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California's Clean Car Law: Fifteen Years Later, a Look in the Rearview Mirror

*Darry Sragow and Monika Darwish**

Fifteen years ago, before most Americans were certain that the globe is warming and our climate is changing, back when they still relied on daily newspapers and network broadcast television for much of their news, a small but hardy band of California environmental organizations and activists handed the auto industry an unexpected defeat. This, it has been argued, marked the turning point that launched the far-reaching climate change regulatory schemes in place today, nationally and globally.

The success of California's 2002 Clean Car Law (AB 1493) is worth examining because it reflects the outcome determinative significance of three underlying dynamics that have defined the successes and failures of the environmental movement, broadly defined, in the United States for many decades. Those are the importance of when and where a policy debate takes place; the decentralized, disaggregated structure of the environmental movement; and the critical role played by a relatively small number of committed governmental officials and advocates.

Lessons learned in winning passage of this landmark legislation can continue to inform future campaigns aimed at tackling the causes of climate change.

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The authors express their gratitude to each of the sources who shared their recollection of the complex path travelled to the passage of this landmark legislation.

The Importance of Where and When the Inevitable Policy Debate Takes Place

Under federal law, emissions standards are governed by the U.S. Environmental Protection Agency, but the State of California is authorized to establish and enforce more stringent emission standards subject to federal approval, and other states may choose whether they will adhere to the national or California standards.¹ This policy reflects a recognition that parts of California face unique air quality issues due to specific meteorological conditions and heavy reliance on transport by automobile. For economic reasons, reflecting the size of the California market and magnified by the adoption of California emissions standards by many other states, vehicles sold in the U.S. are built to adhere to the tougher California standards.

Reflecting California's innovative leadership on emission reductions, the impetus for the Clean Car Law came from a pair of relatively small environmental organizations in the state, San Francisco-based Bluewater Network and the Coalition for Clean Air, with offices in Los Angeles and Sacramento. Consistent with California's unique preferences and authority with respect to motor vehicle emissions, these two groups and other eventual members of the coalition pursued their goal of regulating tailpipe emissions of greenhouse gases nationally by focusing on the California legislature rather than the Congress.

Good timing, on the other hand, is often a function of good luck. In retrospect, essential factors contributing to the passage of this measure included: relatively new term limits forced a constant turnover in the legislature, leading to the presence of a political newcomer and committed environmental advocate in the State Assembly; receptive legislators led both the Assembly and Senate; and, in the wake of a jarring shortage of generated electricity in California in 2000 and 2001, a heightened voter distrust of large corporations and a Governor facing a potentially difficult reelection campaign in 2002.

Decentralized, Disaggregated Structure of the Environmental Movement

After the election of George W. Bush in 2000, Russell Long, the Executive Director of a ten-person environmental group called Bluewater Network, looked to California as a venue for progressive environmental

1. 42 U.S.C. § 7507 (2017).

legislation in the face of unreceptive federal leadership.² Although the Energy Policy and Conservation Act of 1975 prohibits states from regulating fuel economy, California's Clean Air Act waiver authorized the state to regulate tailpipe emissions produced through fuel combustion during a vehicle's operation.³ Long proposed that the state require a reduction in greenhouse gas emissions from new automobiles.⁴ The transportation sector contributed fifty-eight percent of California's greenhouse gas emissions, making it a logical target of opportunity.⁵ It was a simple but bold idea.⁶ Greenhouse gases were not yet regulated federally under the Clean Air Act.

The job of advocating for environmental causes in the U.S. is shared by literally hundreds of nonprofit organizations. A few have budgets in the many millions of dollars and membership rosters with tens of thousands of names, but most are a fraction of that size. Their agendas often overlap and competing views are inevitable.

Bluewater faced early opposition from key members of the California environmental community. Some groups expressed general concern that the proposal was too much too soon without sufficient support from inside

2. Carli Paine, *How the Green Guys Won: Interest Group Strategies & The California Clean Cars Legislation*, at 21 (June 28, 2005) (Master's Thesis, Massachusetts Institute of Technology).

3. 49 U.S.C. § 32919 (2017); 42 U.S.C. §§ 7543 (2017)

4. Fran Pavley, *California's Battle for Clean Cars*, in *CLIMATE CHANGE SCIENCE AND POLICY* 364, 364 (Stephen H. Schneider, et al., 2014). (During her fourteen years in the legislature, Fran Pavley focused on a broad range of environmental issues, including water, clean energy, clean air, toxics reduction, and children's health. Following the enactment of AB 1493, she authored AB 32, the Global Warming Solutions Act of 2006, capping greenhouse gas emissions and rolling them back to 1990 levels by 2020. That bill was signed by Governor Arnold Schwarzenegger. In 2016 she authored SB 32, an extension of AB 32's cap, requiring further emission reductions, which was signed by Governor Jerry Brown. She currently works as an environmental consultant with the USC Schwarzenegger Institute and others on renewable energy, wildlife, watershed health, and other environmental concerns.)

