choice as to whether they would meet the air quality requirements).

48 See 42 U.S.C. § 7410 (1988) (each state was required to submit a state implementation plan); see also MVMA I, supra note 10, at 1336 (stating that under the 1970 Act, Congress required the states to adopt and submit to the EPA a state implementation plan which provides for the implementation, maintenance and enforcement of the national ambient air quality standards); Muskie, supra note 31, at 15 (stating that § 110 of the 1970 Act required the states to submit SIPs).

49 See Muskie, supra note 31, at 14 (Muskie states that “Senator Howard Baker believed that the American technological genius should be brought to bear on the air pollution problem, and that industry should be required to apply the best technology available.”); A Clean Air Act
stationary sources of air pollution were required to meet the air quality standards using the best available technology (BAT).\textsuperscript{50} Also, the 1970 Act allowed the EPA to regulate mobile sources of pollutants by controlling both tailpipe emissions and fuel composition.\textsuperscript{51}

The seven years following the 1970 Clean Air Act saw many advances in the protection of air quality and health.\textsuperscript{52} New technologies were developed,\textsuperscript{53} various parts of the country saw air quality improvements, and deterioration of air quality in many urban areas was slowed.\textsuperscript{54} During those same seven years, however, the automobile industry, the oil industry, and various other business groups waged an all-out war against the 1970 Act.\textsuperscript{55} This opposition led directly to the 1977 amendments which weakened the 1970 Act.\textsuperscript{56} Compliance with the CO and HC standards was postponed,\textsuperscript{57} and the standards for NO\textsubscript{x} were also relaxed.\textsuperscript{58}

Although the 1977 amendments weakened the Clean Air Act, Congress did not completely abandon its commitment to clean air and public health. The 1977 amendments also demanded that non-attainment areas make reasonable further progress towards attainment,\textsuperscript{59} non-attainment areas must make "annual incremental reductions in emissions of the applicable air pollutant . . . to provide for attainment."\textsuperscript{60}

Further amendments in 1990 signaled a renewal of the federal commitment to clean air and public health.\textsuperscript{61} First, Congress estab-

\textit{Primer: Part I, supra} note 13, at 10,161 (stating that the 1970 amendments sought to stimulate new technology).
\textsuperscript{50} \textit{A Clean Air Act Primer: Part I, supra} note 13, at 10,161 (stating that the 1970 amendments sought to stimulate new technology, and that new sources were required to meet the air quality standards based upon the best available technology).
\textsuperscript{51} \textit{See generally id.} (stating that Title II of the Act gave the EPA authority to control both tailpipe emissions and the composition of fuels).
\textsuperscript{52} \textit{See Muskie, supra} note 31, at 15 ("In the seven years that followed, a great deal of work was done in the clean air laboratory of the real world.").
\textsuperscript{53} \textit{See id.}
\textsuperscript{54} \textit{See id.}
\textsuperscript{55} \textit{See id. at} 15–16.
\textsuperscript{56} \textit{See The Clean Air Act Amendments of 1977, Pub. L. No. 95-95, 91 Stat. 685 (1977); see also Muskie, supra note 31, at 15–16.}
\textsuperscript{57} \textit{See Waxman et al., supra} note 4, at 1950 n. 3 ("The 1977 Amendments extended the deadline for achieving the 90\% reduction to 1980 in the case of hydrocarbons and to 1981 in the case of carbon monoxide.").
\textsuperscript{58} \textit{See id.} ("The statutory requirement for a 90\% reduction in NO\textsubscript{x} emissions was eliminated in favor of a more lenient standard that required only a 75\% reduction by 1981.").
\textsuperscript{59} \textit{See PLATER ET AL., supra} note 13, at 812 ("The signal content of the 1977 non-attainment areas legislation, 42 U.S.C.A. §§ 7501–7508, is the insistence that non-attainment areas make 'reasonable further progress' toward attainment.").
\textsuperscript{60} \textit{Id.} at 812 (quoting 42 U.S.C. § 7501).
lished a graduated listing of non-attainment areas with categories ranging from marginal to extreme.\textsuperscript{62} The closer to the extreme classification a state falls, the more time it is given to comply with the air quality standards.\textsuperscript{63} Second, Congress strengthened the enforcement provisions of the Clean Air Act.\textsuperscript{64} The EPA was given power to issue compliance violations up to $25,000 per day.\textsuperscript{65} Many criminal misdemeanors were upgraded to felonies, and the 1990 amendments established "bounty hunter" awards for citizens providing information leading to civil or criminal penalties.\textsuperscript{66}

The 1990 amendments, however, made their greatest contribution to clean air and health in the area of mobile source pollution. Congress adopted numerous provisions to reduce mobile source pollution for two reasons: the first was the high percentage levels of air pollution contributed by mobile sources,\textsuperscript{67} and the second was the relative cost-effectiveness of reducing mobile source pollution. Compared to reducing stationary source pollution, reducing mobile source pollution is much less expensive.\textsuperscript{68}

With regard to mobile source pollution, Congress tightened the tailpipe emission standards on all light-duty vehicles.\textsuperscript{69} Congress also required, under certain circumstances, control of emissions from gasoline evaporation, and the recapture of refueling emissions.\textsuperscript{70} Durability requirements for emissions controls on vehicles were doubled,\textsuperscript{71} and a

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Marginal & 3 years & 15\% in 6 years \\
Moderate & 6 years & 15\% in 6 years and 3\% per year thereafter \\
Serious & 9 years & 15\% in 6 years and 3\% per year thereafter \\
Severe & 15–17 years & 15\% in 6 years and 3\% per year thereafter \\
Extreme & 20 years & 15\% in 6 years and 3\% per year thereafter \\
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\textsuperscript{62} See \textit{A Clean Air Act Primer: Part I}, supra note 13, at 10,162.
\textsuperscript{63} See id. at 10,185. For example, the categories and years granted for attainment of the ozone standard are as follows:

\textsuperscript{64} See id. at 10,162.
\textsuperscript{65} Id.
\textsuperscript{66} Id.
\textsuperscript{67} See \textit{Waxman et al.}, supra note 4, at 1952–53.
\textsuperscript{68} See id. (The EPA estimates that the cost of reducing VOC emissions from stationary sources is approximately $5,000 per ton of VOC removed, and in some cases exceeding $25,000 per ton removed. In contrast, the cost of installing controls to reduce gasoline evaporation from vehicles is $80 per ton removed; on-board vapor recovery systems reduce VOC emissions at the cost of $550 per ton removed.)
\textsuperscript{70} See id.
\textsuperscript{71} See 42 U.S.C. § 7541 (Supp. IV 1992), quoted in \textit{Waxman II}, supra note 18, at 1770 (the standards were doubled from five year or fifty-thousand miles to ten year or one-hundred-thousand miles).
program was developed to control toxic pollutants from motor vehicles.72 Lastly, clean fuel requirements were added.73

3. Clean Air Standards, SIPs, and EPA/State Testing for Compliance

Under section 109 of the Clean Air Act, the EPA is required to develop and publish national ambient air quality standards (NAAQS) for various pollutants.74 These standards are divided into primary and secondary standards.75 Primary standards are ambient air quality standards which are requisite for the protection of the “public health.”76 Secondary standards specify a level of air quality which is requisite to protect the “public welfare” from any known or anticipated effects associated with the presence of such air pollutants.77 The various pollutants found in automotive emissions fall within these two categories of pollutants regulated by the NAAQS.78

In addition to the NAAQS requirements, the EPA was also directed to develop tailpipe emission standards and “clean fuel” standards. The EPA developed emission standards for all light-duty vehicles, diesel heavy-duty vehicles, motorcycles, and other types of engines.79 No state may adopt and enforce other standards without obtaining a waiver from the EPA.80 The EPA has also regulated motor vehicle fuel.81 In areas with serious non-attainment problems, the sale of a reformulated gasoline designed to reduce various pollutant levels is required.82 Other non-attainment areas may opt into the reformulated fuel program by application to the EPA.83

