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Karen D. Bettencourt

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**California's Attempt to Remain the Leader in
Environmental Policy: Regulating Carbon Dioxide
Emissions from Vehicles Sold in the Golden State**

Karen D. Bettencourt

Code Sections Affected

Health and Safety Code § 43018.5 (new); § 42823 (amended).
AB 1493 (Pavley); 2002 STAT. Ch. 200.

*"We Californians love our cars. Don't change our cars. Just change the amount of harmful emissions that come from our cars."*¹

I. INTRODUCTION

Reports have shown that the temperature of the Earth has risen about one degree Fahrenheit in the last one hundred years and is still on the rise.² As greenhouse gases, such as carbon dioxide, are emitted into the air, they get trapped in the atmosphere and warm the Earth.³ As the amount of greenhouse gases in the atmosphere increases, the temperature of the Earth will gradually increase with time.⁴ With an increase in the Earth's temperature, the Earth could experience changes in weather, including the intensity and frequency of storms and droughts.⁵ These changes may have an effect on the ability to grow crops and

1. *California Law Will Limit CO₂ Emissions from Cars*, ENV'T NEWS SERVICE, July 22, 2002 [hereinafter *California Law Will Limit CO₂ Emissions*] (quoting California Governor Gray Davis).

2. See Environmental Protection Agency, *EPA Global Warming: Climate: Trends*, at <http://www.epa.gov/globalwarming/climate/trends/index.html> (last updated Aug. 29, 2001) (copy on file with the *McGeorge Law Review*) (stating "that the average land surface temperature has risen 0.45-0.6°C (0.8-1.0°F) in the last century" and that "[g]lobal temperatures are rising.").

3. See Environmental Protection Agency, *EPA Global Warming: Science Frequently Asked Questions: Fundamentals*, at <http://www.epa.gov/globalwarming/faq/fundamentals.html> (last visited Aug. 9, 2002) [hereinafter *EPA Frequently Asked Questions*] (copy on file with the *McGeorge Law Review*) (stating that without greenhouse gases, "our planet would be 60°F colder and uninhabitable.").

4. See CHRISTOPHER B. FIELD ET AL., THE UNION OF CONCERNED SCIENTISTS & THE ECOLOGICAL SOCIETY OF AMERICA, CONFRONTING CLIMATE CHANGE IN CALIFORNIA 5 (Nov. 1999) [hereinafter CONFRONTING CLIMATE CHANGE], available at <http://www.ucsus.org> (stating that "California is likely to see average annual temperatures rise by 3-4° Fahrenheit in the next century" and the world climate future indicates "a globally averaged warming of about 4° F (2° Celsius) by 2100.").

5. Environmental Protection Agency, *EPA Global Warming: Impacts*, at <http://www.epa.gov/globalwarming/impacts/index.html> (last updated Dec. 27, 2001) (copy on file with the *McGeorge Law Review*).

raise livestock.⁶ These changes could also lead to a reduction in energy and fresh water supplies, decreased air quality, and an increase in the number of heat-related deaths.⁷ Already, mountains are losing snowcap and glaciers are melting.⁸ Overall, the effects of global warming could be devastating to both the economy and the environment.⁹ The reality of these concerns has been highly debated.¹⁰ However, it has become widely accepted that global warming does exist, that much of the problem has been caused by humans, and that the problem must be addressed.¹¹

One solution to this potential problem is to reduce the amount of greenhouse gases emitted into the air. The United States leads the world in greenhouse gas emissions.¹² While the United States makes up less than five percent of the world's population, it produces almost a quarter of the world's human-created carbon dioxide pollution.¹³ Behind Texas, California produces the most carbon

6. *Id.*

7. *EPA Frequently Asked Questions*, *supra* note 3; see also Jillian Pannek, *California's Clean Air Bill Passes*, CAL. AGGIE (Davis), July 25, 2002 (stating that "[i]ncreased heat-related deaths, air pollution, loss of water supply from the Sierra snow pack and an increase in forest fires are some of the effects of global warming.").