5. See CALIFORNIA ENERGY COMM'N STAFF REPORT, EXECUTIVE SUMMARY, INVENTORY OF CALIFORNIA GREENHOUSE GAS EMISSIONS AND SINKS: 1990-1999, at 8 (Nov. 2002) available at <https://perma.cc/H2U9-VRJ4>.

6. Telephone Interview with Anne Baker (Oct. 9, 2017). (Anne Baker served as Fran Pavley's lead staffer during the bill's journey through the legislature and a key player in shepherding the legislation inside the Capitol and with external groups.)

the state Capitol.⁷ Other organizations were uncomfortable with the proposal for fear that it might compromise federal lobbying efforts.⁸

Undaunted and indefatigable, Bluewater pressed its case. The Coalition for Clean Air, became the first significant cosponsor. The pair unsuccessfully asked eleven different legislators to carry the bill before approaching newly elected Fran Pavley, a former school teacher representing the western portion of the Los Angeles basin.⁹ Pavley showed up for work in Sacramento very much an unknown. Not a political insider, she had, in fact, gotten to the Capitol by unexpectedly beating an opponent relatively well known in certain state and national political circles. What appealed to Pavley about this proposal was that it was not intended as merely a symbolic gesture.¹⁰ Its sponsors meant business, as far-fetched as that seemed to experienced Sacramento insiders.¹¹ She was very concerned that cars were the state's biggest source of greenhouse gas emissions and wanted to tackle that issue.¹² According to one of the key participants in this effort, as a freshman member, new to state politics and deadly earnest, Pavley was determined to do the right thing.¹³

Pavley decided to introduce a bill that was straightforward. The US EPA can deny a California Clean Air Act waiver request if the state's standards are arbitrary and capricious, the state does not need such standards to meet compelling and extraordinary conditions, or the state's enforcement mechanisms conflict with the Clean Air Act.¹⁴ Pavley chose to keep her bill's objectives broad by excluding specific reduction targets from the statutory language. By deferring to the ARB's expertise, she intended to increase the odds that the bill would withstand inevitable legal challenges. Additionally, the list of legislative findings in the bill was intended to address the compelling and extraordinary reasons test required for a California Clean Air Act waiver approval.

Once Pavley agreed to author the bill, Bluewater and the Coalition for Clean Air successfully solicited support from a number of local and state

7. See Paine, *supra* note 2, at 22.

8. Telephone Interview with Anne Baker (Oct. 9, 2017).

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. Telephone Interview with Jim Marston (Oct. 9, 2017). (Jim Marston directed the Environmental Defense Fund's State Climate Initiatives in 2002. Much of his effort focused on undecided legislators who were the targets of the industry's opposition campaign. The EDF describes this bill's passage as one of their most important state climate victories.)

14. 42 U.S.C. § 7543(b) (2017)

environmental organizations including the California Public Interest Research Group (CALPIRG), Sierra Club California, and Greenpeace.¹⁵

The bill received little notice in Sacramento until it was heard in the Assembly Transportation Committee in April 2001.¹⁶ That committee was viewed as unfriendly to legislation supported by environmentalists and the auto industry did not view the proposal as a serious threat, registering only “token opposition.”¹⁷

Pavley and the bill sponsors originally anticipated pushback against the scientific certainty of climate change.¹⁸ Instead, opponents attacked the bill as a blank check granting unlimited authority to the California Air Resources Board.¹⁹

To get the bill through the committee, Assemblyman Joe Simitian amended it to delay implementation by one year, giving the Legislature time to review, but not vote on, the regulations that the Air Resources Board would propose following enactment.²⁰ The Committee also added a standard requiring that “maximum feasible reduction of carbon dioxide emitted from passenger vehicles” be cost effective.²¹ These amendments were intended to assuage concerns of ARB overreach and yielded support from the wavering committee members including the chairman.²²

The Transportation Committee approved the measure. Now the auto industry was paying attention.

