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## States Take the Wheel—Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie Gives States a Chance to Choose the Direction of Their Automobile Emissions Regulation

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## States Take the Wheel—*Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie* Gives States a Chance to Choose the Direction of Their Automobile Emissions Regulation

### I. Introduction

In *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, the United States District Court for the District of Vermont decided the first of several cases across the United States addressing state regulation of automobile greenhouse gas emissions.<sup>1</sup> In these cases, automobile manufacturers and dealerships challenged state regulations adopted pursuant to a specific waiver provision under the Clean Air Act (CAA) claiming the state regulations were preempted by federal law.<sup>2</sup> In a landmark victory for environmentalists, the United States Supreme Court recently held in *Massachusetts v. EPA* that greenhouse gas regulation by the Environmental Protection Agency (EPA) pursuant to the CAA was not preempted.<sup>3</sup> Expanding upon the Supreme Court's decision, the court in *Crombie* held that states were not preempted from regulating greenhouse gases through the CAA waiver provisions.<sup>4</sup> In another success to be celebrated by environmentalists and, in this case, states' rights advocates, *Crombie* reveals the beginning of the states' struggle to regain control over environmental policy that is necessary to combat global warming.

As a result of increasing public awareness of the causal connection between man-made greenhouse gas emissions and global warming, both the federal government and state governments have attempted to enact more stringent standards regulating greenhouse gas emissions and air pollution.<sup>5</sup> The threat of global warming demands a swift and effective governmental response, as the effects of climate change are becoming more difficult to ignore.<sup>6</sup> Greenhouse gases can cause serious problems ranging from degraded water quality and low water supply to disasters of Hurricane Katrina proportion.<sup>7</sup> Legislatures have reacted by targeting automobiles with progressively more stringent automobile emissions pollution regulations, in large part because “the

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1. 508 F. Supp. 2d 295, 300 (D. Vt. 2007).

2. *Id.* at 300-01.

3. 549 U.S. 497, 529-30 (2007).

4. *Crombie*, 508 F. Supp. 2d at 397-98.

5. Steven G. Davison, *Regulation of Emission of Greenhouse Gases and Hazardous Air Pollutants from Motor Vehicles*, 1 PITTSBURGH J. ENVTL. & PUB. HEALTH L. 1, 2 (2006).

6. *Id.*

7. *Id.* at 4.

United States transportation sector emits an enormous quantity of carbon dioxide into the atmosphere.”<sup>8</sup> As federal and state regulations increase, courts across the United States have been called upon to decide issues of federalism and preemption that arise in automobile air quality litigation and environmental law.<sup>9</sup>

Historically, regulation of air pollution fell within the states’ police power, but political pressure from industry and influential polluters caused many states to set extremely low standards or no standards at all.<sup>10</sup> If standards were enacted, they were often unenforced with no penalties for noncompliant polluters. In the mid-twentieth century, however, the federal government began to enact mandatory federal standards for air pollution regulation.<sup>11</sup> The sudden creation of numerous federal laws led to conflict between existing state regulations and the new national standards for air pollution control.<sup>12</sup> Under the Supremacy Clause of the United States Constitution, however, federal law preempts any state laws that “interfere with, or are contrary to” federal law.<sup>13</sup> With broad acts such as the Air Quality Act (AQA) and the Clean Air Act (CAA), the federal government has taken the primary power to regulate air pollution from the states with a few limited exceptions.<sup>14</sup> These federal regulations embody a new system of cooperative federalism—establishing federally mandated nationwide standards and delegating the power of implementation and enforcement to the states.<sup>15</sup> States retain significant power in implementing the federal program, but the overall scope and requirements for air pollution regulation are determined federally.<sup>16</sup> If the states fail to meet the federal standards, the federal government regains the power of implementation and enforcement to ensure that states attain federal environmental standards.<sup>17</sup>

One significant exception to Congress’s reign over the field of air pollution regulation is the waiver granted to the State of California by the 1967

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8. *Massachusetts v. EPA*, 549 U.S. at 524.

9. Cases involving state regulation of automobile emissions win the “prize for creating the longest-running, most contentious environmental preemption disputes.” ZYGMUNT J.B. PLATER ET AL., *ENVIRONMENTAL LAW AND POLICY: NATURE, LAW, AND SOCIETY* 329 (Erwin Chemerinsky et al. eds., 3d ed. 2004).

10. *Id.* at 316-17.

11. *Id.* at 292-93.

12. *Id.*

13. *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 211 (1824) (interpreting U.S. CONST. art. VI, cl. 2).

14. PLATER ET AL., *supra* note 9, at 297.

15. *Id.* at 305.

16. *Id.* at 305-06.

17. *Id.* at 306.

amendments to the Clean Air Act.<sup>18</sup> This waiver granted the State of California the right to establish its own automobile emission standards, so long as such standards are more stringent than federal standards and meet additional federal requirements.<sup>19</sup> In 1967, Congress also authorized other states to adopt California's standards so long as they were substantively identical and met the same additional federal requirements.<sup>20</sup> Congress's grant of power to state governments to regulate air pollution more stringently than required by federal standards has been important to the success of automobile emissions pollution regulations and also has been the source of a significant amount of litigation relating to the relationship between automobile emissions pollution standards and federally mandated fuel economy standards.<sup>21</sup>

In *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, automobile manufacturers and dealerships challenged the State of Vermont's 2005 adoption of the most recent California standard adopted in 2004.<sup>22</sup> The manufacturers and dealerships claimed that standards set under the California waiver were preempted by federal law under the Environmental Policy and Conservation Act of 1975 (EPCA) and the CAA.<sup>23</sup> In *Crombie*, the United States District Court for the District of Vermont considered whether the waiver for California, and other states adopting California's standards, has the effect of federal law or whether it is a state regulation with the possibility of preemption by federal statutes.<sup>24</sup> The court held that the standard under the California waiver provision for automobile emissions pollution regulation had the effect of federal law and, therefore, could not be preempted by other federal laws regulating fuel economy.<sup>25</sup> Alternatively, the court held that if the waiver provisions did not have the effect of federal law, the waiver did not impermissibly conflict with federal law and was not preempted.<sup>26</sup>

Consequently, automobile manufacturers and dealerships must adhere to the State of California's automobile emissions pollution regulations and the regulations of other states adopting California's standards.<sup>27</sup> The court's decision in *Crombie* reinforces the necessary structure of cooperative federalism in environmental regulation and prevents slight statutory overlap from rendering ineffective the powerful waiver provisions that Congress

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18. 42 U.S.C. § 7543(b) (2000); *see also* PLATER ET AL., *supra* note 9, at 329.

19. 42 U.S.C. § 7543(b).

20. *Id.* § 7507.

21. PLATER ET AL., *supra* note 9, at 329.

22. 508 F. Supp. 2d 295, 300, 338 (D. Vt. 2007).

23. *Id.* at 301.

24. *Id.* at 303.

25. *Id.* at 398.

26. *Id.*

27. *Id.* at 398-99.

intended states to wield against automobile emission pollution. As such, on appeal, *Crombie* should be upheld and heralded as an instructive model for other courts faced with challenges against similar state legislation.