73 See Waxman II, supra note 18, at 1770.
75 See id.
80 See id.
Congress accorded the development of the various NAAQS and tailpipe emission/clean fuel standards to the EPA, but the states were given the primary responsibility for assuring the “implementation, maintenance, and enforcement” of those standards within their respective borders.\textsuperscript{84} Each state is required to submit to the EPA a state implementation plan (SIP) which will set forth the strategies that the state will use to bring its air quality into compliance with the federal standards and maintain compliance in the future.\textsuperscript{85} The EPA then approves or disapproves the SIP in whole or in part.\textsuperscript{86} Upon EPA approval, the SIP becomes enforceable by both the federal and state governments.\textsuperscript{87}

As part of enforcing and ensuring compliance with the air quality and emission standards, both the EPA and the states are required to conduct various testing programs. With regard to mobile source pollution, the EPA must conduct two tests: the certification test and the in-use test.\textsuperscript{88} Prior to the sale of a new vehicle or engine model, the EPA uses a process known as “certification” to test each new model for compliance with the tailpipe emission standards.\textsuperscript{89} The certification test examines a prototype of every new vehicle developed by the auto-manufacturers. If the prototype conforms to the standards, the EPA issues a certificate of compliance.\textsuperscript{90} After new vehicles have been sold to the public, the EPA obtains a sample of the vehicles and conducts additional tests called “in-use” tests.\textsuperscript{91} If, as a result of in-use testing, the EPA determines that a vehicle does not conform to the emission standards, it can order a recall of the vehicle model at the manufacturer’s expense.\textsuperscript{92} Both the certification test and the in-use test are conducted with specially manufactured fuel known as indo-

\textsuperscript{84} See MVMA I, supra note 10, at 1336; Defendant’s Memorandum, supra note 2, at 4–5; 42 U.S.C. § 7410 (1988).
\textsuperscript{85} 42 U.S.C. § 7410 (1988); see MVMA I, supra note 10, at 1336; Defendant’s Memorandum, supra note 2, at 5.
\textsuperscript{86} 42 U.S.C. § 7410 (1988); see A Clean Air Act Primer: Part I, supra note 13, at 10,163.
\textsuperscript{87} 42 U.S.C. § 7410 (1988); see A Clean Air Act Primer: Part I, supra note 13, at 10,163.
\textsuperscript{89} See 42 U.S.C. § 7525 (1988), cited in MVMA III, supra note 10, at 527; see also MVMA I, supra note 10, at 1337.
\textsuperscript{91} 42 U.S.C. § 7541 (1988), cited in MVMA III, supra note 10, at 527; see MVMA I, supra note 10, at 1337.
\textsuperscript{92} 42 U.S.C. § 7541 (1988), cited in MVMA III, supra note 10, at 527; see MVMA I, supra note 10, at 1337.
lene or certification fuel.\textsuperscript{93} Indolene fuel has an average sulfur content much lower than commercially available fuels.\textsuperscript{94}

Finally, SIPs must include provisions for inspection and maintenance (I/M) programs.\textsuperscript{95} These programs ensure that in-use vehicles are properly maintained and comply with the applicable emission standards.\textsuperscript{96}

4. Federal Preemption and a Commitment to the Protection of the Automobile Industry

The primary purpose of federal preemption in the area of vehicle emission regulation is to ensure a national uniformity of air quality standards.\textsuperscript{97} Congress sought to avoid placing an undue burden upon manufacturers of motor vehicles which would result from a multiplicity of various state standards.\textsuperscript{98} If each state could establish its own emission standards, then automobile manufacturers would potentially have to create a different vehicle for each state. This would result in an extreme burden on the automobile manufacturers.\textsuperscript{99}

Congress made one exception, though, to the federal automobile emission standards.\textsuperscript{100} Congress declared that any state which had adopted its own vehicle emission standards prior to March 30, 1966 could maintain and continue to adopt its own standards.\textsuperscript{101} The state's standards and programs, however, are subject to EPA approval.\textsuperscript{102} A waiver of preemption must be obtained for each new program.\textsuperscript{103}

California was the only state to have enacted such standards for motor vehicle emissions within the statutory time constraints.\textsuperscript{104} Hence,

\begin{footnotes}
\textsuperscript{93} See Defendant's Memorandum, supra note 2, at 8; MVMA I, supra note 10, at 1337.
\textsuperscript{94} See Defendant's Memorandum, supra note 2, at 8; MVMA I, supra note 10, at 1337. It has been stated that indolene fuel has an average sulfur content of 18 parts per million, whereas the average commercially available fuel has an average sulfur content which can exceed 1000 parts per million. See Defendant's Memorandum, supra note 2, at 8, 15.
\textsuperscript{96} See id.
\textsuperscript{97} See MVMA I, supra note 10, at 1337.
\textsuperscript{98} See id.
\textsuperscript{99} Cf id.
\textsuperscript{100} See id. at 1337-38.
\textsuperscript{102} See id.
\textsuperscript{103} See id. 42 U.S.C. § 7543 (1988) states in part that no waiver shall be granted if the EPA finds that (a) the determination of the state is arbitrary and capricious, (b) such state does not need such standards to meet compelling and extraordinary conditions, or (c) such state standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title.
\textsuperscript{104} See MVMA I, supra note 10, at 1338.
\end{footnotes}
the effect was to create an exception for the state of California alone.105 As a result, automobile manufacturers were protected from having to deal with more than two different sets of emission standards. They were left with the federal standards and the California standards.106 Other states with mobile source pollutant problems were eventually given the option of adopting the California vehicle emission program in place of the less stringent federal program.107 Congress enacted this option in 1977 because various states were having trouble meeting the Clean Air Act’s air quality standards. At that time only a few states had met the NAAQS for ozone, and many had failed to meet the carbon monoxide standard.108

Other states may adopt and enforce the California standards without EPA approval, however, only if “such standards are identical to the California standards.”109 Because the standards adopted by the states must be identical, the Clean Air Act still provides for the protection of automobile manufacturers. The auto-manufacturers still have to produce at most two different types of motor vehicles to comply with the various emission standards.110 The 1990 amendments to the Clean Air Act added another requirement to the option of adopting the California standards. Congress declared a “no-third-vehicle” requirement.111 The thrust of this requirement is to prevent the states from adopting new tailpipe emission standards which cause or have the effect of causing the manufacturers to have to create a new vehicle or engine. The no-third-vehicle requirement was included to further protect the automobile industry from having to produce an additional vehicle other than the federal standard vehicle and the California vehicle.112

By granting states the ability to control air pollution in any manner they deem best, Congress has enabled the states to best meet the

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105 See id.
106 Cf. id.; see also Defendant's Memorandum, supra note 2, at 6.
107 See Defendant's Memorandum, supra note 2, at 7; see also 42 U.S.C § 7507 (1988).
108 See MVMA I, supra note 10, at 1338.
110 See Defendant's Memorandum, supra note 2, at 7.
111 Nothing in this section . . . shall be construed as authorizing any such state to prohibit of limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a “third vehicle”) or otherwise create such third vehicle.
112 See MVMA I, supra note 10, at 1338.
ambient air quality standards. The states' freedom to control air pollution, however, must be balanced against Congress's intent to protect the automobile industry from potentially having to make fifty-one different types of automobiles.113 Thus, in summary, the preeminent goal of the Clean Air Act is to protect public health by improving and maintaining the air quality in the United States. In light of this goal, however, two competing interests must be balanced: state freedom in regulating air pollution, and protection of the automobile manufacturers from having to create additional vehicles other than the federal standard vehicle and the California standard vehicle.