8. See Fran Pavley, Editorial, *Clean Air Doesn't Necessarily Mean No Choice*, DAILY NEWS OF L.A., July 24, 2002, at N19 (indicating that "Mount Kilimanjaro in Africa has lost [eighty-two] percent of its area since it was first mapped in 1912" and "[t]he rate of melting glaciers in Alaska has almost doubled in the last five years."); see also California Climate Registry, *Climate Change: Climate Change Science*, at <http://www.climateregistry.org/index.php/climatechangescience> (last visited Aug. 9, 2002) (copy on file with the *McGeorge Law Review*) (stating that "[i]n Arctic regions, glaciers are melting and the tundra is thawing").

9. See generally CONFRONTING CLIMATE CHANGE, *supra* note 4 (addressing several devastating impacts that global warming may have on California); see also Jim Sanders, *Governor Gets Auto Emission Measure: California May Become First State to Regulate "Greenhouse Gas" from Cars*, SACRAMENTO BEE, July 2, 2002, at A1 [hereinafter *Governor Gets Auto Emission Measure*] (stating that "[t]hrough greenhouse gases are not believed to be hazardous to breathe, their atmospheric buildup can raise the Earth's temperature and affect sea levels, water supplies, crop production, disease and wildfires"); John Marelus & Michael Gardner, *Davis Signs Landmark Legislation to Combat Global Warming*, COPLEY NEWS SERVICE, July 22, 2002 (stating that if global warming is not controlled, "a slow but significant change in weather patterns could have a devastating effect on the environment and the economy from the snowcapped Sierra peaks to the fertile farmland of the San Joaquin Valley.").

10. ASSEMBLY RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1493, at 3 (July 1, 2002).

11. See *id.* (stating that "the scientific community appears largely to accept that CO₂ emissions are associated with increasing temperatures"); Paul Rogers, *California Governor Signs Automobile Greenhouse Emissions Bill*, SAN JOSE MERCURY NEWS, July 23, 2002 (quoting Sherwood Rowland, a Nobel Prize winner in chemistry and professor at U.C. Irvine, as saying, "Our national policy accepts that global warming is occurring and that mankind is responsible for much of the increase in greenhouse gases"); Environmental Protection Agency, *EPA Global Warming: Science Frequently Asked Questions: In More Detail*, at <http://www.epa.gov/globalwarming/faq/moredetail.html> (last updated May 14, 2001) (copy on file with the *McGeorge Law Review*) (stating that "[c]areful measurements have confirmed that CO₂ is increasing in the atmosphere and that human activities are the primary cause.").

12. See Environmental Protection Agency, *EPA Global Warming: Emissions: Individual Emissions*, at <http://www.epa.gov/globalwarming/emissions/individual/index.html> (last updated Oct. 3, 2001) (copy on file with the *McGeorge Law Review*) (stating that "[t]he U.S. presently emits more greenhouse gases per person than any other country.").

13. 4 FED. ADMIN. PRAC. § 4673 (West 3d ed. 1999)

dioxide emissions in the country.¹⁴ In addition, almost half of California's carbon dioxide pollution comes from cars and small trucks.¹⁵ Chapter 200 is California's attempt to regulate vehicles to achieve less carbon dioxide pollution.¹⁶

Chapter 200 is the first legislation in the United States to regulate emissions of greenhouse gases from vehicles.¹⁷ It follows Congress's failed attempt to increase fuel standards by only a few months.¹⁸ Governor Gray Davis has said that the legislation "put[s] California at the forefront of a worldwide effort to reduce greenhouse gases."¹⁹ The bill requires the California Air Resources Board (ARB) to design and enact regulations to ensure that all automakers that sell vehicles in California reduce the amount of carbon dioxide that is emitted from the fleet of cars that they sell within the state.²⁰

Chapter 200 has been greatly debated, and the debate may not end with its passage.²¹ While most Californians support the bill and the reduction of greenhouse gases from cars and trucks,²² the bill has also been strongly opposed.²³ Automakers and oil companies argue that the legislation will increase costs to consumers, limit consumer vehicle options, and make certain vehicles, such as sports utility vehicles (SUVs) harder to obtain, without making a significant impact on the amount of greenhouse gases in the atmosphere.²⁴ However, environmentalists and supporters of Chapter 200 believe that it will not only help reduce the amount of carbon dioxide emissions, thus decreasing the effects of global warming, but it will do so in a way that will not significantly affect the way that Californians live.²⁵

14. *California Law Will Limit CO₂ Emissions*, *supra* note 1.