Part II of this note introduces the structure of cooperative federalism and its relation to the doctrine of preemption as applied to both federal and state laws. Part II also summarizes the legislative history of the CAA and the EPCA, along with the difficulties arising from solely federal regulation of air pollution that led to the specific waiver provision for California and the subsequent waiver for any state that adopts the California regulations. Part III discusses the procedural and factual history of *Crombie*, as well as the court's decision relative to the issues of federal preemption and the statutory waiver, along with the possible future of the case on appeal. Part IV concludes with an analysis of the district court's refusal to allow slight statutory overlap which would prevent necessary environmental regulation from functioning properly and undermining the effective structure of cooperative federalism in the regulation of automobile emission pollution regulation. This note concludes with Part V.

## II. Law Before the Case

In *Crombie*, the United States District Court for the District of Vermont considered whether the Clean Air Act's (CAA's) waiver for California and others states constitutes federal or state law.<sup>28</sup> Additionally, the court examined how the waiver may be affected by preemption under the EPCA.<sup>29</sup> Prior to analyzing the specific issue of the California waiver and the possibility of preemption by the EPCA, the court first examined the history and purpose of the CAA, the EPCA, and of the waiver provision itself.<sup>30</sup> The court applied reasoning derived from the United States Supreme Court's analysis in *Massachusetts v. EPA* and expanded the Supreme Court's holding to determine how the doctrine of preemption specifically relates to automobile emissions pollution regulations and the California waiver provisions.<sup>31</sup> The

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28. *Id.* at 300-01.

29. *Id.* at 301.

30. *Id.* at 303-07.

31. *Id.* at 344 (citing *Massachusetts v. EPA*, 549 U.S. 497 (2007)). In *Massachusetts v. EPA*, a group of states, local governments, and environmental organizations petitioned for review of an order of the Environmental Protection Agency (EPA) denying a petition for rulemaking to regulate greenhouse gas emissions from motor vehicles under the Clean Air Act (CAA). 549 U.S. at 514. The Supreme Court had three primary holdings: (1) the state of Massachusetts had standing to petition for review; (2) the CAA authorized the EPA to regulate greenhouse gas emissions from new motor vehicles in the event that it forms a "judgment" that such emissions contribute to climate change; and (3) the EPA can avoid taking regulatory action with respect to greenhouse gas emissions from new motor vehicles only if it determines that

*Crombie* court's decision relied considerably upon the Supreme Court's analysis of the historical context of cooperative federalism, preemption, the federal regulations, and the California waiver.<sup>32</sup>

*A. Federalism and Environmental Regulation*

During the 1960s and 1970s, the United States became increasingly concerned with the negative impact that human actions can have on the environment.<sup>33</sup> This realization led to an enhanced federal involvement in what was once a primarily state-governed arena.<sup>34</sup> As the federal government became more active in regulating environmental issues, a new system emerged with both state and federal governments actively participating in the regulation and enforcement of new environmental statutes.<sup>35</sup> Most major environmental legislation conformed to the general format of cooperative federalism—the federal government established a mandatory national standard and required states to take the proper steps to implement programs and enforcement mechanisms to ensure compliance with the national standards.<sup>36</sup> This system minimized two of the major problems associated with individual states enacting pollution regulations—specifically automobile emissions standards. The first problem resulted from states approaching automobile emissions differently based on the automobile industry's role within their state.<sup>37</sup> States with automobile factories encountered strong political pressure to avoid

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greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do.  
*Id.*

Of particular relevance to the court in *Crombie* is the Supreme Court's analysis of the interplay between fuel economy standards under the Energy Policy and Conservation Act (EPCA) and automobile emissions pollution regulations under the CAA. The EPA argued that it "could not regulate carbon dioxide emissions from motor vehicles because doing so would require it to tighten mileage standards, a job (according to the EPA) that Congress has assigned" to the Department of Transportation (DOT) through the EPCA. *Id.* at 531-32. The Court rejected this argument and held that the "EPA has been charged with protecting the public's 'health' and 'welfare,' a statutory obligation wholly independent of DOT's mandate to promote energy efficiency. The two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency." *Id.* (citations omitted). This legal reasoning provides a foundation for the Vermont District Court's decision relating to the EPCA and the CAA waiver provision in *Crombie*.

32. See generally *Crombie*, 508 F. Supp. 2d 295 (citing *Massachusetts v. EPA*, 549 U.S. 497).

33. PLATER ET AL., *supra* note 9, at 294.

34. *Crombie*, 508 F. Supp. 2d at 303-04.

35. PLATER ET AL., *supra* note 9, at 305-06.

36. *Id.*

37. *Id.* at 296-300.

stringent automobile emissions pollution regulations and to set less burdensome standards.<sup>38</sup> Many states did not set stringent standards out of concern that industry would relocate and new industry would choose a location with fewer regulatory burdens.<sup>39</sup> Other states, such as California, which suffered from smog and air pollution resulting from heavy car emissions in populous cities, set more stringent automobile emissions standards that were more difficult for automobile manufacturers to meet.<sup>40</sup> Thus, state control over emission standards resulted in regulatory inconsistency and difficult enforcement problems for the states and the federal government.<sup>41</sup>

The inconsistency created by different state standards for automobile emissions pollution created a second problem for the regulation of automobile emissions. With emission standards varying among the states, automobile manufacturers and dealerships were confronted with a broad array of requirements along with the burden and expense of complying with each individual state's regulations.<sup>42</sup> As a result, automobile manufacturers strongly advocated for the creation of a federal emission standard in a system of cooperative federalism.<sup>43</sup> Although the federal standard was more stringent than some state standards, to the automobile manufacturers, the burden of compliance with the federal regulatory scheme was easily outweighed by the benefit of having only one standard to consider and implement in their automobile designs.<sup>44</sup>

#### *B. Clean Air Act and California Waiver Provision*

Responding to the need for an all-encompassing federal standard for automobile emissions, Congress modified the already existing CAA that regulated air pollution by passing the Motor Vehicle Air Pollution Control Act of 1965 (MVAPCA). The MVAPCA was included in the amended CAA and established a national automobile emissions standard, but it did not include express language removing states' rights to establish state standards.<sup>45</sup> When the states continued setting their own regulations despite the federal standard enacted in the MVAPCA, Congress amended the CAA to include an express

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38. *Id.*

39. *Id.*

40. *Id.* at 299-300.

41. *Id.*

42. Donald Elliot et al., *Toward a Theory of Statutory Evolution: The Federalization of Environmental Law in ENVIRONMENTAL LAW AND POLICY: NATURE, LAW, AND SOCIETY* 293, 294 (Erwin Chemerinsky et al. eds., 3d ed. 2004).

43. *Id.*

44. *Id.* at 293.