C. The California Automobile Emissions Program

The California Air Resources Board (CARB) is the agency in charge of establishing and implementing the motor vehicle emission standards for the state of California.114 CARB also administers the "certification" and "in-use" testing in California.115

In 1990, CARB adopted the regulatory program known as the "Low Emission Vehicle/Clean Fuels" program ("LEV/CF").116 This program has three main components.117 First, it sets new levels of emission standards for mobile sources.118 Light-duty vehicles are categorized based upon these standards.119 The categories are: transitional low emission vehicles (TLEVs), low emission vehicles (LEVs), ultra-low emission vehicles (ULEVs), and zero-emission vehicles (ZEVs), the most common type being electric vehicles.120

The second aspect of the LEV/CF program is the mandatory phase-in of ZEVs.121 By 1998, two percent of all light-duty vehicles sold in California must be ZEVS.122 This percentage rises to five percent in 2001, then ten percent in 2003.123

113 See id. at 1338-39.
114 See Defendant's Memorandum, supra note 2, at 8.
115 See id. at 8-9.
116 MVMA I, supra note 10, at 1339.
117 Id.
118 See id.
119 Id.
120 See id.; Letter from Barbara Kwetz, supra note 17.
121 See MVMA I, supra note 10, at 1339-40. With the exception of ZEVs, manufacturers are not required to comply with the phase in schedule. Manufacturers can produce any category of low emission vehicles so long as the overall fleet average is met. However, manufacturers who produce more low emission vehicles than necessary will earn credits which may be used in the future, sold, or traded to other auto-manufacturers. Id. at 1339-40.
122 See id.
123 Id.
The third component of the LEV/CF program is the clean fuel component.\textsuperscript{124} CARB tightened its regulations concerning the composition of commercially available gasoline.\textsuperscript{125} In November 1991, CARB adopted the “Phase II reformulated commercial gasoline” requirement which prohibits the sale of gasoline with a sulfur content higher than eighty parts per million after March, 1996.\textsuperscript{126} Also, for model years 1993 and after, CARB is allowing auto-manufacturers to certify their vehicles on either indolene or “Phase II reformulated certification gasoline.”\textsuperscript{127} This Phase II fuel has a similar sulfur content to indolene.\textsuperscript{128}

Section 209 of the Clean Air Act requires California to obtain a waiver from the EPA before it can enforce its LEV program. CARB obtained the waiver on January 7, 1993.\textsuperscript{129} CARB did not submit a waiver for the commercial fuel requirement because it is not required to obtain EPA approval for that portion of the program.\textsuperscript{130}

D. Massachusetts’s Adoption of the California LEV Program

Under the 1990 Clean Air Act Amendments, Massachusetts must show a fifteen percent reduction in VOC emissions from the 1990 baseline by 1996, and an additional three percent reduction each year thereafter until the NAAQS attainment level is reached.\textsuperscript{131} If, through modeling analysis, Massachusetts determines that the yearly percentage reductions are insufficient to meet the ozone standard by 1999, then it must adopt additional emission reduction programs adequate to meet the standard.\textsuperscript{132} In addition, Massachusetts must show that there are sufficient ongoing programs to maintain compliance with the ambient air quality standards in the future, while taking into account any new growth in emissions production.\textsuperscript{133}
1. M.G.L. c. 111, § 142k

In response to the growing pollution problem in Massachusetts, the Massachusetts state legislature adopted chapter 111, section 142k of the General Laws of the Commonwealth of Massachusetts. Section 142k requires the DEP to adopt motor vehicle emissions standards based on California's standards, unless the California standards will not achieve greater motor vehicle pollution reductions than the federal standards. In short, Massachusetts is required to adopt the California vehicle emissions control program unless doing so will not achieve cleaner air than the federal standards and compliance program.

2. The Legislative Commission and the DEP's Decision

In January, 1992, the Massachusetts state legislature created a commission to study the California LEV/CF program and make a recommendation as to whether Massachusetts should adopt the program. Prior to the commission's determination, the DEP held three days of public hearings during which it received oral and written comments from the public and other parties concerning the adoption of the California program. As a result of these meetings, the DEP made a determination that the California LEV standards would reduce emissions of automobile pollutants to an extent greater than the federal standards. Hence, on January 31, 1992, the DEP complied with the statutory mandate and opted into the California program.

Massachusetts did not adopt the entire California LEV/CF program, however. First, the DEP adopted the LEV portion of the program. Accordingly, any new vehicle that is certified by CARB as meeting the California standards can be registered in Massachusetts.

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135 Massachusetts may adopt motor vehicle emissions standards based on the California's standards unless said emissions standards and a compliance program similar to the state of California's will not achieve, in the aggregate, greater motor vehicle pollution reductions than the federal standards and compliance program. See id.
136 See Defendant's Memorandum, supra note 2, at 13. To the best of the author's knowledge, no one has seriously asserted that the California standards will not achieve cleaner air than the less stringent federal standards.
137 See Complaint, supra note 5, at 16; Defendant's Memorandum, supra note 2, at 16.
138 See Defendant's Memorandum, supra note 2, at 13.
139 See id.
140 See id.
141 See Complaint, supra note 5, at 15.
142 See id.; see also Defendant's Memorandum, supra note 2, at 13.
Second, the DEP also adopted the California ZEV mandate. As with the California program, the percentage increases to five percent in model year 2001 and ten percent for model year 2003.

The DEP, however, opted not to adopt the clean fuel portion of the California program. The DEP concluded, after a cost-benefit analysis, that the cost of implementing the clean fuel portion far outweighed the benefits it would provide. California has estimated that the cost of implementing the Phase II gasoline is approximately $7,000 to $11,000 per ton of ozone precursors removed. This compares to $1,100 to $1,400 per ton removed if only the LEV program is implemented. The DEP determined that since Massachusetts's air is actually much cleaner than California's, the cost of implementing the Phase II gasoline was excessive.

Massachusetts did, however, adopt the federally reformulated gasoline. In August, 1991, Governor Weld elected to require the sale of the federal reformulated gasoline effective March, 1995. This gasoline has a maximum sulfur limit of 500 parts per million (ppm), and is the cleanest gasoline available without having to secure a waiver from the EPA.

In March, 1993, the state legislative commission issued its report. It voted to endorse the DEP's regulations. The commission also endorsed DEP's decision not to adopt the California Phase II fuel.
III. Developing a Hermeneutical Method\textsuperscript{158}

"Il n'y a pas de hors-texte."\textsuperscript{159} What does Derrida mean by this? At first glance, it appears he is siding with the textualists who claim that the only meaning to be derived from a text is the meaning provided by the words existing within the "four-corners" of the document.\textsuperscript{160} This is not the case, however. The following will unpack the meaning of Derrida's statement. In unpacking the statement, a hermeneutical approach will be developed with which to interpret the Clean Air Act as applied in the controversy between the DEP and the auto-manufacturers.

When interpreting statutes, it is critical to remember that words do not mean, people mean.\textsuperscript{161} People have experiences, ask questions, gain insights and understanding, develop judgments, and make decisions.\textsuperscript{162} The contents of these cognitional activities are the personal and active products of the individual. They are also the sources from which meaning is derived.

\textsuperscript{158}There is at times a marked difference in the use of the term "Deconstruction" in the legal literature as opposed to the philosophical literature. In the legal literature, the term is often used to mean a "taking apart" or "selective adherence to," or refer to a method of criticizing by showing the text to be self-contradictory or indeterminate. For example, a judge may deconstruct the facts of a case by "taking apart" the facts as a whole picture and selectively emphasizing certain portions of the whole. See Anthony D'Amato, The Ultimate Injustice: When A Court Misstates The Facts, 11 CARDOZO L. REV. 1313, 1343–47 (1990); see also J.M. Balkin, Deconstructive Practice And Legal Theory, 96 YALE L. J. 743, 743–44 (1987). Throughout the rest of this Comment, the term "deconstruction" will be used in this way.