Consistent with legislative procedure, the bill made its way to the Assembly Appropriations Committee in May 2001, where Speaker Bob Hertzberg was concerned over the stirring controversy.²³ As Chair of the committee, he agreed to sign off on the bill only after proponents promised to wait until the following January for a vote on the Assembly floor.²⁴ This

15. See Paine, *supra* note 2, at 23.

16. Telephone Interview with Anne Baker (Oct. 9, 2017).

17. *Id.*

18. See Pavley, *supra* note 4, at 365.

19. Telephone Interview with Fran Pavley (Oct. 12, 2017).

20. *Id.*

21. See A.B. 1058, 2001-2002, Gen. Assemb., (as reported by Assemb. Comm. on Transp., April 25, 2001), <https://perma.cc/382W-A2PC>.

22. See Pavley, *supra* note 4, at 365.

23. Telephone Interview with V. John White (Oct. 6, 2017). (V. John White, Executive Director of the Center for Energy Efficiency and Renewable Technologies (CEERT), was an early ally in support of the bill. He played a critical role as an advocate and strategist from conception to passage. A portion of his lobbying efforts were supported by Sierra Club California.)

24. *Id.*

gave Pavley eight months to muster support among her Assembly colleagues.²⁵

As noted by *Governing Magazine* when it honored Pavley as a 2003 Public Official of the Year, “if governmental achievement is often a function of persistence, it’s worth remembering that on occasion it is the product of sheer audacity. [. . .] Told that she was wasting her time, that automakers and oil companies would spend millions to prevent any such law from being enacted, Pavley persisted, out of what she now admits was mostly naivete.”²⁶

Lobbying fellow Assembly members for support was not an easy task.²⁷ Pavley and the coalition were asking her colleagues to take on a high-power interest group with plenty of resources to convince constituents that the Pavley measure would increase gas prices. The auto industry had all the money it needed to purchase ads and mount voter contact programs, and had a friendly, local face for such a campaign in the form of local car dealers.²⁸ Car dealerships are often major contributors to the local tax base in their community.

Pavley and the coalition could not match the auto industry’s advocacy budget dollar-for-dollar. They decided to level the playing field by building a broad support coalition that would articulate the bill’s benefits at a personal and community level.

Slowly but surely, the fragmented environmental players assembled an effective working coalition that ultimately extended beyond the bounds of the traditional environmental community. The California League of Conservation Voters, Environmental Defense, Union of Concerned Scientists, Planning and Conservation League, and Clean Power Campaign all registered their formal support.²⁹ NRDC and Sierra Club even joined Bluewater Network and Coalition for Clean Air as cosponsors.³⁰ A political strategist was retained to oversee limited opinion research and a modest campaign fund aimed at nursing the development of and adherence to a multi-organizational support effort.

For example, several members of the Latino Caucus were already concerned with air quality issues in their Los Angeles and Central Valley districts. One of their leaders, Senator Martha Escutia, invited Pavley to present her bill to the caucus.³¹ The presentation sparked several

25. *Id.*

26. *Public Officials of the Year*, GOVERNING MAGAZINE (2003), <https://perma.cc/9975-QZQA>.

27. Telephone Interview with Fran Pavley (Oct. 12, 2017).

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

discussions on air quality issues that could be addressed in conjunction with the Clean Car Law.³² Legislators representing districts in the Central Valley, where air quality problems were especially severe, were frustrated that their constituents were required to get smog checks, but Bay Area residents were not.³³ Ultimately, Pavley enlisted Senate President Pro Tem John Burton, who represented parts of the Bay Area, to support their legislation making smog checks mandatory in the San Francisco Bay Area Basin.³⁴

Concerns with the health implications of climate change led to support from the American Lung Association, Physicians for Social Responsibility, California Medical Association, and the California Nurses Association.³⁵ Pavley recalls that this was the first time the American Lung Association took a formal stance on a piece of California legislation.³⁶

Religious organizations, led by the California Interfaith Council of Power and Light, also played an important role in reminding legislators of their moral obligations to protect the planet.³⁷

In the days before social media, newspaper editorial support was considered especially influential with state decision makers and opinion leaders.³⁸ With the exception of the *Orange County Register*, Pavley and her team gained the strong support of every major editorial board in the state.³⁹

They also found local level support from air districts, water districts, cities, counties, and local officials across the state.

Business leaders and Environmental Entrepreneurs, or E-2, a Silicon Valley-based group of environmentally conscious business owners and investors also joined the effort. This was E-2's first foray into legislative lobbying.

By the end of 2001, Pavley had added nearly twenty coauthors to the bill, including the two leaders of the Latino Caucus: Senator Martha Escutia and Assembly Majority Leader Marco Firebaugh.⁴⁰

This significant expansion of the coalition, activating broad support in the environmental community, but also, significantly, recruiting credible

32. *Id.*

33. *Id.*

34. *See* A.B. 2637, 2002 Leg., Reg. Sess. (Cal. 2002), <https://perma.cc/CN63-8NV4> (establishes an enhanced smog check program in the San Francisco Bay Area Basin).