15. See Pannek, *supra* note 7 (quoting Craig Noble, the media representative of the bill's sponsor, as saying that "cars and light trucks are responsible for [forty] percent of carbon dioxide pollution").

16. See generally CAL. HEALTH & SAFETY CODE § 43018.5 (enacted by Chapter 200).

17. *War of Words Over Greenhouse Gas Legislation*, 23 CAL. ENVTL INSIDER 6 (May 15, 2002) [hereinafter *War of Words*].

18. Danny Hakim, *At the Front on Pollution*, N.Y. TIMES, July 3, 2002.

19. Dan Walters, *SUVs Face Rocky Road with Davis*, FRESNO BEE, July 25, 2002, at B3 [hereinafter *SUVs Face Rocky Road*] (quoting California Governor Gray Davis).

20. CAL. HEALTH & SAFETY CODE § 43018.5 (enacted by Chapter 200).

21. See *infra* Part IV.E (laying out the debate over Chapter 200).

22. See *California Leads to Cleaner Skies*, DAILY IOWAN, July 10, 2002 (stating that seventy percent of Californians support the bill).

23. See Dan Walters, *All the Hot Air over Global Warming Isn't Coming from Gas-Guzzlers*, SACRAMENTO BEE, July 7, 2002, at A3 [hereinafter *All the Hot Air over Global Warming*] (stating that "[o]ne radio talk show generated so many opposing phone calls to Davis' office . . . that it shut down his phone system.").

24. See *infra* Part IV (analyzing Chapter 200).

25. *Id.*

II. EXISTING LAW

A. Federal Law

In 1970, the Clean Air Act created authority for the Environmental Protection Agency to regulate greenhouse gas emissions.²⁶ However, since California had already set limits on air pollution before the Clean Air Act was passed, the Act enabled California to create tougher auto tailpipe emissions standards than the federal limits.²⁷ California is the only state that is able to set new standards, but once California has set new standards, other states can then choose to adopt those standards.²⁸

B. California Law

The California Climate Action Registry (Registry) was created to, among other things, maintain a record of the amount of certified greenhouse gases, such as carbon dioxide, being produced.²⁹ The record must be made available to the public, unless a member of the Registry has determined that a portion of a specific record should remain confidential.³⁰ Then, according to the California Public Records Act, any of those records can be inspected by the public, unless specifically prohibited by that Act.³¹

III. CHAPTER 200

Chapter 200 requires automakers to reduce greenhouse gases, such as carbon dioxide, in their fleet of cars, trucks, and SUVs sold in California.³² The reductions will apply to the manufacturer's fleet average, not to each individual car.³³

Chapter 200 requires that the ARB "develop and adopt regulations that achieve the maximum feasible and cost-effective reduction of greenhouse gas emissions"³⁴ in all motor vehicles sold in California.³⁵ The regulations must be as

26. See generally 42 U.S.C.A. §§ 7401-7627 (West 1995 & Supp. 2002) (comprising the provisions of the federal Clean Air Act).

27. 42 U.S.C.A. § 7543; *California Law Will Limit CO₂ Emissions*, *supra* note 1.

28. 42 U.S.C.A. § 7543; see also *California Law Will Limit CO₂ Emissions*, *supra* note 1 (stating that many states, including New York, Massachusetts, Maine, and Vermont, have chosen to do so).

29. CAL. HEALTH & SAFETY CODE § 42823(f) (West Supp. 2002).

30. *Id.*

31. CAL. GOV'T CODE § 6253 (West Supp. 2003).

32. CAL. HEALTH & SAFETY CODE § 43018.5 (enacted by Chapter 200).

33. *Id.*; *California Law Will Limit CO₂ Emissions*, *supra* note 1.