In the philosophical writings, "deconstruction" holds a different meaning. In developing a hermeneutical approach with which to interpret the Clean Air Act, this Comment relies upon the philosophical writings of Jacques Derrida and Bernard Lonergan. This approach is deconstructive in the philosophical sense of the word. (It should be noted that by setting out the history and purposes of the Clean Air Act in the previous sections, the use of a deconstructive hermeneutical method in the philosophical sense of the term has already begun. Hence, we are already committed to the method which will be further developed in this section.) As stated above, however, this Comment will not use the term "deconstruction" in the philosophical sense, but in the sense described in the legal literature.

\textsuperscript{159}"There is nothing outside the text." JACQUES DERRIDA, OF GRAMMATOLOGY 158 (Gayatri Chakravorty Spivak trans., 1976).

\textsuperscript{160}See, e.g., Public Citizen v. United States Dep't of Justice, 491 U.S. 440, 467-482 (1989) (Kennedy, J., concurring in judgment).

\textsuperscript{161}See Bernard J.F. Lonergan, INSIGHT: A STUDY IN HUMAN UNDERSTANDING 553–58, 568–73 (1978). This is what is meant by the often quoted phrase, "language is not self-interpreting."

Words are instrumental acts of meaning, expressed by people who, through cognitional structure, are the sources of meaning. A person’s true thoughts and real meanings must be mediated through the use of words. Hence, words express a subject’s meaning by externalizing the meaning. Words carry the meaning out into the open for examination and interpretation.

It follows that words and expressions of thought are not true or false. Expressions are related to truth and falsity by relating that which is true or false. Words and expressions are merely adequate or inadequate as carriers of meaning.

Inadequacy in carriers of meaning may result from two situations. First, there may be a discontinuity between what the subject who is utilizing the words seeks to express and the words that the subject chooses in attempting to externalize what he or she means. The subject may not express himself or herself with sufficient clarity to impart the desired understanding to the reader of the words. Second, there may be a discontinuity between the individual experiencing—the instrumental acts of meaning and the instrumental acts of meaning themselves. The reader may not have the necessary and required insights to fully understand the terms being used.

These discontinuities between the individuals and the terms, however, do not result in subjectivism or necessitate a subjective interpretation of the carriers of meaning. The inadequacies can be overcome through understanding. The reader must gain understanding of the insights which guided the choice of terms used. For example,

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163 LONERGAN, supra note 161, at 357 (“The instrumental act of meaning is . . . the use of words or symbols in a spoken, written, or merely imagined utterance.”); id. at 569 (sources of meaning lie in the experiential, intellectual, and rational levels of knowing, i.e. the cognitional structure of individuals).

164 See Balkin, supra note 158, at 757.

165 Id.

166 This is not to deny that words have references. Meaning would be impossible to ascertain if they did not. However, this does not imply that words have meaning. Meaning is still in the individual who uses the words and their references to express him or herself. We must come to understand the references and their relations in order to understand meaning.

167 LONERGAN, supra note 161, at 556.

168 See id.

169 Id.

170 See id.

171 See id.

172 Id. at 558-59 (“To appropriate a truth [true meaning] is to make it one’s own. The essential appropriation of truth is cognitional.”).
the reader must understand the social policies guiding the author's choices of terms. The author's intent must also be understood. The reader must have insights about the goals which the author sought to accomplish in choosing the particular terms. In short, the reader must understand the "story" of the terms.

To understand the story of the terms, the reader must unpack the terms. By unpacking the terms, the reader will come to fully understand the meaning which the author means in using those terms. This is what Derrida meant when he said "Il n'y a pas de hors-texte." We do not go outside the text to discover the meaning of the text. This is because the terms of the text have an ontological life of their own. They have a story which must be unpacked in order to determine the true meaning which the author has meant.

Hence, in order to understand the Clean Air Act, an individual must understand the history of the Clean Air Act, its contextual beginnings, its purpose and goals, and the policies behind the Act. In short, an individual must fully understand the "story" of the Clean Air Act.

IV. INTERPRETING THE LEGAL ISSUES SURROUNDING MASSACHUSETTS'S ADOPTION OF THE CALIFORNIA LEV PROGRAM

Having adopted the California LEV program, the DEP found itself the defendant in a lawsuit. The auto-manufacturers claim that in adopting the LEV portion of the California tailpipe emissions-control program, the DEP violated the Clean Air Act. The auto-manufacturers made several arguments to uphold their claim. First, they stated that the DEP's decision to exclude the clean fuel portion of the

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173 Those who hold to a textualist (four corners) hermeneutical method claim that it is not the duty of the courts to inquire what the legislature meant; the duty of the courts is to seek only what the statute means. See Oliver Wendell Holmes, Jr., The Theory Of Legal Interpretation, 12 Harv. L. Rev. 417, 419 (1899). However, this Comment argues that determining what the statute means requires unpacking the story of the terms used in the statute. In so doing we must inquire about such things as purpose, legislative intent, social policies, and the like. True meaning can not be found without doing such.

174 DERRIDA, supra note 159, at 158.

175 In stating "Il n'y a pas de hors-texte," Derrida illustrated his point. We had to unpack the terms in order to fully understand what Derrida meant. If we had held to a textualist approach, we would have interpreted the words literally and arrived at the opposite meaning of the point that Derrida was trying to make.

176 Having stated our hermeneutical method, we can now fully understand the purposes behind sections I and II of this Comment. These sections explicate the story of the Clean Air Act, emphasizing the most relevant and pressing points.

177 See generally Complaint, supra note 5, at 1; AAMA I, supra note 3, at *1–3.

178 See, e.g., Complaint, supra note 5, at 4–5; AAMA I, supra note 3, at *1–3.
California LEV/CF program violated the "identicality" requirement of section 177 of the Clean Air Act. They also claimed that the DEP's failure to adopt the CF portion effectively forced the auto-manufacturers to create a "third vehicle" in violation of section 177. Thirdly, the plaintiffs alleged that the adoption of the ZEV sales mandate, a component of the LEV portion of the California program, violated section 177 in two ways: by indirectly limiting sales of other types of vehicles, and by forcing the auto-manufacturers to construct a third vehicle. Finally, the auto-manufacturers claimed that the DEP violated the Clean Air Act by adopting California standards that had not received a federal waiver at the time of the adoption.

Throughout the discussion of these issues, the reader is first presented with the plaintiffs' arguments, followed by the defendant's arguments. Following the presentation of these arguments, each issue is analyzed following the hermeneutical method as developed in section III. Finally, a solution to the controversy or controversies surrounding each issue is presented.

A. The Identicality Issue

Section 177 of the Clean Air Act allows any state to "adopt and enforce for any model year standards relating to the control of emissions from new motor vehicles" if those standards are identical to the California standards for which a waiver from the EPA has been granted. The issue here is what it means to be "identical" to the California standards for the control of emissions.