45. *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F. Supp. 2d 295, 303 (D. Vt. 2007).

preemption clause to prevent states from enacting their own automobile emissions standards.<sup>46</sup> The new addition, Title II of the CAA, became known as the National Emissions Standards Act (NESA).<sup>47</sup>

NESA, however, did not entirely remove states' rights to set automobile emissions pollution standards. The amendments included a specific waiver provision for the State of California.<sup>48</sup> California had been setting more stringent and progressive automobile emissions pollution standards since the early 1950s.<sup>49</sup> One of the primary reasons Congress included a preemption clause in the CAA was California's continued efforts to set its own stricter standards after the federal standard was established.<sup>50</sup> Under the NESA waiver, California is allowed to continue setting its own emission standards so long as they are more stringent than the federal standards.<sup>51</sup> California must also show that the adopted standards are not arbitrary or capricious, address compelling and extraordinary conditions, and are consistent with the federal standards and policy.<sup>52</sup>

As concern over pollution and environmental issues grew, other states also sought increased power to regulate automobile emissions pollution within their borders.<sup>53</sup> In 1977, Congress amended the CAA to include a "piggyback" waiver for states desiring to adopt standards identical to California's, so long as both California and other states seeking a waiver adopted the standards at least two years before the commencement of the automobile model year to be regulated.<sup>54</sup> Under the "piggyback waiver," California and states wishing to adopt California's standards must apply to the Environmental Protection Agency (EPA) for approval of the state standard based on the statutory requirements of the waiver.<sup>55</sup> The waivers provide a means for states that

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46. 42 U.S.C. § 7543(a) (2000). This provision states:

No state or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

*Id.*

47. *Crombie*, 508 F. Supp. 2d at 303.

48. 42 U.S.C. § 7543(b).

49. PLATER ET AL., *supra* note 9, at 329.

50. *Id.*

51. 42 U.S.C. § 7543(b).

52. *Id.*

53. *Motor Equip. Mfrs. Ass'n, Inc. v. EPA*, 627 F.2d 1095, 1108 (D.C. Cir. 1979).

54. 42 U.S.C. § 7507.

55. *Id.* §§ 7543(b), 7507.

desire more stringent regulations than those enacted by the federal government to protect their states from automobile emissions pollution.<sup>56</sup>

*C. Energy Policy and Conservation Act*

During the same period of increasing environmental regulation that led to the CAA and the MVAPCA, Congress enacted the EPCA in response to the energy crisis of the 1970s.<sup>57</sup> The EPCA's goal was to "provide for improved energy efficiency of motor vehicles," and one of its primary functions was to set national fuel economy standards for automobiles.<sup>58</sup> The authority to set fuel economy standards was given to the Secretary of Transportation who then delegated the authority to the National Highway Traffic Safety Administration (NHTSA).<sup>59</sup> Because the fuel economy standards were not enacted for environmental purposes, the EPA has no authority over the fuel economy standards, their implementation, or enforcement.<sup>60</sup>

Under the EPCA, NHTSA enacts "fleet-wide average fuel economy standards that . . . apply to all passenger automobiles or light-duty trucks sold . . . in a given year . . ."<sup>61</sup> These standards are known as Corporate Average Fuel Economy or "CAFE" standards.<sup>62</sup> Currently, the EPCA establishes broad guidelines but requires that NHTSA consider four general factors when setting the CAFE standards.<sup>63</sup> NHTSA is required to consider "technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy."<sup>64</sup> When considering these factors and establishing fuel economy standards, the EPCA gives NHTSA broad discretion.<sup>65</sup>

When the EPCA was initially passed, Congress required that "other Federal motor vehicle standards" be considered as one of the four statutory factors when setting national fuel economy standards.<sup>66</sup> The EPCA was recodified in 1994, and now requires that the NHTSA consider the "effect of other motor vehicle standards of the Government on fuel economy," changing from its

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56. PLATER ET AL., *supra* note 9, at 329.

57. *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F. Supp. 2d 295, 305 (D. Vt. 2007).

58. 42 U.S.C. § 6201.

59. *Crombie*, 508 F. Supp. 2d at 306.

60. *Id.* at 347.

61. *Id.* at 306.

62. *Id.*

63. 49 U.S.C. § 32902(f) (2000).

64. *Id.*

65. *Crombie*, 508 F. Supp. 2d at 306.

66. 15 U.S.C. § 2002(e)(3) (1988), *repealed by* 49 U.S.C. § 32902(f).

previous language only slightly.<sup>67</sup> Congress also provided that the technical modifications made to the EPCA during its recodification were intended to revise, codify, and enact the law “without substantive change.”<sup>68</sup> Like the CAA, the EPCA includes a broad preemption provision that precludes any state government from adopting or enforcing “a law or regulation *related to* fuel economy standards . . . for automobiles covered by an average fuel economy standard” under the Act.<sup>69</sup> Thus, the relationship between the California waiver, the CAA, and the EPCA governs the preemption issue before the court in *Crombie*.

#### *D. Preemption*

To determine the permissibility of the California waiver provision under the CAA and the “piggyback statute” allowing other states to adopt California’s standards, the *Crombie* court had to consider the possibility of preemption.<sup>70</sup> In the United States, federalism allows both state and federal governments to enact legislation.<sup>71</sup> As a result, there is a possibility that state law could contradict federal law, necessitating a determination of which law will govern in such an instance. The Supremacy Clause of the Constitution created the doctrine of preemption and established that federal law “shall be the supreme Law of the Land.”<sup>72</sup> The doctrine of preemption holds that when a state law impermissibly infringes on federal law, the state law is preempted and is unconstitutional.<sup>73</sup>

If the waiver provisions are afforded the effect of federal law, preemption analysis is unnecessary because federal law is not capable of preemption by other federal law.<sup>74</sup> Preemption is not implicated if federal laws conflict or appear to conflict with each other.<sup>75</sup> If, however, the regulations adopted

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67. 49 U.S.C. § 32902(f). This section states:

When an average fuel economy standard prescribed under this chapter is in effect, a State or political subdivision of a State may not adopt or enforce a law or regulation related to fuel economy standards or average fuel economy standards for automobiles covered by an average fuel economy standard under this chapter.

*Id.*

68. S. REP. NO. 103-265, at 1 (1994); H.R. REP. NO. 103-180, at 1 (1993) *as reprinted in* 1994 U.S.C.C.A.N. 818, 818.

69. 49 U.S.C. § 32919(a) (emphasis added).

70. *Crombie*, 508 F. Supp. 2d at 343.

71. PLATER ET AL., *supra* note 9, at 327.

72. U.S. CONST. art. VI, cl. 2.

73. *Crombie*, 508 F. Supp. 2d 295, 343 (D. Vt. 2007) (citing *Hillsborough County, Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 712 (1985)).

74. *Id.*

75. *Id.* at 344.

through the waiver provisions are considered state law, preemption analysis will determine whether the overlap between the state regulations and the federal law is permissible.