34. CAL. HEALTH & SAFETY CODE § 43018.5(a), (i)(2)(A)-(B) (enacted by Chapter 200) (stating that "[m]aximum feasible and cost-effective reduction of greenhouse gas emissions" means that the ARB determines that the regulations are "[c]apable of being successfully accomplished within the time provided by

flexible as possible in requiring ways in which the reductions can be made.³⁶ The ARB must also consider the technological feasibility of the regulations and their impact on California's economy.³⁷ The regulations may not restrict any particular type of vehicle from being sold in California; may not impose additional fees or taxes on cars, gas, or miles traveled; may not require reducing vehicle weight; and may not reduce speed limits or vehicle miles traveled.³⁸ The regulations will take effect after January 1, 2006 and will only affect vehicles made in the 2009 model year or after.³⁹ In addition, the ARB must hold public meetings about the regulations in at least three communities in California with highly polluted air quality.⁴⁰

After developing the regulations, the ARB must report its regulations to the Legislature by January 1, 2005.⁴¹ The Legislature will then be able to review the regulations prior to the date that they become effective to determine if further legislation is needed.⁴² The Legislature must hold at least one public meeting in which the regulations will be reviewed.⁴³

Chapter 200 also changes the disclosure requirements for the Registry.⁴⁴ Prior to Chapter 200, any record could be deemed confidential by a member of the Registry, but Chapter 200 only allows a record to be exempt from disclosure if it was specifically stated in the California Public Records Act that it should be exempt.⁴⁵ If auto manufacturers reduce greenhouse gases emitted from the vehicles they sell prior to the time that they are required to do so, they will receive credit for those reductions.⁴⁶ Chapter 200 also requires the ARB to set up procedures for keeping track of and certifying those reductions.⁴⁷

IV. ANALYSIS

A. *Will Chapter 200 Really Impact Global Warming?*

The goal of Chapter 200 is to decrease the amount of carbon dioxide emitted by automobiles in California so that the effects of global warming can be

this section, taking into account environmental, economic, social, and technological factors" and "[e]conomical to an owner or operator of a vehicle, taking into account the full life-cycle costs of a vehicle.").

35. *Id.* § 43018.5 (enacted by Chapter 200).

36. *Id.*

37. *Id.*

38. *Id.* § 43018.5(d) (enacted by Chapter 200).

39. *Id.* § 43018.5 (enacted by Chapter 200).

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* § 42823 (amended by Chapter 200).

45. *Id.*

46. *Id.* § 43018.5 (enacted by Chapter 200).

47. *Id.* § 42823 (amended by Chapter 200).

minimized.⁴⁸ But, it is unclear whether Chapter 200 will achieve that goal. Since the amount of carbon dioxide that California produces on the global scale is so minimal, Chapter 200 may not make a significant impact on global warming.⁴⁹

However, there are multiple ways in which Chapter 200 may have an impact on global warming. First, by decreasing the amount of carbon dioxide in the air, Chapter 200 will help slow the process of warming the Earth.⁵⁰ One environmental scientist has said that “the ozone is like a full bathtub; add just a little more carbon dioxide and it overflows. Thus even relatively small reductions may make a substantial difference.”⁵¹

Second, Chapter 200 may also decrease global warming by influencing the federal government, other states (since according to the Clean Air Act, other states can follow California’s lead),⁵² or even other countries to follow California’s lead in creating legislation to limit carbon dioxide emissions.⁵³ Furthermore, even if other states do not create similar legislation, there may be a decrease in greenhouse gas emissions throughout the entire country because automakers will have to create better designs for California.⁵⁴ Because California has the largest market for auto sales nationwide, those new designs will likely be sold in states other than California.⁵⁵

B. Is Chapter 200 Feasible?

Scientists have shown that it is possible to create cars that emit less carbon dioxide without substantially increasing vehicle costs or making the cars less

48. See generally ASSEMBLY RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1493 (July 1, 2002).

49. See Pannek, *supra* note 7 (quoting Bill George, a representative of We Decide What We Drive, a coalition opposing the bill, as saying, “We do not believe this bill will do anything to address the issue in terms of reducing carbon dioxide in the environment”); *All the Hot Air over Global Warming*, *supra* note 23 (stating that “California produces . . . less than [one] percent of the [world’s greenhouse gas emissions],” so the bill can not really have an impact on global warming).