The auto-manufacturers argue that the DEP has violated the Clean Air Act by not adopting the clean fuel component of the California LEV/CF program. They point to the fact that California recognized that the clean fuel component is necessary if the emission standards

179 Complaint, supra note 5, at 4; see AAMA I, supra note 3, at *1-2.
180 Complaint, supra note 5, at 4; see AAMA I, supra note 3, at *1-2.
181 Complaint, supra note 5, at 5; see AAMA I, supra note 3, at *1-2.
182 Complaint, supra note 5, at 5; see AAMA I, supra note 3, at *1-2.
183 Complaint, supra note 5, at 4; see AAMA I, supra note 3, at *1-2.
184 Other issues are raised in the case. These issues, however, not lending to the discussion of deconstruction, are not discussed.
185 See 42 U.S.C. § 7507 (1988); see also Defendant's Memorandum, supra note 2, at 24.
186 See Defendant's Memorandum, supra note 2, at 23-24; see also AAMA I, supra note 3, at *3-4; MVMA I, supra note 10, at 1342.
187 Complaint, supra note 5, at 19; see AAMA I, supra note 3, at *3-4; MVMA I, supra note 10, at 1342.
are to be achieved.\textsuperscript{188} Furthermore, they note that CARB also recognized that the clean fuel requirement is necessary to the operation and maintenance of the program to assure continuous emission reduction.\textsuperscript{189} Hence, they argue that the phrase “standards relating to the control of emissions” should be interpreted broadly to include the clean fuel component.\textsuperscript{190} Hence, by not adopting the clean fuel component, the Massachusetts standards “relating to the control of emissions” are not “identical” to California’s standards.\textsuperscript{191} Because they are not identical, the DEP has violated the Clean Air Act.\textsuperscript{192}

The auto-manufacturers also argue that in order for the standards to be identical, they must have identical “practical effects,” as well as being identical on their face.\textsuperscript{193} They state that without the California fuels, the level of emission reductions in Massachusetts will be substantially less than in California. Hence, the practical effect of Massachusetts’s adoption of the California LEV program is different from the practical effect of the California program.\textsuperscript{194} As a result, the auto-manufacturers again claim that the DEP has violated the identicality requirement.\textsuperscript{195}

The DEP, on the other hand, claims that absence of the clean fuel component does not violate the Clean Air Act.\textsuperscript{196} The DEP relies on the plain language of section 177.\textsuperscript{197} The critical language allows a state to adopt standards only if they are identical to those California standards “for which a waiver has been granted.”\textsuperscript{198} According to the DEP, this means that a state may not adopt any California standards which have not received the EPA’s approval.\textsuperscript{199} The DEP points out that California has not applied for a waiver for the clean fuel component of its LEV/CF program. Indeed, California does not need a waiver

\textsuperscript{188} Complaint, supra note 5, at 19-20.
\textsuperscript{189} See id.
\textsuperscript{190} Cf. Defendant’s Memorandum, supra note 2, at 24.
\textsuperscript{191} Cf. id.; see Complaint, supra note 5, at 19-20.
\textsuperscript{192} See Complaint, supra note 5, at 20.
\textsuperscript{193} See Plaintiff’s Memorandum, supra note 78, at 34.
\textsuperscript{194} See id. at 34-35.
\textsuperscript{195} See id. at 34-35.
\textsuperscript{196} See Defendant’s Memorandum, supra note 2, at 23-25; see also AAMA I, supra note 3, at *3-4; MVMA I, supra note 10, at 1342.
\textsuperscript{197} See Defendant’s Memorandum, supra note 2, at 23-25; see also AAMA I, supra note 3, at *3-4; MVMA I, supra note 10, at 1342.
\textsuperscript{198} See Defendant’s Memorandum, supra note 2, at 23-25; see also AAMA I, supra note 3, at *3-4; MVMA I, supra note 10, at 1342.
\textsuperscript{199} See AAMA I, supra note 3, at *3-4; MVMA I, supra note 10, at 1342.
for this component.\textsuperscript{200} Hence, the DEP claims that because California did not receive a waiver for the clean fuel component, the DEP could not adopt the clean fuel component.\textsuperscript{201}

The auto-manufacturers could respond to the DEP’s argument by stating that although the EPA does not directly review the clean fuel component, it does not have to. This is because California receives an automatic waiver of its clean fuel component.\textsuperscript{202} Accordingly, the term “waiver” in section 177 should be interpreted broadly to include the automatic waiver also. Hence, the auto-manufacturers could conclude that Massachusetts must adopt the clean fuel component to be in compliance with the Clean Air Act.\textsuperscript{203}

This counter-argument, however, ignores the fact that Congress, separate from its preemption of motor vehicle emissions, preempts state enforcement of vehicle fuel regulations.\textsuperscript{204} Although California is exempted from this provision—which results in the effect of an automatic waiver—the other forty-nine states are not.\textsuperscript{205} The other states may avoid the federal preemption only by demonstrating to the EPA that a more stringent fuel regulation is needed for the state to attain the NAAQS.\textsuperscript{206} For example, Massachusetts could only adopt the California clean fuel component by proving the necessity of the fuel for meeting the NAAQS. EPA approval, however, is not necessary for Massachusetts to opt into the California LEV program.\textsuperscript{207} Congress has treated these two areas differently.\textsuperscript{208} Hence, to suggest that Massachusetts must adopt the clean fuel component simply because California received an automatic waiver contradicts the terms of the federal fuel preemption portion of the Clean Air Act. Massachusetts can not adopt the California clean fuel program without obtaining EPA approval.\textsuperscript{209}

In arguing for their respective interpretations, both parties have deconstructed the Clean Air Act. Both parties have divorced various terms from their “story” in their attempt to achieve their desired

\textsuperscript{200} See Defendant’s Memorandum, supra note 2, at 24.

\textsuperscript{201} See id. at 24–25; see also AAMA I, supra note 3, at *3–4; MVMA I, supra note 10, at 1342–43.

\textsuperscript{202} See AAMA I, supra note 3, at *3; MVMA I, supra note 10, at 1342–43.

\textsuperscript{203} See AAMA I, supra note 3, at *3; MVMA I, supra note 10, at 1342–43.


\textsuperscript{205} See MVMA I, supra note 10, at 1343.


\textsuperscript{207} See Defendant’s Memorandum, supra note 2, at 23–24; see also 42 U.S.C. § 7507 (1988).

\textsuperscript{208} See MVMA I, supra note 10, at 1343.

\textsuperscript{209} See Defendant’s Memorandum, supra note 2, at 24.
goals. The auto-manufacturers have done so by seeking a broad interpretation of the term "identical." Their arguments, however, would result in one of two events taking place. Either Massachusetts would have to repeal M.G.L. c. 111, § 142k, or Massachusetts would have to apply for a waiver from the EPA for the clean fuel program. The first resultant situation ignores the preeminent concern of the Clean Air Act, which is to protect the public health. The adoption of the LEV program would improve the air quality in the state of Massachusetts, thus protecting the health of the citizens residing in that state. The resultant second situation denies Massachusetts the freedom to regulate air pollution in any manner it deems sufficient and necessary.

The DEP seeks an interpretation of the statute which follows the "plain meaning" of the text. Such a hermeneutical method divorces the terms from their stories; it deconstructs the Clean Air Act by focusing on the term "identical" exclusively. Hence, this method is fraught with problems. The question must be asked, what does it mean to interpret the Clean Air Act using the plain meaning method. The DEP seems to suggest that such a method refers to the most obvious meaning of the terms of the statute as understood in the immediate present. The most obvious meaning, however, often leads to absurd results. For example, the phrase, "Napoleon was alive and well in 1985," is patently false according to such an interpretative method. This phrase, however, is factually true. When we examine the story of the term "Napoleon," we learn that Napoleon was a cat, and indeed he was alive and well at such a time.

If the defendant is not referring to the most obvious meaning of a term as understood in the immediate present, it is not clear what it is referring to, or what is sought in such a hermeneutical method. Hence, since it has been shown that either the plain meaning method of interpreting is fraught with peril, or that the defendant is at best nebulous as to what is meant by such a method, such a method should not be followed.

In order to solve this issue, the term "identical" must be unpacked. As has been stated, the purpose of the Clean Air Act is to protect the public health. This was the paramount and preeminent concern of Congress in framing the Act. In seeking to protect the public health, though, we must also bear in mind Congress's desire to balance the states' freedom to control air pollution in any manner they deem sufficient and necessary against its desire to protect the automobile

\footnote{See supra notes 40-41 and accompanying text.}
\footnote{Muskie, supra note 31, at 14.}
industry from having to manufacture a third vehicle. These concerns form the story of the term "identical" as it is found within the context of the Clean Air Act. Hence, we must interpret this term in such a way so that the results of the interpretation best meet these concerns.