35. Telephone Interview with Fran Pavley (Oct. 12, 2017).

36. *Id.*

37. *See* Pavley, *supra* note 4, at 365.

38. Telephone Interview with Fran Pavley (Oct. 12, 2017).

39. *Id.*

40. *See* Pavley, *supra* note 4, at 366.

messengers on the effects of global warming from the ranks of interest groups not often associated with environmental issues, escaped the notice of the bill's opponents. Much to their surprise, on January 30th, 2002 the bill was approved by the Assembly, 42-24, with bipartisan support and votes to spare.⁴¹

The Critical Role Played by a Relatively Small Number of Committed Governmental Officials and Advocates

In April 2002, with the bill pending in the Senate Appropriations Committee, the auto industry deployed its financial resources that far exceeded anything the proponents could hope to muster. Joined by the California Chamber of Commerce, the United Auto Workers, and the California Manufacturers and Technology Association; the Alliance of Automobile Manufacturers launched a five-million-dollar ad campaign labeling the bill as a car tax that would ban SUV's. Television advertisements featured legendary car salesman Cal Worthington warning Californians to fear AB 1058.⁴² The industry also launched a grass roots online campaign at www.wedrive.org, rallying constituents to lobby against what they described as an ill-considered plan that would prevent soccer-moms from driving their SUVs.⁴³

The amount of money being spent by the industry to kill the bill left many members of the coalition in despair. They knew there was no way for proponents to raise funds sufficient to counter the industry on television and turned to their campaign strategist for advice on steps they could take in hopes of weathering the storm. Their adviser, who had managed a number of campaigns for statewide office in California and served as the campaign strategist for the Assembly Democratic Caucus, urged them to be patient. It was his view, based on opinion research and intuition, that the industry ad campaign would backfire. "No one believes anything that car salesmen say about the cars they sell; why would they believe what a car salesman says about the environment," he cautioned. Still, he added that unquestionably the entire industry opposition effort, including the well-financed ads and heavy lobbying in the Capitol, made passage no sure thing.

In the meantime, in Sacramento Pavley's roster of supporters had been growing.

As soon as the bill made its way to the environmentally friendly Senate, President pro Tempore John Burton took it under his wing and made

41. Telephone Interview with Fran Pavley (Oct. 12, 2017).

42. See Pavley, *supra* note 4, at 367.

43. Deborah Keeth, *The California Climate Law: A State's Cutting-Edge Efforts to Achieve Clean Air*, 30 *ECOLOGY L. Q.* 715, 717 n.31 (2003).

it a priority. His own staff remarked that Burton worked harder on Pavley's Clean Car Law than he did on his own bills.⁴⁴ As one key participant noted, the bill "grabbed the auto industry by the tail and went right to the cause. That is kind of how Burton got into issues."⁴⁵ Burton's commitment was threefold. First, he wanted the state to reclaim its role as a leader in environmental issues.⁴⁶ Second, he knew enough about the science of climate change to recognize its potentially catastrophic effects.⁴⁷ Third, he understood the bill's monumental implications when combined with California's authority under the federal Clean Air Act.⁴⁸

Yet Burton did not want credit for the bill. He never put his name on it, and did not attend the bill signing.⁴⁹ He felt that he could best serve the cause by crafting an effective, behind-the-scenes strategy.⁵⁰

Upon its arrival from the Assembly, Burton directed the Rules Committee to refer AB 1058 to the Environmental Quality Committee, chaired by Senator Byron Sher, instead of the less friendly Transportation Committee where precedent would have otherwise sent the bill.⁵¹ The issue of greenhouse gases was relatively new to the legislature, but fit squarely within the jurisdiction of the Environmental Quality Committee where Burton and Sher were sure the bill would pass.⁵² This was a decisive move, which prevented the auto industry from killing the bill or forcing hostile amendments.⁵³

When the United Automobile Workers lobbied other labor groups to oppose the legislation, Burton stepped in.⁵⁴ He made clear how strongly he supported the bill and warned other unions that their neutrality could be tolerated, but not their opposition.⁵⁵ In the end, the United Automobile Workers remained the only labor group to oppose the bill.⁵⁶