When considering the permissibility of overlap between a state law and a federal law, courts utilize a standard preemption analysis of the issue. In order to be effective in the United States, federalism demands a general presumption against preemption unless it is the clear and manifest purpose of Congress.<sup>76</sup> Thus, when courts consider the possibility of preemption, the touchstone is primarily congressional purpose and intent.<sup>77</sup> Preemption analysis requires consideration of the three general categories of federal preemption: express, implied, and conflict preemption.<sup>78</sup>

### *1. Express Preemption*

Express preemption of state law requires express or explicit preemptive language within the applicable federal statute.<sup>79</sup> If there is an express preemption provision, such as in the CAA and the EPCA, the plain wording of the provision is the first focus of the preemption analysis as it “necessarily contains the best evidence of Congress’ pre-emptive intent.”<sup>80</sup> If the plain language of the statute is insufficient to provide evidence of Congress’s intent, then courts consider the legislative history of the statute.<sup>81</sup> In *Crombie*, the United States District Court for the District of Vermont encountered the issue of express preemption as a result of the CAA clause prohibiting state regulation of automobile emissions pollution and the EPCA clause prohibiting state regulation of fuel economy standards. These clauses must only be reconciled with the waiver provision if it is considered a state regulation.<sup>82</sup>

### *2. Field Preemption*

Field preemption occurs when the scheme of federal regulation is so pervasive as to leave no room for supplementary state regulation.<sup>83</sup> Congress’s intent must be clear and manifest indicating that it intended the federal government to regulate a certain field exclusive of state regulation.<sup>84</sup> The

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76. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

77. *Malone v. White Motor Corp.*, 435 U.S. 497, 504 (1978) (quoting *Retail Clerks Int’l Ass’n Local 1625 v. Schermerhorn*, 375 U.S. 96, 103 (1963)).

78. *Crombie*, 508 F. Supp. 2d at 350, 354-55.

79. 16A AM. JUR. 2D *Constitutional Law* § 243 (2007).

80. *Crombie*, 508 F. Supp. 2d at 351 (quoting *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993)).

81. *Id.* at 353.

82. *Id.* at 351.

83. 16A AM. JUR. 2D, *supra* note 79, § 243.

84. *Crombie*, 508 F. Supp. 2d at 354.

federal regulation of the field must be pervasive and “so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.”<sup>85</sup> Field preemption is based almost entirely on the congressional intent behind the federal regulations.<sup>86</sup> Because both the EPCA and the CAA have express preemption clauses, there is no need to address whether Congress had the requisite intent to preempt state regulations, thus field preemption is the least relevant type of preemption analysis for the CAA and the EPCA.

### 3. Conflict Preemption

Even if the waiver provisions are not found to be expressly preempted by the EPCA, courts could find an impermissible conflict between the regulations under the California waiver and the federally mandated fuel economy standards. Conflict preemption occurs “where either (a) compliance with both state and federal law is impossible, or (b) a state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”<sup>87</sup>

Conflict preemption operates similarly to implied preemption, as neither requires express statutory language to establish preemption.<sup>88</sup> In order to find that a state law impermissibly conflicts with federal law, the conflict must exhibit more than mere tension or possession of different objectives.<sup>89</sup> The presumption against preemption requires that courts find an actual conflict that would make it impossible to satisfactorily comply with both statutes.<sup>90</sup> Thus, for a court to find that the waiver provisions impermissibly conflict with the federal statutes, the conflict preemption analysis must reveal that the waiver provisions and the fuel economy standards cannot coexist without impeding congressional objectives.<sup>91</sup>

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85. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (citing *Hines v. Davidowitz*, 312 U.S. 52 (1941)).

86. PLATER ET AL., *supra* note 9, at 328.

87. 16A AM. JUR. 2D, *supra* note 79, § 243; *see also Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 492 (1987); *Hillsborough County, Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 713 (1985).

88. 16A AM. JUR. 2D, *supra* note 79, § 243.

89. *Crombie*, 508 F. Supp. 2d at 356.

90. *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 884 (2000).

91. *Id.*

### III. Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie

#### A. Background and Procedural History

In 2004, California adopted new comprehensive standards for regulating automobile greenhouse gas emissions and applied to the EPA for a waiver as provided by the CAA.<sup>92</sup> Subsequently, Vermont adopted the same standard and applied for a waiver in 2005.<sup>93</sup> A group of automobile manufacturers and dealerships opposed the adoption of the Vermont regulations and challenged the regulations' validity in *Crombie*.<sup>94</sup> The possibility of individual states adopting increasingly more stringent standards strengthened the automobile industry's desire for one general federal standard, and the industry decided to fight the waiver provisions in court. Similar cases emerged in other states that chose to adopt California's standards.<sup>95</sup> The automobile manufacturers and dealerships<sup>96</sup> alleged that the regulations adopted by Vermont constituted state regulations that impermissibly conflicted with federal law prohibiting state regulation of automobile emissions pollution and state regulation of automobile fuel economy standards.<sup>97</sup> The plaintiffs sued George Crombie, the Secretary of the Vermont Agency of Natural Resources, along with several other environmental officials of the State of Vermont for injunctive relief and a declaratory judgment based on two claims of federal preemption: express and implied preemption under the EPCA and conflict preemption under the amended CAA.<sup>98</sup>

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92. *Crombie*, 508 F. Supp. 2d at 302, 338 (discussing CAL. CODE REGS. tit. 13, § 1961.1 (2007)).

93. *Id.* at 302, 338-39.

94. *Id.* at 300-01.

95. *Id.* at 301 n.3.

96. The plaintiffs are: Green Mountain Chrysler Plymouth Dodge Jeep; Green Mountain Ford Mercury; Joe Tornabene's GMC; Alliance of Automobile Manufacturers; DaimlerChrysler Corporation; and General Motors Corporation. *Id.* at 301 n.1.

97. *Id.* at 301.

98. *Id.* The plaintiffs also alleged violation of the CAA, foreign policy preemption, violation of the dormant commerce clause, and violation of the Sherman Act. *Id.* The claims of violation of the CAA, violation of the dormant commerce clause and violation of the Sherman Act were later dismissed by plaintiffs. *Id.* The foreign policy preemption claim was discussed, but it is not relevant to the specific issues of federal preemption discussed in this note. *Id.* at 392.

Initially, the defendants<sup>99</sup> sought dismissal of the case for lack of subject matter jurisdiction and requested a judgment on the pleadings because the waiver sought by Vermont had not yet been approved by the EPA.<sup>100</sup> The United States District Court for the District of Vermont concluded that there was subject matter jurisdiction and held that the case should proceed under the assumption that the waiver would be granted.<sup>101</sup> If the waiver was not granted following the case, then Vermont's regulation of automobile emissions pollution without an EPA waiver would automatically be preempted as an impermissible state regulation under the CAA.<sup>102</sup> The defendants also asked the court to stay the case pending resolution of a case in California involving the same issues before the court in *Crombie*.<sup>103</sup> Further, the defendants requested another stay of the proceedings pending resolution of *Massachusetts v. EPA* before the United States Supreme Court because it addressed a similar issue as to whether federal automobile emissions pollution standards relating to greenhouse gases conflict with fuel economy standards under the EPCA.<sup>104</sup> Both requests for stays were denied by the United States District Court of the District of Vermont, but because *Massachusetts v. EPA* was decided prior to this court's decision, it ultimately became the foundation for much of the *Crombie* analysis.<sup>105</sup>

#### *B. Decision of the Court*

In *Green Mountain Chrysler Plymouth Dodge v. Crombie*, the United States District court addressed two issues relating directly to the possibility of the Vermont regulations being preempted by federal law. The court first considered whether regulations for automobile emissions pollution under the waiver provision of the CAA were equivalent to federal regulations for the

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99. The defendants are: George Crombie, Secretary of the Vermont Agency of Natural Resources; Jeffrey Wennberg, Commissioner of the Vermont Department of Environmental Conservation; and Richard Valentinetti, Director of the Air Pollution Control Division of the Vermont Department of Environmental Conservation. *Id.* at 295. The defendants-intervenors are: Conservation Law Foundation; Sierra Club; Natural Resources Defense Council; Environmental Defense, Vermont Public Interest Research Group; State of New York; and Denise M. Sheehan, in her official capacity as Commissioner of Environmental Conservation of the State of New York. *Id.*

100. *Id.* at 301.