50. Peter Schrag, *A Step to Counter Greenhouse Gases*, SAN DIEGO UNION-TRIB. July 12, 2002, at B8.

51. *Id.*

52. 42 U.S.C.A. § 7543 (West 1995).

53. See Marelius & Gardner, *supra* note 9 (stating that according to Winston Hickox, secretary of California’s Environmental Protection Agency, while California alone will not solve the world’s global warming problem, “[b]y acting now, however, California will push the rest of the nation into action”); Pannek, *supra* note 7 (quoting California State Representative Fran Pavley as saying, “if car manufacturers come up with technology that can be exported, for example the catalytic converter . . . it will sort of have a ripple effect”); Jim Sanders, *Governor Expects to Sign Air Bill: He Says the Landmark ‘Greenhouse Gas’ Curbs Strike the Right Balance*, SACRAMENTO BEE, July 4, 2002, at A1 [hereinafter *Governor Expects to Sign Air Bill*] (quoting Assemblywoman Fran Pavley, as stating that “[m]y hope is that eventually this will be a national policy and you won’t need one state by state”); *California Law Will Limit CO2 Emissions*, *supra* note 1 (stating that Gerry Scott, the director of the climate change campaign at Canada’s Davis Suzuki Foundation, suggested that Canada might follow in California’s footsteps).

54. See John H. Cushman, Jr., *California Lawmakers Vote to Lower Auto Emissions*, N.Y. TIMES, July 2, 2002 (stating that as California changes the requirements for its vehicles, auto manufacturers end up being “forced to build cars that meet California’s standards and to sell them nationwide.”).

55. *Id.*

safe.⁵⁶ Technology, such as improved transmissions, tires, air conditioner seals, valve exhaust systems, and aerodynamics, that can be used to meet tougher emissions standards is already in use in Europe and the United States.⁵⁷ The multinational energy corporation, British Petroleum, has already reduced its greenhouse gas emissions by over ten percent.⁵⁸

One major concern about Chapter 200 is that it creates a “blank check” for the ARB by giving it a lot of room in setting the emissions regulations.⁵⁹ As a result of such concerns, the authors of Chapter 200 inserted several restrictions on what the ARB can regulate.⁶⁰ However, those restrictions may actually make the goal of the bill impossible to achieve.⁶¹ The language of Chapter 200 also contradicts itself: how can there be a “maximum-feasible, cost-effective way” to do anything?⁶² As more emissions reductions are required, more costs will be incurred to achieve those reductions, which would make Chapter 200’s mandate impossible to meet.⁶³

Another concern about Chapter 200 is that its effects are unclear due to its vagueness.⁶⁴ Chapter 200 requires the ARB to create regulations, but it is currently unclear what those regulations will entail or what the costs of those regulations will be.⁶⁵

56. See Pannek, *supra* note 7 (referring to a comment by Craig Noble, the media representative for the National Resource Defense Council, “that it is technologically feasible to manufacture cars that emit less carbon dioxide without increasing vehicle costs or affecting vehicle safety.”).

57. *Clean Cars Without Voodoo*, L.A. TIMES, July 25, 2002, at 12; Pannek, *supra* note 7; Pavley, *supra* note 8; see also Rogers, *supra* note 11 (referring specifically to gas-electric hybrid vehicles, such as the Toyota Prius, Honda Insight, and the Ford Escape, which all receive forty miles per gallon); Fred Krupp, Editorial, *Cars Can Get Much Cleaner*, N.Y. TIMES, July 20, 2002 (stating that “[m]uch of the technology already exists today to accomplish [the goal of limiting greenhouse emissions from vehicles].”).