44. Telephone Interview with Anne Baker (Oct. 9, 2017).

45. *Id.*

46. Telephone Interview with Jim Marston (Oct. 9, 2017).

47. *Id.*

48. *Id.*

49. Telephone Interview with Fran Pavley (Oct. 12, 2017).

50. *Id.*

51. Email from Kip Lipper to V. John White (Nov. 5, 2017, 15:08 PST) (on file with authors).

52. *Id.*

53. *Id.*

54. Telephone Interview with Fran Pavley (Oct. 12, 2017).

55. *Id.*

56. *Id.*

Because the auto industry opposition campaign identified the measure by its original bill number, AB 1058, Burton decided to employ a tactic often used by the California legislature, known as a “gut-and-amend.” A gut-and-amend entailed taking the entire language of the original bill, AB 1058, and substituting it for unrelated language in another bill, that pursuant to the legislature’s rules, was procedurally eligible to be considered for passage, AB 1493. In essence a rebranding exercise, the gut-and-amend allowed legislators to vote on the legislation’s substance without voting for the bill number targeted by the auto industry.

The gut-and-amend bill included clarifying amendments addressing concerns raised by the auto industry opposition campaign. The amendments specified that the Air Resources Board could not limit the number of miles motorists could drive, raise gas taxes, or restrict the type of vehicle consumers could purchase.⁵⁷ The Senate passed AB 1493 on Saturday, June 29, 2002, with a 23-6 vote.

Newly elected Assembly Speaker Herb Wesson, Pavley’s seatmate at the time, consistently supported the bill but was not always certain how much effort to exert in ensuring its passage.⁵⁸ Proponents found creative ways to encourage him to make this measure’s success one of his top priorities. They arranged for Congressman John Lewis to call Wesson, an avid Civil Rights Movement history buff, to underscore the vote’s national importance.⁵⁹ President Bill Clinton called Wesson.⁶⁰ Capitol observers tease that Wesson jumped in with both feet after Pavley jokingly presented him with an autographed picture of his celebrity crush, Jennifer Lopez.⁶¹ He hung the framed photo on the wall in his Speaker’s office.⁶²

Wesson’s commitment was critical.⁶³ He rallied support from other Assembly members and ensured that key votes on the bill were scheduled only when passage was certain.⁶⁴ Coalition support for his recruitment effort included identifying the local offices for which soon-to-be termed out legislators would run, and encouraging elected officials in those communities to voice support for the bill.

57. A.B. 1493, 2001-2002, Gen. Assemb., Reg. Sess. (Cal. 2002), <https://perma.cc/P4AL-32X2>.

58. Telephone Interview with Jim Marston (Oct. 9, 2017).

59. *Id.*

60. Telephone Interview with Fran Pavley (Oct. 12, 2017).

61. *Id.*

62. *Id.*

63. Telephone Interview with Jim Marston (Oct. 9, 2017).

64. *Id.*

Within forty-eight hours after the Senate approved AB 1493, Wesson had ushered the bill through the Assembly Transportation Committee and onto the floor, where it passed with 41 votes, the exact number required.⁶⁵

Governor Gray Davis had tasked two key appointees to work with the legislature on language that he would be comfortable signing, focused on cost effectiveness and feasibility.⁶⁶ The signing ceremonies at the Griffith Park Observatory in Los Angeles and at the Presidio overlooking the Golden Gate Bridge in San Francisco were covered by press from across the nation and the world. At the ceremony, Davis declared that, “the sky is not falling, it’s only getting cleaner.”⁶⁷

Had either legislative leader, Burton or Wesson, or Governor Davis waived in the face of industry opposition, the bill never would have become law.

Lessons Learned

That a school teacher turned legislator could, in her first few months in office, launch a successful challenge to one of the most powerful industries in America and the world is remarkable. The unexpected enactment of the Clean Car Law in California in 2002 emboldened the environmental movement, and was directly responsible for the passage of California’s landmark Global Warming Solutions Act, AB 32, in 2006, and all the measures in California and elsewhere that limit the emission of greenhouse gases.

The bill’s legacy extends far beyond its immediate greenhouse gas reductions. The first of its kind anywhere in the world, it emboldened the environmental community and its supporters to press forward in their fight to mitigate global warming.

Proponents of strong public policy initiatives to address the causes and consequences of climate change would be well advised to pick their venues with care; to launch at opportune moments; to cultivate active, unyielding support from the elected and other public officials who genuinely determine outcomes; and to seize on the disaggregated, decentralized nature of the environmental movement as a strength. Environmentalists will always be outspent by those whom they seek to regulate. But their commitment, their passion, and the inevitability that they will speak not with one voice, but with many voices, are, in the political arena, valuable strengths.

65. Telephone Interview with Fran Pavley (Oct. 12, 2017).

66. See Pavley, *supra* note 4, at 369.

67. *Id.*