The LEV program alone will benefit the public health by greatly reducing mobile source pollutants. Hence, Congress’s aim of protecting the public health is not undermined by Massachusetts adopting only the LEV portion of California’s LEV/CF program. In addition, the LEV program alone does not force the auto-manufacturers to build a third vehicle. Thus, they are also protected. By allowing Massachusetts to adopt the LEV program without the CF program, the court will also be protecting Massachusetts’s freedom to regulate air pollution. Hence, the concerns of Congress are completely and fully met by interpreting the term “identical” so as to allow Massachusetts to adopt the LEV program without the concomitant CF portion.

B. The Third Vehicle Issue

The 1990 amendment to section 177 asserts in part that no state shall take any action to create, or to have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified under California standards or otherwise create such a third vehicle. This amendment protects the automobile manufacturers from having to develop more than two types of vehicles: the federal vehicle and the California vehicle. The issue under discussion here is whether the DEP’s adoption of the California LEV standards without the adoption of the clean fuel standards will force the automobile manufacturers to design and create a third vehicle different from the federal car and the car sold in California.

The auto-manufacturers argue that the higher sulfur content in the Massachusetts fuels—as opposed to the California fuels—will cause a significant negative impact on the functioning of the catalytic converter installed in every new California car. This will seriously affect the vehicle’s ability to pass the in-use recall tests. As a result the auto-manufacturers claim that they will have to do either one of two things. Either they will have to design a new catalytic converter for

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213 See Complaint, supra note 5, at 20–21; see also Defendant’s Memorandum, supra note 2, at 44–52.
214 See Plaintiff’s Memorandum, supra note 78, at 24–28; see also Complaint, supra note 5, at 20–21.
215 Plaintiff’s Memorandum, supra note 78, at 26.
Massachusetts cars, which is tantamount to creating a third vehicle, or they will have to more frequently replace the catalytic converter on Massachusetts cars which will result in an undue burden.\textsuperscript{216} Either option, the plaintiffs claim, violates the third car regulation or its underlying policy, which is to protect the automobile manufacturers from the undue burden which multiple state vehicle emission standards would create.\textsuperscript{217}

The auto-manufacturers also argue that the attachment mechanism for the catalytic converter will have to be changed in Massachusetts cars.\textsuperscript{218} They state that the impact of the higher level of sulfur will cause, in certain very high mileage vehicles, the car's On Board Diagnostic System (OBD II)—which will be installed in every new California car beginning in the mid 1990s—to activate the Malfunction Indicator Light (MIL) more often in Massachusetts than in California.\textsuperscript{219} Hence, when the car owner, still within the emissions system warranty period—which under the LEV/CF is 100,000 miles—brings the car in for servicing, the catalytic converter will have to be replaced.\textsuperscript{220}

In California, the catalytic converter is welded to the engine.\textsuperscript{221} The auto-manufacturers claim that, in order to reduce the cost of replacing the converter, the attachment mechanism design for the catalytic converter will have to be changed for Massachusetts cars.\textsuperscript{222} The converter will have to be attached with a bolt and flange instead of welded.\textsuperscript{223} Consequently, the plaintiffs argue that the necessitated change to the bolt and flange is tantamount to creating a third vehicle.\textsuperscript{224}

On the other hand, the DEP argues that the sulfur impairment of the catalytic converter will not impede a car's ability to pass an in-use recall test.\textsuperscript{225} In performing the recall test, the Federal Test Procedure is used.\textsuperscript{226} Part of this procedure involves taking necessary steps to reverse sulfur impairment prior to the testing.\textsuperscript{227} In addition, the

\textsuperscript{216} See id. at 26–28.
\textsuperscript{217} See id. at 26–28; Complaint, supra note 5, at 20–21.
\textsuperscript{218} See Plaintiff's Memorandum, supra note 78, at 26–28.
\textsuperscript{219} See id.; see also Defendant's Memorandum, supra note 2, at 54.
\textsuperscript{220} See Plaintiff's Memorandum, supra note 78, at 26–28.
\textsuperscript{221} See id.
\textsuperscript{222} See id.
\textsuperscript{223} Id.
\textsuperscript{224} See id.
\textsuperscript{225} See Defendant's Memorandum, supra note 2, at 61–66.
\textsuperscript{226} See id. at 66.
\textsuperscript{227} See id. Sulfur impairment can be reversed by simply heating the catalytic converter to 700
in-use test utilizes indolene or Phase II gasoline, which has a significantly lower sulfur content than the commercially available gasolines.\textsuperscript{228} Thus, the sulfur content of Massachusetts gasoline will not affect the outcome of the in-use test.\textsuperscript{229}

In addition, the DEP also argues that the design change of the attachment mechanism for catalytic converters does not constitute the construction of a third vehicle.\textsuperscript{230} Only material differences, that is differences which create an undue burden on the car manufacturer, constitute the construction of a third vehicle.\textsuperscript{231} The change from a welded method to a bolt and flange method hardly rises to the level of creating a third vehicle.\textsuperscript{232}

The DEP also argues that the design problem that the car manufacturers face in relation to the Massachusetts cars is the same design problem that they face in relation to cars sold in California.\textsuperscript{233} Cars sold in California do not strictly stay in California.\textsuperscript{234} Millions of people leave the state temporarily every year for business and pleasure. In addition, thousands of people leave the state permanently in order to relocate.\textsuperscript{235} In fact, according to the motor vehicle records, an estimated 283,000 vehicles left California last year alone.\textsuperscript{236} This is more than all the new light-duty vehicles sold in Massachusetts last year.\textsuperscript{237} When these cars leave, they then operate on the higher sulfur gasolines.\textsuperscript{238} Hence, the converter design problem that the automobile manufacturers face is worse in relation to the California cars than to the Massachusetts cars.\textsuperscript{239} Thus, to complain about the Massachusetts car and its design problem is frivolous.

Lastly, the DEP argues that the tests conducted on the catalytic converters are flawed.\textsuperscript{240} Testing was done with fuel containing a sulfur level of 600 ppm.\textsuperscript{241} No testing was done on the converters using degrees Celsius. This is done in everyday driving. It is also accomplished by driving for a period with low-sulfur gasoline. See id.

\textsuperscript{228} See id. at 8; see also MVMA I, supra note 10, at 1344.
\textsuperscript{229} See Defendant’s Memorandum, supra note 2, at 61–66.
\textsuperscript{230} See id. at 54–55.
\textsuperscript{231} See id. at 55 n.43.
\textsuperscript{232} See id.
\textsuperscript{233} See id. at 59–61.
\textsuperscript{234} See id.
\textsuperscript{235} See id.
\textsuperscript{236} See id.
\textsuperscript{240} See id.
\textsuperscript{241} See id. at 55–58.
the federally reformulated fuel which contains a much lower sulfur level. The federally reformulated fuel has an expected sulfur level of half that amount, and the maximum allowable sulfur level of 500 ppm is well below that amount.\textsuperscript{242} Since Massachusetts has opted into the federally reformulated fuel program, the test results are flawed in relation to Massachusetts vehicles.\textsuperscript{243} Hence, the argument that the catalytic converter will fail and have to be replaced is irrelevant because it is based upon this study.

In arguing for their respective positions, both parties have deconstructed the Clean Air Act. Each party seeks to divorce the third vehicle passage from its "story," and interpret it in such a way so as to achieve their desired goals. The auto-manufacturers seek a broad interpretation of the third vehicle passage so as to allow a small design change to be interpreted as a de facto third vehicle. The DEP seeks a very narrow interpretation of the third vehicle passage so that the design change to the catalytic converter attachment mechanism will not result in the court's finding that the change results in a de facto third vehicle. Neither party, however, sought to interpret the passage within the context of its story.

The crux of this third vehicle argument is whether a small design change on the attachment mechanism of the catalytic converter will result in such an undue burden upon the auto-manufacturers that it creates a de facto third vehicle.\textsuperscript{244} When deciding this, the courts must weigh the burden placed upon the auto-manufacturers against Massachusetts's right to control mobile source pollution in the manner it deems best. The balancing, though, must be done while keeping in mind the paramount concern of the Clean Air Act, which is to protect public health.