58. Krupp, *supra* note 57.

59. See Jim Sanders, *Greenhouse Gas Fight May Carry On: Lawsuits or an Initiative May Follow If Gov. Davis Signs the Bill*, SACRAMENTO BEE, July 7, 2002, at A3 [hereinafter *Greenhouse Gas Fight May Carry On*] (quoting Bill Simon, Republican gubernatorial candidate); see also *War of Words*, *supra* note 17 (stating that opponents of the bill have produced advertisements that claim that the bill “will give the ARB the right to impose several draconian measures on California drivers.”); *Governor Expects to Sign Air Bill*, *supra* note 53 (stating that according to Phil Isenberg, spokesman for the Alliance of Automobile Manufacturers, the bill gives state bureaucrats the ability to design the cars driven by Californians).

60. CAL. HEALTH & SAFETY CODE § 43018.5(d) (enacted by Chapter 200).

61. See *All the Hot Air over Global Warming*, *supra* note 23 (arguing that the supporters of the bills have made two contradictory arguments: that the bill will significantly reduce greenhouse gases and that the bill will not disrupt the way Californians live).

62. See Gary M. Galles, *Emissions Bill Doesn't Hit on All Cylinders*, DAILY NEWS OF L.A., July 9, 2002, at N11 (stating that the vagueness and the contradictory terms in the bill give the ARB a lot of room for interpretation).

63. *Id.*

64. See *SUVs Face Rocky Road*, *supra* note 19 (stating that “[t]he only thing that’s certain is that whatever impacts the legislation produces, if any, won’t be felt until after Davis’ reign as governor is ended.”); Pannek, *supra* note 7 (quoting Bill George, a representative for the coalition against the bill, as stating that “[t]he bill is very vague”); *All the Hot Air over Global Warming*, *supra* note 23 (stating that “exactly what [the bill] does is as murky as the skies over Riverside on a hot summer day” and that “AB 1493 unto itself does almost nothing and is, for the most part, an exercise in political symbolism”).

65. See Patrick J. Michaels, *California's Dreamin'*, WASH. TIMES, July 16, 2002, at A16 (stating that “AB 1493 merely says California will reduce emissions by 2009, not by how much.”); Galles, *supra* note 62

C. *At What Cost to Californians?*

Even if Chapter 200 creates feasible ways to significantly decrease global warming, the costs to consumers in California may be too great.⁶⁶ Since the automakers will be required to reduce the amount of carbon dioxide emissions from their entire fleet, the manufacturers may limit Californians' vehicle choice.⁶⁷ Manufacturers could limit the number of vehicles that achieve very poor fuel efficiency, such as SUVs, trucks, and vans.⁶⁸ If automakers were to do so, such vehicles would likely be more expensive because of the limited supply; so fewer Californians would be able to afford such vehicles.⁶⁹

Also, there may be fewer options available to California consumers.⁷⁰ The types of cars on the market in California and how those cars are constructed would be affected.⁷¹ The legislation may also be dangerous to consumers because if Californians cannot afford to purchase new vehicles, they will be forced to keep their older, less safe vehicles longer.⁷²

But Chapter 200 may also create economic benefits. The legislation may help boost the economy by providing jobs to the high-tech industry because they would need to create new designs for vehicles sold in California.⁷³ The legislation would also be good for business in the United States because it will help keep American automakers competitive with manufacturers in other countries that are already using new technology to make the cleaner cars that consumers want.⁷⁴ The legislation could also save consumers money since studies have shown that design changes, such as better aerodynamics, tires with

(stating that the bill "provides none of the nuts and bolts details necessary to evaluate its effects and costs" and the bill "goes beyond a level of vagueness that anyone would accept spending their own money.").

66. See Pannek, *supra* note 7 (stating that State Senator Maurice Johannessen opposed the bill because of concerns that it might increase the cost of vehicles).

67. *Governor Expects to Sign Air Bill*, *supra* note 53.

68. *Id.*

69. *Id.*

70. See Marelius & Gardner, *supra* note 9 (quoting William Fay, president of the American Highway Users Alliance, as saying that the legislation "will curtail every Californian's right to choose the safest and most appropriate vehicle for themselves and their families" and who also proposed that California build better roads that would prevent gridlock and would do more to clean up the air in California); *Governor Gets Auto Emission Measure*, *supra* note 9 (stating that according to Phil Isenberg, a spokesman for a coalition that opposes the bill, "the measure's most direct impact would be on consumers, because it would affect the types of cars available and how they are built").

