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Judge declines to drop Vermont auto emissions trial

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U.S. District Judge William Sessions decided Wednesday to proceed with a three-week trial in which automakers are seeking to overturn Vermont's greenhouse gas emission limits for cars, SUVs and pickup trucks.

He said a Monday U.S. Supreme Court decision in a related case left issues still to be resolved in the Vermont trial.

Lawyers defending Vermont's new emissions limits had asked Sessions earlier in the day to cancel the scheduled three-week trial and to decide the case immediately in Vermont's favor.

They argued that the Supreme Court decision upholding federal authority to regulate carbon dioxide emissions essentially settled the Vermont lawsuit.

"I urge you to save the time and trouble of a trial," Natural Resources Defense Council attorney David Doniger argued to Sessions, making the state's case.

Attorneys for the automakers strongly disagreed. The Supreme Court case, *Massachusetts v. EPA*, left untouched their central claim against the Vermont rules, they argued.

Even if Vermont's emissions limits are approved by the U.S. Environmental Protection Agency, their argument ran, the limits would conflict with a second federal law governing fuel economy standards and thus must be thrown out.

"I can't think of a single bit of our evidence that is affected by *Massachusetts v. EPA*," attorney Andrew Clubok, representing the Alliance of Automobile Manufacturers, told Sessions.

Sessions declined to rule on any of the legal arguments from either side. But, citing the importance of the case, he said he wanted to hear all the evidence before deciding the outcome. That would allow a thorough decision that would be ripe for review by a higher court in the case of a likely appeal, he said.

The automakers "are saying this regulation is so oppressive to them as to be pre-empted by the (fuel economy law)," Sessions said in an exchange with Doniger. "The purpose of the trial is to get a full and factual record. What in *Massachusetts v. EPA* changes that scenario?"

Attack on global warming

Vermont has adopted tough vehicle emissions limits set in California, which alone among the states has authority under the Clean Air Act to set standards different from those set by the EPA. Other states are allowed to follow California's lead.

California acted because the EPA had refused to regulate carbon dioxide emissions, which are a significant contributor to greenhouse gases blamed for global warming.

Until Monday, the Bush administration had insisted the Clean Air Act did not allow the EPA to regulate greenhouse gases.

The Supreme Court rejected that position and said the EPA must regulate carbon dioxide emissions unless it has a rational basis to conclude they don't contribute to global warming.

Automakers' continuing challenge to the Vermont regulations hinges on a different fact, that the way to cut carbon dioxide emissions is to burn less gasoline -- to build cars that get more miles to the gallon.

Automakers contend a 1975 law, the Energy Policy and Conservation Act, gives the federal Department of Transportation sole authority to set fuel economy standards.

In its Monday decision, the Supreme Court said the EPA cannot use that excuse to duck regulation of carbon dioxide emissions. Instead, EPA and DOT should work out any differences they may have, the court said.

Pre-empted by Washington?

But what about the states? Are they pre-empted from regulating carbon dioxide emissions because that means, in effect, setting fuel economy standards?

Automakers say yes, states cannot go their own way.

Vermont and its allies say no, California still has authority to write emissions standards that, once approved by the EPA will become, in effect, federal standards and thus not pre-empted by other federal laws.

Sessions scheduled opening arguments in the trial for Tuesday. A hearing Friday will continue to address public access to the courtroom during the trial. Automakers are seeking to keep some "highly confidential information" secret and to exclude the public when that information is discussed in court.

The Burlington Free Press has intervened to oppose closed court sessions.