



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
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CONSENT
August 19, 2008

Honorable Mayor and
Members of the City Council

Title: Authorization to Pursue Amicus Curiae Participation in Support of State of California in *State of California v. U.S. Environmental Protection Agency*

Location/Council District: Citywide.

Recommendation: Adopt a **Resolution** authorizing the City Attorney to pursue *amicus curiae* participation in support of State of California's Petition for Review in *State of California et al. v. U.S. Environmental Protection Agency* (United States Court of Appeals for the District of Columbia Circuit, Case No. 08-1178).

Contact: Eileen Teichert, City Attorney, (916) 808-5346; Matthew Ruyak, Supervising Deputy City Attorney, (916) 808-5346.

Presenters: None

Department: City Attorney

Organization No: 0500

Description/Analysis

Issue: On June 17, 2008, the City Council authorized the City Attorney to join the *amicus curiae* brief of the National Association of Clean Air Agencies (NACAA) in support of the State of California in *State of California et al. v. U.S. Environmental Protection Agency et al.* case before the U.S. Court of Appeals for the Ninth Circuit. (Resolution No. 2008-427).

The Ninth Circuit court case involved a Petition for Review filed by the State of California of the U.S. Environmental Protection Agency's (EPA) denial of California's request for a waiver of federal preemption for California's regulations to control greenhouse gas emissions from new motor vehicles. The State also filed a similar challenge against the EPA in the U.S. Court of Appeals for the District of Columbia (D.C.) Circuit in *State of California et al. v. U.S. Environmental Protection Agency*, Case No. 08-1178. The D.C. Circuit court case was stayed pending resolution of the Ninth Circuit court case to avoid duplicative litigation.

On July 25, 2008, the Ninth Circuit issued an order dismissing the case for lack of

jurisdiction over the matter. As a result, the proceeding has now shifted to the D.C. Circuit Court of Appeals. This report recommends that the City Council authorize the City Attorney to pursue *amicus curiae* participation in support of the State of California's Petition for Review in the case that is now before the D.C. Circuit Court of Appeals.

Policy Considerations: The D.C. Circuit Court of Appeals' decision has the potential to affect the ability of the State of California to regulate automobile tailpipe emissions. If the court denies the State's petition, the State will not be able to impose emission standards stricter than those mandated by the federal government, as it has done for the past three decades; such a decision could adversely impact the air quality of Sacramento. If the court grants the State of California's petition, the State will be able to continue its historical practice of implementing air quality regulations more stringent than those established by the federal government.


Environmental Considerations: Authorizing participation as *amicus curiae* in support of the State of California's Petition for Review does not constitute a "project" that requires environmental review under the California Environmental Quality Act.

Rationale for Recommendation: Authorization to pursue *amicus curiae* participation is requested in order to inform the U.S. Court of Appeals for the D.C. Circuit that the City supports the State of California's vanguard efforts to enforce strict greenhouse gas emission standards.

Financial Considerations: Participation as *amicus curiae* has no financial impact on the City.

Emerging Small Business Development (ESBD): Not applicable, as this item does not relate to the procurement of goods or services.

Respectfully Submitted by:


EILEEN M. TEICHERT
City Attorney

Recommendation Approved:


RAY KERRIDGE
City Manager

for

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Attachment 1**Background Information:**

The federal Clean Air Act authorizes the U.S. Environmental Protection Agency (EPA) to regulate tailpipe emissions from new motor vehicles. California has authority to set its own emission standards because of the state's long-standing, severe air pollution problems. However, California must first obtain a waiver of preemption from the EPA before it may enforce its own emissions regulations.

On December 19, 2007, the EPA Administrator, Stephen Johnson, sent a letter to Governor Schwarzenegger, informing him the EPA would deny the state's request for a waiver of preemption of the state's greenhouse gas emissions controls. The state's regulations would require reductions in fleet-average greenhouse gas emissions, including carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), and hydrofluorocarbons (HFCs), for most new passenger motor vehicles sold in California, beginning with the 2009 model year.

On January 2, 2008, the State of California filed a Petition for Review in the Ninth Circuit Court of Appeals, seeking review of the EPA Administrator's denial of the waiver request. Councilmember McCarty requested the City Attorney's Office pursue *amicus curiae* participation in the case. The Deputy Attorney General handling this matter on behalf of the State of California recommended the City contact the National Association of Clean Air Agencies (NACAA) to join in its *amicus curiae* brief. NACAA represents air pollution control agencies in 53 States and territories and more than 165 major metropolitan areas across the United States. On June 17, 2008, the City Council authorized the City Attorney to join the *amicus curiae* brief of NACAA in support of the State of California's Petition for Review in the Ninth Circuit Court of Appeals.

In the meantime, the EPA published its formal Notice of Decision denying California's waiver request in the Federal Register on March 6, 2008. The Notice of Decision included language indicating that the decision was a final action of national applicability. Section 307(b) of the Clean Air Act requires a legal challenge to final agency actions that are nationwide in scope to be filed in the D.C. Circuit Court of Appeals. In order to preserve its claim, the State of California filed a similar Petition for Review in the D.C. Circuit Court of Appeals challenging the EPA's Notice of Decision published in the March Federal Register. The D.C. Circuit court case, however, was stayed pending resolution of the case before the Ninth Circuit court to avoid duplicative litigation.

On July 25, 2008 the Ninth Circuit issued an order dismissing the case for lack of jurisdiction over the matter, explaining that the letter from the EPA administrator was not, itself, a reviewable final action subject to judicial review. As a result, the proceeding has now shifted to the D.C. Circuit Court of Appeals.

RESOLUTION NO. 2008-XXXX

Adopted by the Sacramento City Council

August 19, 2008

Authorization to Pursue *Amicus Curiae* Participation in Support of State of California in *State of California v. U.S. Environmental Protection Agency*

BACKGROUND

- A. On June 17, 2008, the City Council authorized the City Attorney to join the *amicus curiae* brief of the National Association of Clean Air Agencies (NACAA) in support of State of California in *State of California et al. v. U.S. Environmental Protection Agency et al.* case before the U.S. Court of Appeals for the Ninth Circuit. (Resolution No. 2008-427). The case involved a Petition for Review filed by the State of California of the U.S. Environmental Protection Agency's (EPA) denial of California's request for a waiver of federal preemption of California's greenhouse gas emissions controls.
- B. The State of California also filed a similar challenge to the EPA's decision in the U.S. Court of Appeals for the District of Columbia Circuit (*State of California et al. v. U.S. Environmental Protection Agency*, Case No. 08-1178). The D.C. Circuit Court of Appeals case was stayed pending resolution of the Ninth Circuit court case to avoid duplicative litigation.
- C. On July 25, 2008, the Ninth Circuit issued an order dismissing the case for lack of jurisdiction over the matter. As a result, the proceeding has now shifted to the U.S. Court of Appeals for the D.C. Circuit.
- D. The D.C. Court of Appeals' decision has the potential to affect the ability of the State of California to regulate automobile tailpipe emissions. A decision against the State could adversely impact the air quality of Sacramento.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Attorney is authorized to pursue *amicus curiae* participation in support of the State of California's Petition for Review in *State of California et al. v. U.S. Environmental Protection Agency* (United States Court of Appeals for the District of Columbia Circuit, Case No. 08-1178).