71. See *Governor Gets Auto Emission Measure*, *supra* note 9 (quoting Phil Isenberg, a spokesman for a coalition that opposes the bill, as saying that "[t]he end result, because of the design requirements, is going to be fewer cars available that people like to buy").

72. See Cushman, *supra* note 54 (quoting Assemblyman Dennis Hollingsworth as stating, "[t]his will cost lives. The reason it will cost lives is that it will price people out of the market. So they will keep their older cars, which do not have the safety features of newer cars.").

73. *Clean Cars Without Voodoo*, *supra* note 57; Pavley, *supra* note 8.

74. See Krupp, *supra* note 57 (stating that the legislation "will not only benefit the environment, but it will keep American automakers competitive with our European and Asian rivals in making the clean cars that consumers and nations demand.").

rolling resistance, and gas-electric hybrid engines, can make vehicles run farther on a gallon of gas.⁷⁵

D. *Is California Overstepping Its Boundaries?*

Since it is the duty of Congress to regulate fuel economy standards, opponents argue that Chapter 200 oversteps legal boundaries.⁷⁶ Automakers claim that the only way to meet the standards to be set by Chapter 200 would be to require auto manufacturers to produce cars that burn less gasoline, which is really just a way of regulating fuel economy standards.⁷⁷ They argue that the only way to decrease carbon dioxide emissions from vehicles is by reducing the amount of fuel the cars use.⁷⁸

However, supporters argue that the legislation is not outside of California's legal reach because, while only the federal government can regulate fuel economy standards, California *can* regulate all forms of air pollution.⁷⁹ The bill was worded carefully by its drafters to ensure that Chapter 200 only regulates carbon dioxide emissions and not fuel efficiency, so as not to overstep California's legal boundaries.⁸⁰

E. *Will Chapter 200 Survive?*

Opponents have already stated that Chapter 200 will not go unchallenged. A potential referendum could be placed on the ballot to destroy Chapter 200.⁸¹ Lawsuits have been threatened, possibly alleging that California has overstepped its boundaries in enacting Chapter 200 and that the California Legislature "played dirty" in enacting the legislation.⁸²

75. Pannek, *supra* note 7.

76. See ASSEMBLY RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1493, at 4 (July 1, 2002) (stating that "[o]pponents contend that federal Corporate Average Fuel Economy (CAFE) law and the Clean Air Act prohibit state action on CO₂ regulation."); Rogers, *supra* note 11 (quoting GOP gubernatorial candidate, Bill Simon, as saying that "[r]educing greenhouse gases is not simply a state issue and must be addressed nationally if not internationally"); Cushman, *supra* note 54 (stating that according to Chris Preuss, a spokesman for the General Motors Company, the bill attempts to regulate fuel economy, which is under the authority of the federal government only).

77. *Greenhouse Gas Fight May Carry On*, *supra* note 59.

78. *Id.* (quoting Gloria Bergquist, spokeswoman for the Alliance of Automobile Manufacturers).

79. See ASSEMBLY RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1493, at 4 (July 1, 2002) (stating that "[p]roponents counter that CO₂ regulation need not entail fuel economy standards and that other states have successfully enacted CO₂ standards."); Cushman, *supra* note 54 (stating that "[e]nvironmentalists argued that while fuel economy standards were regulated only by federal laws, California had the right to regulate all forms of air pollution").

80. See Cushman, *supra* note 54 (stating that according to environmentalists, "[Chapter 200] was carefully written to limit emissions of carbon dioxide, not fuel efficiency.").