101. *Id.*

102. *Id.* at 302.

103. *Id.* at 301; *see also* Cent. Valley Chrysler-Jeep, Inc. v. Witherspoon, No. CV F 04-6663 AWI LJO, 2007 WL 135688 (E.D. Cal. Jan. 16, 2007).

104. *Crombie*, 508 F. Supp. 2d at 301; *see also* *Massachusetts v. EPA*, 549 U.S. 497 (2007).

105. *Crombie*, 508 F. Supp. 2d at 307-10.

purpose of preemption analysis.<sup>106</sup> If the waiver was considered equivalent to a federal regulation, it would become part of the “regulatory backdrop against which NHTSA must design maximum feasible fuel economy levels,” and thus, the issue of preemption under the EPCA would be moot.<sup>107</sup>

The court held that “once [the] EPA issues a waiver for a California emissions standard, it becomes a motor vehicle standard of the government, with the same stature as a federal regulation with regard to determining maximum feasible average fuel economy under EPCA.”<sup>108</sup> The regulations on fuel economy set by the EPCA and the regulations on automobile emissions pollution were intended to coexist and occupy overlapping fields of regulation.<sup>109</sup> Referencing *Massachusetts v. EPA*, the court cited repeated congressional recognition of the interplay between fuel economy and automobile emissions pollution and decided that Congress could not have intended that an EPA granted waiver operate as anything less than a federal regulation.<sup>110</sup>

Because the court decided the waiver constituted a federal regulation, the court considered a second issue: whether the state regulation was preempted by the EPCA or CAA. This issue was settled because *Massachusetts v. EPA* established that automobile emission pollution regulations of the CAA exist concurrently and overlap with the EPCA fuel economy standards without preemption of either federal law.<sup>111</sup> Nevertheless, the court addressed the second issue for two reasons: “one, the express language of the EPCA’s preemption provision appears literally to forbid the enactment or enforcement of Vermont’s [greenhouse gas (GHG)] regulation; and two, Plaintiffs have alleged that the GHG regulation actually conflicts with the EPCA’s fuel economy standards.”<sup>112</sup> The court then applied the standard preemption analysis to Vermont’s automobile emissions pollution regulations to determine whether the regulation would be found preempted if on appeal the regulation was considered a state regulation rather than an “other motor vehicle standard[] of the Government.”<sup>113</sup>

Express preemption is the most obvious preemption issue applicable to the Vermont automobile emissions pollution regulations because the EPCA

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106. *Id.* at 343.

107. *Id.* at 344.

108. *Id.* at 347.

109. *Id.* at 344.

110. *Id.* (citing *Massachusetts v. EPA*, 549 U.S. 497 (2007)).

111. *Id.*

112. *Id.* at 350.

113. *Id.* at 344 (quoting 49 U.S.C. § 32902(f) (2000), requiring NHTSA consideration of other federal standards when setting maximum feasible average fuel economy standards).

includes a statutory preemption clause. Beginning with the presumption against preemption, the court acknowledged that the “regulation of air pollution from mobile sources was traditionally a state responsibility.”<sup>114</sup> The overlapping spheres of authority involved in cooperative federalism required finding that the Vermont regulation could not be preempted unless Congress had the “clear and manifest purpose to do so.”<sup>115</sup> The first step of the court’s analysis of the preemption issue focused on the plain language of the express preemption provision within the EPCA.<sup>116</sup>

The preemption provision at issue prohibits any state from establishing fuel economy standards or any standards “related to” fuel economy standards.<sup>117</sup> Although the emission standards may affect fuel economy, they are not primarily fuel economy standards.<sup>118</sup> The court found that there was a correlation, but the fact that manufacturers may have to improve fuel economy to comply with the standard does not per se convert the standard into a fuel economy regulation.<sup>119</sup> There are alternatives for complying with the standard, such as alternative fuels, new technology, and the ability to purchase credits from other automobile makers who exceed the goals set by the regulation.<sup>120</sup> The court concluded that there is no persuasive evidence that the “regulation is a de facto fuel economy standard.”<sup>121</sup>

Additionally, the court reasoned that the regulation is not “related to” fuel economy within the meaning of the statute because such an interpretation violates congressional intent.<sup>122</sup> Recognizing the need to limit “related to” in some reasonable manner, the court analyzes the EPCA and the waiver provisions’ underlying objectives.<sup>123</sup> The court determined that the EPCA was enacted as an energy conservation statute without independent environmental significance outside of the energy crisis.<sup>124</sup> The preemption clause was included to achieve uniformity with a national standard for fuel economy standards.<sup>125</sup> The automobile emissions pollution regulations adopted under the California waiver provisions are primarily environmental legislation aimed at reducing smog and the emission of greenhouse gases that cause global

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114. *Id.* at 350.

115. *Id.* at 351.

116. *Id.*

117. 49 U.S.C. § 32919(a).

118. *Crombie*, 508 F. Supp. 2d at 352.

119. *Id.*

120. *Id.* at 342.

121. *Id.* at 353.

122. *Id.* at 353-54.

123. *Id.*

124. *Id.*; *see also* 42 U.S.C. § 6201 (2000).

125. *Crombie*, 508 F. Supp. 2d at 354.

warming.<sup>126</sup> The court concluded that Congress realized there was a “backdrop of other regulations that affected motor vehicles and could have an effect on fuel economy” and chose to enact the EPCA regardless.<sup>127</sup> Prior to recodification, language in the EPCA specifically included regulations adopted in California through the CAA waiver as regulations to be considered when setting CAFE standards.<sup>128</sup> Although the language was removed during recodification, Congress specifically stated that the recodification should make no substantive changes in the statute.<sup>129</sup> The combination of these factors led the court to conclude that Congress had not expressly preempted the California waiver regulations through either the CAA or the EPCA.<sup>130</sup>

The court then considered the possibility of field preemption and quickly concluded that there was no clear or manifest intent of Congress to occupy the area of automobile emission regulation exclusively.<sup>131</sup> In *Massachusetts v. EPA*, the United States Supreme Court held that the regulation of greenhouse gas emissions from automobiles is not reserved exclusively for the United States Department of Transportation through the EPCA.<sup>132</sup> Carbon dioxide and greenhouse gases qualify as pollutants that the EPA is required to regulate under the CAA in order to protect public health and welfare.<sup>133</sup> Consequently, the *Crombie* court concluded that “the Congressional regulatory scheme to improve fuel economy does not express so dominant or pervasive a federal interest that EPA-approved state regulation is precluded.”<sup>134</sup>

The court then addressed the applicability of conflict preemption between state regulations under the waiver and the objectives of the EPCA.<sup>135</sup> The waiver regulations would be impermissible through conflict preemption if they conflict seriously with the EPCA or stand “as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”<sup>136</sup> Conflict preemption requires finding more than mere tension between legislation and more than different objectives; it requires an actual intrusion on congressional objectives by the state law.<sup>137</sup> The plaintiffs in

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126. *Id.* at 370 n.76.