If the courts find that a de facto third vehicle has been created, then Massachusetts will be federally preempted in its freedom to regulate mobile source pollution. Massachusetts will be left with the option of either repealing M.G.L. c. 111, § 142k, or adopting the CF program.

There is no doubt that a design change creates a burden for the auto-manufacturers. The change, however, in the attachment mechanism is merely a change from a welding method to a bolting method.

\textsuperscript{242} See id. at 56–57.
\textsuperscript{243} See id. at 14–15.
\textsuperscript{244} Regardless of whether or not the courts find that the catalytic converter fails the in-use tests more often with the less clean Massachusetts gasoline, if the courts find that the redesign of the attachment mechanism is not sufficient to create a third vehicle, the defendants win on this count. If the redesign does not create a third vehicle, then it does not matter if the catalytic converter fails the in-use tests more often. Hence, the crux of the issue is as stated above.
This change does not justify federal intrusion upon Massachusetts's right to regulate mobile source pollution. Massachusetts knows the best manner and methods to control air pollution in its state. Massachusetts is best able to balance the methods necessary to control mobile source pollution against the expense to its citizens. A small design change in the attachment of the catalytic converter does not justify the court overriding the knowledge that the state has with regard to the control of its air pollution and the expenses that such control demands.

In addition, concluding that the balance weighs in favor of the state will not undermine the goal of the Clean Air Act to protect public health. Massachusetts will adopt the LEV program which will further the goal. In contrast, a conclusion that the balancing weighs against the state would violate one of two goals of the Clean Air Act. If the state were forced to repeal M.G.L. c. 111, § 142k, then the primary goal of the Clean Air Act would be violated. Public health would not be best protected. If the state were forced to adopt the CF portion, then the state's freedom would be restricted.

Lastly, it should be noted that one of the minor goals of the Clean Air Act is to force the development of new and better technology. By forcing the auto-manufacturers to develop new and better methods of attaching the catalytic converters, the courts will be upholding a goal of the Clean Air Act, and assisting in the development of such technology.

C. The ZEV Issues

Massachusetts's adoption of the zero-emission vehicle requirement raises two distinct issues: the issue regarding the ZEV sales requirement, and the issue concerning the construction of ZEVs.

1. The ZEV Sales Requirement

The first issue concerns the ZEV sales requirement, which begins in 1998. Section 177 of the Clean Air Act declares that a state which adopts California vehicle emission standards shall not "prohibit or limit, directly or indirectly, the manufacture or sale of a new motor

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246 See Complaint, supra note 5, at 23-25; see also AAMA I, supra note 3, at *1-2; MVMA I, supra note 10, at 1345-47.
247 See Complaint, supra note 5, at 23.
vehicle or motor vehicle engine that is certified in California as meeting California standards."248

The auto-manufacturers argue that the adoption of the ZEV sales mandate violates section 177 of the Clean Air Act.249 As stated above, Massachusetts has adopted the California ZEV sales mandates.250 By the year 1998 two percent of all vehicles sold in Massachusetts must be ZEVs.251 This percentage increases in the year 2001 and once again in 2003.252 The ZEV sales mandate requires that each manufacturer meet the ZEV percentage sales quota.253 Hence, this quota system indirectly restricts the sale of California non-ZEV vehicles in violation of section 177.254

For example, in the year 1998, the ZEV sales mandate requires that two percent of all vehicles sold in Massachusetts be ZEVs.255 Due to this requirement, manufacturers could only sell forty-nine conventional California vehicles for every ZEV they sell or ZEV credit they purchase.256 In model year 2003, the requirement would reduce conventional sales to nine out of every ten vehicles.257 Hence, the auto-manufacturers claim, it is clear that the sales mandate limits the sale of conventional California vehicles in violation of section 177.258

In addition, the auto-manufacturers argue that the lack of market demand in Massachusetts will limit the sale of ZEVs, and thereby indirectly restrict the sale of conventional California vehicles.259 The lack of sales incentives, coupled with the less favorable climate in Massachusetts for ZEVs,260 will result in an inadequate demand for the ZEVs.261 Thus, manufacturers will have to do one of two things in order to meet the ZEV sales quotas.262 Either they will have to reduce

249 See Complaint, supra note 5, at 23.
250 Id. at 15–16.
251 Id.
252 Id.
253 Plaintiff's Memorandum, supra note 78, at 37–39.
254 Id.
255 Complaint, supra note 5, at 23.
256 See Plaintiff's Memorandum, supra note 78, at 37.
257 See id.
258 See id. at 37–39.
259 See id. at 38–39.
260 The colder Massachusetts climate will negatively impact the functioning of the lead-acid batteries upon which the ZEVs operate, thus greatly reducing the already limited distances which ZEVs can travel without recharging the batteries. See Plaintiff's Memorandum, supra note 78, at 42.
261 Cf. id. at 38–39.
262 See id. at 38.
the availability of the conventional California vehicles, thereby forcing buyers to purchase ZEVs; or, they will have to increase the cost of the conventional California vehicles, thereby making ZEVs more financially attractive. Either option has the effect of restricting the sale of conventional California certified vehicles in violation of section 177.

On the other hand, the DEP can argue that section 177 prohibits limitations on the sale of California vehicles generally, and does not refer to specific classes of California vehicles. Hence, no state that adopts the California emission standards can restrict the sale of California vehicles in general. The ZEV sales mandate does not limit the sale of California vehicles generally. In effect, the sales mandate requires the sale of all categories of California vehicles, including ZEVs. Hence, the ZEV sales mandate does not violate the section 177 prohibition.

In so arguing, the parties have once again deconstructed the Clean Air Act. They have focused upon a few sentences in the Act, and have built their arguments around those sentences. As a result, they have mired what is a simple passage to understand.

ZEVs are zero-emission vehicles which emit little or no air pollutants. As such, they are a superior way to reduce mobile source pollutants and thereby fulfill the primary goal of the Clean Air Act, which is to protect the public health. Thus, the ZEV sales mandate was included in the LEV program by California in order to facilitate the sale of ZEVs. It is clear that any ZEV sold in Massachusetts will be a California-certified vehicle. It is also clear that the auto-manufacturers can sell any number of non-ZEV, California-certified vehicles so long as they sell the specified percentages of ZEVs. Hence, Massachusetts has not limited the number of non-ZEVs that the auto-manufacturers can sell. They can sell as many conventional vehicles as possible, as long as they sell the specified percentages of ZEVs.

It is true that the reduced market for ZEVs in Massachusetts may affect the sale of non-ZEV vehicles to some degree. However, in light of the goals of the Clean Air Act, it would be inappropriate for the

263 See id.
264 See id.
265 See MVMA II, supra note 10, at 65.
266 See id.
267 See id.
268 See id.
269 It remains to be seen the extent to which such devices as fuel-fired heaters on the ZEVs will emit air pollution.
court to interpret the "affect" as placing a "limit" on the sale of California vehicles. The ZEV requirement will result in the reduction of mobile source pollution, hence the protection of public health. In addition, Congress wanted to allow the states the freedom to opt into the California program. A ruling that the ZEV sales requirement causes Massachusetts to violate the Clean Air Act would effectively prohibit Massachusetts or any other state from opting into the California program. Thus, such a ruling is absurd, being both self-contradictory and debasing the primary goals of the Act.

2. The Construction of ZEVs

The second ZEV issue concerns the construction of the ZEVs. As stated above, section 177 says that no state can take any action which has the effect of causing the automobile manufacturers to produce a third vehicle other than the vehicles which they produce to meet the federal emission standards and the California emission standards. This requirement was enacted to prevent the automobile manufacturers from being unduly burdened. This issue revolves around whether the Massachusetts's ZEV sales mandate will require the construction of a third vehicle.