81. Rogers, *supra* note 11; Marelius & Gardner, *supra* note 9.

82. Rogers, *supra* note 11; Marelius & Gardner, *supra* note 9.

Those threatening to challenge the legislation claim that the Legislature acted improperly in passing the bill because it quickly changed the bill number from AB 1058 to AB 1493 in order to divert attention away from the bill.⁸³ Challengers also claim that switching the bill numbers was a way for legislators to ensure that their names were not connected to such a controversial bill in an election year.⁸⁴ After a huge campaign by lobbyists against the bill, the bill was not moving forward.⁸⁵ So, Senate President Pro Tem John Burton took another bill, stripped it of all of its content, amended it, and renamed it AB 1493.⁸⁶ The bill passed through the Senate on a Saturday and then passed through the Assembly the following Monday.⁸⁷ Opponents of Chapter 200 claim that the public did not receive much time to react before the bill was passed.⁸⁸ However, supporters of the legislation deny such allegations⁸⁹ and argue that the switch was necessary in order to amend the bill to address the concerns of critics.⁹⁰

V. CONCLUSION

Chapter 200 is a controversial landmark bill “address[ing] the greatest environmental challenge of the [twenty-first] century.”⁹¹ It has been celebrated by environmentalists “as the year’s most significant conservation bill” and “a once-in-a-generation bill.”⁹² Its opponents have called it “‘feel good’ legislation that would raise car prices and reduce safety”⁹³ and have spent more than five million dollars in a campaign against the bill.⁹⁴

83. Larry McCarthy, Guest Column, BUS. PRESS (Ontario), July 22, 2002; *see also* Robert T. Garrett, “Deal Cutting Bills Targeted: One Inland Lawmaker Says a Constituent’s Complaint Provided the Impetus,” PRESS ENTERPRISE (Riverside), July 24, 2002, at A4 (explaining a pair of constitutional amendments proposed in response to “gut-and-amend legislation” such as AB 1493, which would require a three day delay in passing an amended bill in order to give the public time to respond); *Greenhouse Gas Fight May Carry On*, *supra* note 59 (stating that “Republicans said the hasty procedure was designed to confuse the public and keep the opponents from cranking up a new lobbying effort.”).

84. *Greenhouse Gas Fight May Carry On*, *supra* note 59.

85. *Governor Gets Auto Emission Measure*, *supra* note 9; Schrag, *supra* note 50.

86. *Governor Gets Auto Emission Measure*, *supra* note 9; Schrag, *supra* note 50.

87. *Governor Gets Auto Emission Measure*, *supra* note 9; Schrag, *supra* note 50.

88. *See* Garrett, *supra* note 83 (stating that one constituent complained that “final votes by the Assembly or Senate ought to be delayed long enough for voters to express their views”).

89. *See* *Governor Gets Auto Emission Measure*, *supra* note 9 (stating that “Assembly Speaker Herb Wesson . . . denied the measure had been rushed through the Assembly without adequate public review or comment.”).

90. *See* *Greenhouse Gas Fight May Carry On*, *supra* note 59 (stating that according to Assemblywoman Fran Pavley, “AB 1058 was before the Assembly for concurrence in Senate amendments and, therefore, new language to address critics’ concerns could not be inserted without the switch.”).

91. *California Law Will Limit CO₂ Emissions*, *supra* note 1 (quoting California Governor Gray Davis).

92. Rogers, *supra* note 11.

93. *Governor Gets Auto Emission Measure*, *supra* note 9.

94. *Clean Cars Without Voodoo*, *supra* note 57.

Chapter 200 requires the California Air Resources Board to create and adopt regulations in order to decrease the amount of greenhouse gases being emitted from vehicles sold in California.⁹⁵ The goal of Chapter 200 is to slow the effects of global warming.⁹⁶ However, it is unclear whether Chapter 200 will actually achieve that goal.⁹⁷ The costs of Chapter 200 may include the decrease in availability of certain types of vehicles in California and less options for California's consumers.⁹⁸ However, if Chapter 200 does achieve its goal of slowing the effects of global warming, its benefits would be enormous.⁹⁹ Although the ultimate effects of Chapter 200 are yet to be seen, one thing is clear: the debate over Chapter 200 is far from over.¹⁰⁰

95. CAL. HEALTH & SAFETY CODE § 43018.5 (enacted by Chapter 200).

96. *Id.*

97. *Supra* Part IV.A.

98. *Supra* Part IV.C.

99. *Supra* Part I.

100. *Supra* Part IV.E.