127. *Id.* at 354.

128. *Id.*

129. S. REP. NO. 103-265, at 1 (1994); H.R. REP. NO. 103-180, at 1 (1993) *as reprinted in* 1994 U.S.C.C.A.N. 818, 818.

130. *Crombie*, 508 F. Supp. 2d at 354.

131. *Id.* at 355.

132. *Id.* (citing *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007)).

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.* (citing *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 492 (1987)).

137. *Id.* at 356.

*Crombie* argued that the recently adopted Vermont regulations frustrated congressional intent to maintain a single, nationwide fuel economy standard; that it negatively impacts the automobile industry, consumer choice, traffic safety and employment; and that the EPA's waiver process would not ensure the absence of a conflict with the EPCA objectives.<sup>138</sup> The court addressed each of these claims and found that there was no impermissible conflict between the state law and the EPCA's purpose.<sup>139</sup>

The *Crombie* court considered the possibility that the regulations under the CAA waiver prevented a nationwide fuel economy standard as intended by Congress through the EPCA.<sup>140</sup> The legislative history of both the EPCA and the CAA indicate that Congress recognized the existing statutory overlap and intended for the legislation to work concurrently, as evidenced by the directive under the EPCA for the NHTSA to consider "other motor vehicle standards of the Government" when setting its fuel economy standards.<sup>141</sup> Although fuel economy and emission regulations may intersect in many ways, the NHTSA and the EPA have recognized the overlap from the beginning and have consistently worked together to analyze the effects of emissions control standards and fuel economy standards.<sup>142</sup> The legislative history, the congressional acknowledgment of the possibility of overlap, and the EPA's history of working together with the NHTSA to develop standards for emissions and fuel economy led the court to find that the plaintiffs had failed to prove conflict between a congressional intent to maintain a national fuel economy standard and the automobile emission pollution regulations enacted under the CAA waiver.<sup>143</sup>

The majority of the evidence produced at trial related to the plaintiffs' contention that the regulations adopted under the CAA waiver conflicted impermissibly with the technological feasibility and economic practicability required under the EPCA.<sup>144</sup> The court in *Crombie* evaluated the expert testimony produced by both the automobile industry and the state.<sup>145</sup> Both sides presented the history of technology-forcing regulations, including successes and failures.<sup>146</sup> The abundant materials produced for the court's consideration were "detailed, technical and complex, and addressed the

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138. *Id.*

139. *Id.* at 398.

140. *Id.* at 356.

141. *Id.* (quoting 49 U.S.C. § 32902(f) (2000)).

142. *Id.*

143. *Id.* at 356-57.

144. *Id.* at 356; *see supra* Part II.C.

145. *Crombie*, 508 F. Supp. 2d at 357.

146. *Id.* at 358.

advantages and disadvantages of the regulation, and its impact on consumers, workers, drivers and passengers, specific companies, the automobile industry as a whole, the international community, and the planet.”<sup>147</sup> After a lengthy and in-depth examination of the evidence presented, the court concluded that the plaintiffs failed to carry their burden to show that compliance with the regulation adopted by Vermont is unfeasible and that it impermissibly conflicts with the factors mandated by the EPCA.<sup>148</sup> The court concluded that consumers, the automobile industry, and the economy as a whole would adapt to changes resulting from the adopted California regulations and held that the adopted regulations did not impermissibly conflict with the EPCA.<sup>149</sup> Therefore, the court held that federal law did not preempt regulations adopted under the CAA waiver provisions, regardless of whether the regulations are considered federal or state law.<sup>150</sup>

#### *IV. Analysis*

The significance of the *Crombie* decision is twofold. First, by holding that CAA waivers constitute federal law, the court supports a creative and powerful tool that Congress provided to states within the cooperative federalism system of automobile air pollution regulation. Second, the court correctly applied a thorough preemption analysis and concluded that the regulations adopted by Vermont under the CAA waiver provision are not preempted, regardless of whether they are considered federal law or EPA-approved state law. The Vermont court in *Crombie*<sup>151</sup> wisely relied heavily on congressional intent and the plain language of the CAA and the EPCA in a persuasive decision capable of withstanding the in-depth scrutiny of appellate review.

##### *A. The Success of Automobile Air Pollution Regulation in the Cooperative Federalism System*

The holding in *Crombie* exemplifies the best possible arrangement of a federally mandated minimum regulation with a strong alternative reserved by the states to “supplement or exceed federally established goals or standards.”<sup>152</sup> This cooperative federalism has proven to be the most successful method for handling environmental regulation. Cooperative federalism enables both the

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147. *Id.* at 357.

148. *Id.* at 392.

149. *Id.* at 398-99.

150. *Id.* at 398.

151. 508 F. Supp. 2d 295.

152. Robert L. Glicksman, *From Cooperative to Inoperative Federalism: The Perverse Mutation of Environmental Law and Policy*, 41 WAKE FOREST L. REV. 719, 721 (2006).

federal and state governments to play important roles. The federal government typically retains primary standard-setting authority for environmental regulations, and the role of “implementing the federal standards or in supplementing the federal regulatory initiatives” remains with the states.<sup>153</sup> While the federal government establishes a uniform, national standard, most major environmental statutes explicitly reserve authority for states to adopt more stringent standards than the federal minimum.<sup>154</sup> This structure forces each state to provide a certain degree of environmental regulation while encouraging states to take further protective action through the establishment of stricter standards.<sup>155</sup> Through cooperative federalism, federal standards serve as a floor, rather than a ceiling.<sup>156</sup> The federal floor prevents states from “compet[ing] with one another to attract new business by adopting increasingly lenient controls on activities with potentially damaging environmental effects.”<sup>157</sup> Conversely, the lack of a federal ceiling preserves state autonomy by providing states with some discretion in how to strengthen environmental protection within their borders.<sup>158</sup> There are several reasons that cooperative federalism is the preferred method of management of environmental legislation, but these reasons are accompanied by flaws specific to the system.<sup>159</sup>

One major problem with cooperative federalism is that the federal government establishes the automobile pollution standards with little input from the states.<sup>160</sup> The federal standards will only be as strict and protective of the environment as the current EPA administration wants the standards to be.<sup>161</sup> Consequently, environmental regulation largely depends upon the EPA’s willingness to regulate effectively, which often depends more on political pressure than the science of environmental protection.<sup>162</sup> For instance, many criticized the EPA during the presidency of George W. Bush for its reluctance to regulate industry and protect the environment effectively—with some critics claiming the EPA was in fact working to protect industry and

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153. *Id.* at 740.

154. *Id.* at 743.

155. *Id.*

156. *Id.*

157. *Id.* at 740.

158. *Id.* at 743.