The auto-manufacturers argue that the ZEV sales quota adopted by Massachusetts will cause them to have to produce a ZEV different from the one they produce in California in order to account for the unique weather conditions in Massachusetts. Technological limitations have resulted in the construction of ZEVs without passenger compartment heating systems. Due to the winter weather conditions in Massachusetts, the automobile manufacturers would be required to modify the design of the ZEVs to include a fuel-fired heater, which would significantly modify the design of the California ZEV. Hence, the automobile manufacturers would be required to construct a third vehicle for Massachusetts.

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271 See Complaint, supra note 5, at 24–25.
273 See MVMA I, supra note 10, at 1338.
274 See Complaint, supra note 5, at 24–25.
275 See Plaintiff’s Memorandum, supra note 78, at 39–43; Complaint, supra note 5, at 24–25.
276 See Plaintiff’s Memo, supra note 78, at 41; see also MVMA I, supra note 10, at 1346–47. This does not create a problem in most urban areas of California where winter weather conditions rarely reach the freezing level. See Plaintiff’s Memorandum, supra note 78, at 41.
277 See Plaintiff’s Memorandum, supra note 78, at 41–42.
278 See id.
In addition, the battery system upon which the California ZEVs operate would have to be redesigned.279 The performance of the lead-acid batteries upon which the ZEVs operate is significantly affected by cold temperatures.280 Hence, the automobile manufacturers would have to redesign the battery system to include a battery heater and extra battery insulation for the Massachusetts ZEVs.281 These significant alterations would result in the construction of a third vehicle.282

On the other hand, the DEP can argue that when Congress adopted the third vehicle prohibition, it did not intend to prevent any and every design change that might have to take place.283 What Congress was referring to were design changes in relation to the emissions standards.284 All ZEVs are identical with respect to the emissions standards.285 Changes that have to be made as a result of temperature differences are irrelevant to the statute.

The analysis of this third vehicle argument is similar to the one stated above. The issue is whether the addition of a fuel-fired heater and the redesign of a battery system constitute the creation of a de facto third vehicle. Using the same analysis as above, it is apparent that such additions to the ZEVs do not constitute a third vehicle. First, the additions will facilitate the sale of the ZEVs, which will benefit not only the state, but the auto-manufacturers also. Such additions are also in accord with the technology forcing goals of the Act. Second, Massachusetts is left with the freedom to utilize ZEVs in its pursuit of compliance with the Clean Air Act. Finally, and most importantly, by concluding that the additions do not constitute a third vehicle, the courts are in accord with the chief goal of the Act which is to protect public health.286

D. The Waiver Issue

The auto-manufacturers have also challenged when a state can adopt the California emission standards.287 The auto-manufacturers

279 See id.
280 See id.
281 Id.
282 See id.
283 See MVMA I, supra note 10, at 1346–47.
284 See id.
285 Id.
286 The reader is referred to the discussion of the third-vehicle problem, in section IVB above, for a fuller clarification of the analysis.
287 See Complaint, supra note 5, at 21–22; see also Defendant's Memorandum, supra note 2, at 28–34.
argue that a state may not adopt any California standards for which a waiver from the EPA has not been received. They point out that section 177 of the Clean Air Act declares that a state may adopt those standards relating to the control of emissions from new motor vehicles if those standards "are identical to the California standards for which a waiver has been granted." Massachusetts adopted California's LEV standards in January, 1992. California applied for an EPA waiver of its standards in October, 1991, but it did not receive the waiver until January, 1993. Therefore, Massachusetts adopted the California LEV program a full year before California had received its EPA waiver. Thus, the auto-manufacturers contend, Massachusetts's premature adoption violates section 177 and is therefore unlawful. The DEP argues that section 177 does not preclude states from adopting the California standards prior to the EPA issuing a waiver. Section 177 says that states that are not in compliance with the ozone NAAQS may "adopt and enforce" the California standards if two conditions are met. First, the standards have to be identical to the California standards for which a waiver has been granted. Second, the standards have to be adopted at least two years prior to the commencement of the model year.

"Adoption and enforcement" comprise the "collective act" of implementing the California LEV program. Adoption informs the automobile manufacturers that the state has opted to participate in the California program. It has a notification purpose. Enforcement is the act that requires the automobile manufacturers to conform to the adopted regulations. It establishes the effective date by which they must comply. The waiver approval requirement must be satisfied prior to "adoption and enforcement" as a collective unit; hence, it must

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289 Defendant's Memorandum, supra note 2, at 13; see Complaint, supra note 5, at 21.
290 Id. at 22.
291 Id. at 21–22.
292 See Defendant's Memorandum, supra note 2, at 28–34.
293 See id. at 29.
296 See Defendant's Memorandum, supra note 2, at 29–31.
297 See id.
298 See id.
299 See id.
300 See id.
301 See id.
be satisfied prior to enforcement which completes the adoption and enforcement action, and not prior to adoption alone.\textsuperscript{302}

The goal of the Clean Air Act is to promote cleaner air thereby protecting the public health. In addition, Congress also desires to balance the rights of the states with regard to freedom to regulate air pollution against protection of the auto-manufacturers. In light of the above stated goals, we must determine whether Massachusetts’s adoption of the California LEV program a full year ahead of California’s receipt of a waiver for the program violated the Clean Air Act.

In order to solve this issue, we must determine what the waiver is a precondition to. Once again, both parties deconstruct the Clean Air Act by focusing solely upon the individual words themselves. The auto-manufacturers say the waiver is a precondition to adoption. The DEP states that Massachusetts can adopt the California program prior to the waiver, and that the waiver is a precondition to enforcement of the previously adopted program.

If we examine the Act in light of the above stated policy goals, it is clear that the waiver is a precondition to enforcement. If the waiver is a precondition to adoption, this merely results in a delay in time for the opt-in states. Congress has decided to permit California to blaze a trail in air pollution regulation; hence, its waiver applications are almost always approved with minimal oversight by the federal government.\textsuperscript{303} The opt-in states merely have to wait until the waiver is approved. With regard to Massachusetts, if its adoption was found to be illegal, it would merely have to re-adopt the California program. Once again, this merely results in a delay in time.

If the waiver is a precondition to enforcement, Massachusetts will be allowed to maintain its adoption of the California program. Hence, its enforcement of the program will not be delayed. Such an interpretation allows the state to implement the new emission standards, resulting in cleaner air at an earlier point in time. Hence, the public health will be better protected by this interpretation. In addition, this interpretation allows the state the freedom it needs to best control air pollution; and the auto-industry is no worse off with the exception of a time element which they must now abide by. Hence, the interpretation most in line with the Clean Air Act states that the waiver is a precondition to enforcement.

\textsuperscript{302} See id.

\textsuperscript{303} See Ford Motor Co. v. Environmental Protection Agency, 606 F.2d 1293, 1297 (D.C. Cir. 1979).
V. Conclusion

The primary goal of the Clean Air Act is to improve air quality, and thereby protect the public health. In advancing this goal, Congress also desires to balance two competing goals. Congress wants to protect the states' freedom to control air pollution in any manner they deem necessary. Each state knows what is needed to best improve the air quality in that state. In addition, each state knows how to best balance the competing concerns of air quality and tax burdens. Hence, Congress seeks to allow the states to control their own pollution problems. However, the states' freedom must be balanced against the competing concern of protection for the automobile industry. If each state is allowed to control mobile source pollution without regard to the auto-industry, the auto-manufacturers could potentially end up creating fifty-one different types of vehicles to satisfy each state's and the federal government's pollution control programs. Thus, in improving air quality and protecting public health, these two competing concerns must be balanced against one another.

When interpreting the Clean Air Act, each of the above factors must be considered. The framers of the Act developed the terminology of the Act in light of these factors. Hence, these factors form the story of each term in the Act. As Oliver Wendell Holmes stated, "If my fellow citizens want to go to Hell, I will help them. It's my job." It is the job of every person interpreting the Clean Air Act to interpret it in light of its legislative goals; that is, in light of its story.