159. Scott Josephson, *This Dog Has Teeth . . . Cooperative Federalism and Environmental Law*, 16 *VILL. ENVTL. L.J.* 109, 112-14 (2005).

160. *Id.* at 114-15.

161. Glicksman, *supra* note 152, at 740.

162. Chris Mhyrom, *From the Trenches: What Hath Bush Wrought for the Environmental Lawyer in Private Practice? Or Much Can-Do About Nothing*, 25 *W. NEW ENG. L. REV.* 29, 40 (2003).

deregulate environmental protection.<sup>163</sup> One frequently cited example is the EPA's refusal to regulate greenhouse gases despite the scientifically supported causal connection with global warming.<sup>164</sup> The refusal compelled a group of states, local governments, and private organizations to sue the EPA in *Massachusetts v. EPA* to force the Bush administration to regulate greenhouse gases under the CAA.<sup>165</sup> Although the states were successful, the victory does not ensure that the EPA will set standards that the states consider sufficient.<sup>166</sup> In many instances, federal pollution control laws "put the federal government . . . in the driver's seat" when setting national environmental policy.<sup>167</sup> *Crombie* supplies states with a mechanism to regain some control from the federal government through the waiver provisions of the CAA.

Cooperative federalism requires that the federal government adopt uniform national minimum environmental standards to prevent states from adopting increasingly more lenient regulations because of political pressure from industry.<sup>168</sup> The national minimum "[guarantees] a minimum level of environmental protection to all Americans, regardless of their state of residence, and a minimum level of environmental restraints for businesses, regardless of where they decide to locate or relocate."<sup>169</sup> But many states are demanding more than the minimum environmental protection guaranteed by the national standard as they face the potential effects of global warming on their states and citizens.<sup>170</sup> *Crombie* protects the ability of states to get more than the minimum guarantee by utilizing the CAA waiver provisions. The decision acknowledges that Congress intended for California to establish stricter standards than the federal standards in order to address a particular problem with automobile emission pollution.<sup>171</sup> Applying congressional intent to the clear language of both the CAA and the EPCA, the court correctly concludes that Congress created the waiver provisions as a creative solution

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163. *Id.*; see also Patrick Parenteau, *Anything Industry Wants: Environmental Policy Under Bush II*, 6 VT. J. ENVTL. L. 2 (2004).

164. Ann E. Carlson, *Federalism, Preemption, and Greenhouse Gas Emissions*, 27 ENVIRONS ENVTL. L. & POL'Y J. 281, 282 (2003).

165. 549 U.S. 497, 506 (2007). Vermont was one of the twelve state plaintiffs in this case, along with California, Connecticut, Illinois, Maine, Massachusetts, New Jersey, New Mexico, New York, Oregon, Rhode Island, and Washington. *Id.* at 505 n.2.

166. Josephson, *supra* note 159, at 124.

167. Glicksman, *supra* note 152, at 740.

168. *Id.* at 736.

169. *Id.*

170. *Id.* at 779-80.

171. *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F. Supp. 2d 295, 344 (D. Vt. 2007).

to the possibility of an insufficient federal standard.<sup>172</sup> California may continue to enact the strong and innovative environmental protection laws that earned them a special waiver provision initially, and other states will benefit from California's leadership through the ability to adopt California's more stringent standard. The court's decision in *Crombie* empowers those states who seek more environmental regulation of automobile emission pollution to gain stricter environmental policy without creating the possibility of fifty different standards emerging across the United States.

In the alternative, states are not required to exceed the federal minimum standard by adopting California's more stringent, environmentally conscious approach. The waiver provision is merely an option for those states that desire more environmental protection than the nationally mandated minimum regulations. California chooses to enact strict legislation to address specific environmental problems resulting from its high number of motor vehicles and high levels of greenhouse gas emissions. On the opposite end of the spectrum, the less populous State of Vermont chooses to adopt the strict standards as part of a comprehensive program to reduce Vermont's contribution to global warming despite already capturing more greenhouse gases than it produces and having a relatively light "global environmental footprint."<sup>173</sup> The reason for choosing to adopt the waiver may vary considerably, as it does for California and Vermont, but it ultimately remains a choice for states to make individually based on local environmental issues, local political ideals, and without pressure from the national government. In order for cooperative federalism to be successful, states need some input in the environmental policy of their state.<sup>174</sup> The waiver, as interpreted by the court in *Crombie*, provides the necessary opportunity for states to seek higher levels of environmental protection without forcing states that want or need less protection to do more than the federally required minimum—cooperative federalism operating at its best.

*B. CAA Waivers Are Not Preempted When the Waivers Constitute Federal or State Law*

In order to uphold the waivers as important mechanisms of cooperative federalism, the *Crombie* court addressed the automobile industry's argument that the waivers were preempted by the EPCA both by the express terms of its

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172. *Id.*

173. James H. Douglas, Governor, Vt., Third Inaugural Address, The Vermont Way Forward (Jan. 4, 2007), available at <http://governor.vt.cdc.nicusa.com/sites/gov/files/speeches/Inaugural-Address-2007.pdf>; see *Crombie*, 508 F. Supp. 2d at 339.

174. Josephson, *supra* note 159, at 124-25.

preemption provision and by implication.<sup>175</sup> To determine which type of preemption applied to the waivers, the court in *Crombie* initially concluded that the CAA waivers constituted federal law under the CAA and relative to the EPCA.<sup>176</sup> Considering the waivers as federal law possibly preempted by other federal law, the court's preemption analysis found insufficient conflict to consider the waiver preempted by the language of the EPCA.<sup>177</sup> Despite holding that the waivers constituted federal law, the court continued the preemption analysis by considering what the status of the waiver would be if it was considered a state law.<sup>178</sup> Once again, the court found that the waiver, even if a state regulation, was not preempted by the EPCA.<sup>179</sup> From both perspectives, the decision relied heavily on the congressional intent behind the CAA and the EPCA, along with the recent Supreme Court decision of *Massachusetts v. EPA*, to uphold the waiver and refuse to preempt the legislation unnecessarily because of inevitable overlap.

*1. Unavoidable Interplay Between the CAA's Emissions Regulations and the EPCA's Fuel Economy Standards*

Based on the reasons for the waiver and the reasons for the CAA, the *Crombie* court concluded that Congress "could not have intended that an EPA-approved emissions reduction regulation . . . not have the force of a federal regulation."<sup>180</sup> When Congress initially granted the CAA waiver, it was given specifically to California alone because of the state's "uniquely severe air pollution problems and a burgeoning number and concentration of automobiles" along with its history of setting strict standards for the automobile industry.<sup>181</sup> As Congress extended the waiver to other states and began to consider the relationship between the waivers and other federal statutes, Congress acknowledged the high probability of conflict between emission regulations and fuel economy.<sup>182</sup> Despite the potential for conflict, Congress continued to strengthen the waiver giving "California the broadest possible discretion" in setting regulations and encouraging the state to maintain its position as a pioneer in automobile emission pollution

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175. *Crombie*, 508 F. Supp. 2d at 343.

176. *Id.* at 343-44, 347.

177. *Id.* at 345, 350.

178. *Id.* at 350.

179. *Id.* at 398.

180. *Id.* at 347.

181. *Id.* at 344 (citing 113 CONG. REC. 30,946 (1967) (remarks of Rep. Bell); 113 CONG. REC. 30,950 (1967) (remarks of Rep. Corman)).

182. *Id.* at 346, 350.

regulation.<sup>183</sup> Following the enactment of the EPCA, Congress recognized the potential conflict between automobile emission regulations and fuel economy, but reaffirmed its commitment to reducing emissions particularly through continuing to strengthen the California waiver provisions.<sup>184</sup> Preemption of federal law by another federal law is only available when the two laws conflict so entirely as to make effective coexistence impossible.<sup>185</sup> The *Crombie* court examined the history of the waiver provisions and the history of the EPCA and made the only logical conclusion available: Congress intended both pieces of legislation to serve a particular purpose despite the possible overlap.

In addition to Congress's repeated acknowledgement of the possible overlap between automobile emission regulation and fuel economy, the court examined the overall construction of the EPCA to support its finding of no preemption.<sup>186</sup> The EPCA was enacted in response to the energy crisis of the 1970s, and its objective remains to improve the energy efficiency of the United States with particular emphasis placed on fuel economy of motor vehicles.<sup>187</sup> While the EPCA has no requirement to consider environmental factors when setting fuel economy standards, there is a general requirement that the NHTSA take into consideration other motor vehicle standards of the federal government when setting the fuel economy standards.<sup>188</sup> Consequently, the court interpreted this mandate to mean that Congress intended the motor vehicle regulations under the CAA to be considered, along with any regulations adopted under the CAA waiver provisions, rather than giving the EPCA an explicit environmental objective.<sup>189</sup> The NHTSA has historically considered regulations created through the CAA waiver as "other motor vehicle standards of the Government" under the language of the EPCA, and the court found no reason why the new regulations involving greenhouse gas emissions should be treated any differently.<sup>190</sup> Thus, if the regulations under the CAA waiver provisions are found to be preempted by the EPCA, it must be because they are impermissible state regulations.

## *2. Even as State Law, the Provisions Are Not Preempted by the EPCA*

After concluding that the overlap between the waiver provisions and the EPCA is permissible as between federal regulations, the court in *Crombie*

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183. *Id.* at 345.

184. *Id.* at 346.

185. *Id.* at 343-44, 350.

186. *Id.* at 345-46.

187. *Id.* at 305-06.

188. *Id.* at 346.

189. *Id.* at 347.

190. *Id.* at 346.

extended its analysis to address the preemption possibility if the adopted regulations under the CAA waiver are considered state law by a reviewing court.<sup>191</sup> Interestingly, analysis of the waiver provisions as constituting state law was not drastically different from the analysis of the provisions as constituting federal law. The court once again looked to legislative history and congressional intent as its touchstone in determining whether there was sufficient reason to preempt the regulations adopted under the waiver.<sup>192</sup> And once again, the court reached the conclusion that there is no impermissible conflict that justifies preempting the regulations adopted by Vermont.<sup>193</sup> Neither the EPCA's plain language, nor its legislative history, indicates any express preemption of the adopted automobile emission regulations.<sup>194</sup> States are expressly prohibited from passing any law "related to" fuel economy standards, but the court prudently limited its interpretation of "related to" rather than "ignore decades of EPA-issued and approved regulations that also can be said to 'relate to' fuel economy."<sup>195</sup> The express preemption clause within the EPCA governs standards that are solely related to fuel economy with no other objective, and the purpose of regulating automobile emission pollution is not the type of regulation intended to be preempted by the EPCA.<sup>196</sup>

The plaintiffs' arguments for field preemption and conflict preemption were equally unsuccessful.<sup>197</sup> Field preemption was easily dismissed because the CAA waivers under the EPA and the EPCA have entirely distinguishable objectives, neither of which interfere with "so dominant or pervasive a federal interest" that the other is precluded.<sup>198</sup> The regulations adopted under the CAA waiver also survive the court's thorough conflict preemption analysis.<sup>199</sup> Along with the many rulings of fact, the court considered the possibility of irreconcilable conflict between Vermont's adopted regulations under the CAA waiver and a federal fuel economy standard.<sup>200</sup> And once again, the legislative history provided the support necessary for the adopted regulations under the CAA waiver to avoid preemption. Congress designed the CAA waiver provisions to "foster California's role as a laboratory for motor vehicle

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191. *Id.* at 350.

192. *Id.*

193. *Id.* at 354.

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.* at 355-57.

198. *Id.* at 355.

199. *Id.* at 392.

200. *Id.* at 356.

emission control, in order ‘to continue the national benefits that might flow from allowing California to continue to act as a pioneer in this field.’<sup>201</sup>

By giving this opportunity to California alone, the CAA effectively preempts forty-nine states from setting their own unique standards and establishes a maximum of two standards for automobile emission pollution regulation regardless of how many states choose to adopt the California regulations.<sup>202</sup> Although there are two possible standards for automobile emission pollution regulation, the national fuel economy standard remains the sole fuel economy standard as there is no provision within the EPCA allowing any state to set its own fuel economy standard, and the court found that the waiver under the CAA does not qualify or even “relate to” a fuel economy standard.<sup>203</sup> Ultimately, without finding an impermissible conflict with the EPCA, the court in *Crombie* concluded that the regulations adopted by Vermont under the CAA waiver provisions avoid preemption in any form.<sup>204</sup>

#### V. Conclusion

Although the future of *Green Mountain Chrysler Plymouth Dodge Jeep vs. Crombie* and the CAA waiver’s status to Vermont as well as other states remains uncertain, the significance of the district court’s decision quickly became apparent. Following the Vermont court’s decision, the California case addressing preemption of the regulations adopted under the CAA waiver relied heavily on the *Crombie* court’s reasoning and analysis and reached the same conclusion.<sup>205</sup> While it is possible, if not likely, that the automobile industry will appeal the decisions in both Vermont and California, the *Crombie* decision provides a persuasive and relevant precedent. In the early litigation of an issue that has the potential to reach the United States Supreme Court, Vermont, a state capturing more greenhouse gases than it produces and with fewer registered motor vehicles than any other state, established itself as a forerunner in the growing response to global warming and proved ready to actively participate in the cooperative federalism of environmental regulation.<sup>206</sup> While this may be only the beginning of an extended legal

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201. Ashley Morris Bale, *The Newest Frontier in Motor Vehicle Emission Control: The Clean Fuel Vehicle*, 15 VA. ENVTL. L.J. 213, 222 (1995).

202. Carlson, *supra* note 164, at 311.

203. *Crombie*, 508 F. Supp. 2d at 354.

204. *Id.* at 398.

205. Cent. Valley Chrysler-Jeep, Inc. v. Goldstene, 529 F. Supp. 2d 1151 (E.D. Cal. 2007).

206. Michael Regan, *Climate Battle Reaches Vermont: Suit Pits Automakers, Environmentalists*, HARTFORD COURANT (Conn.), Mar. 23, 2007, available at 2007 WLNR 5504324.

battle, *Crombie* offers Vermont and other states the power to steer environmental policy and forces a lax EPA into the backseat.

*Sarah E. Leatherwood*