

In The
Supreme Court of the United States

AMERICAN TRUCKING ASSOCIATIONS, INC.,

Petitioners,

v.

THE CITY OF LOS ANGELES, THE HARBOR
DEPARTMENT OF THE CITY OF LOS ANGELES,
THE BOARD OF HARBOR COMMISSIONERS
OF THE CITY OF LOS ANGELES, NATURAL
RESOURCES DEFENSE COUNCIL, INC., SIERRA
CLUB, and COALITION FOR CLEAN AIR, INC.,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

BRIEF IN OPPOSITION

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for Clean Air, Inc.

February 21, 2012

QUESTIONS PRESENTED

The Natural Resources Defense Council, Inc., Sierra Club, and Coalition for Clean Air, Inc. join the “Restatement of Questions Presented” submitted by Respondents City of Los Angeles, *et al.*

CORPORATE DISCLOSURE STATEMENT

The Natural Resources Defense Council, Inc., Sierra Club, and Coalition for Clean Air, Inc. are nonprofit corporations which do not issue stock and which are not subsidiaries or affiliates of any publicly owned corporations.

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INTRODUCTION

Respondents the Natural Resources Defense Council, Inc. (“NRDC”), Sierra Club, and Coalition for Clean Air, Inc. (collectively “Environmental-Intervenors”) are non-profit environmental organizations that collectively have nearly 1 million members, and offices throughout the United States and abroad. Environmental-Intervenors have pursued a targeted strategy – spanning over a decade – utilizing litigation, policy expertise and science to protect the public from increasing levels of air pollution generated by Port of Los Angeles (the “Port”) operations. In the proceedings below, Environmental-Intervenors were defendants-intervenors-appellees and supported the concession agreement adopted by Respondents City of Los Angeles, *et al.* (“City of Los Angeles” or the “City”). We join the City’s Brief in Opposition, and submit the following brief to advance one point: The Port’s environmental objectives in adopting its Clean Truck Program, of which the concession agreement is a critical component, were inextricably tied to its interests in growing its commercial enterprise.

Below, we explain how the Court of Appeals’ application of the market participant doctrine was based on the District Court’s extensive findings of fact, which were never challenged by Petitioner American Trucking Associations, Inc. (“ATA”). Further, we explain how application of that doctrine to the Port’s environmental program is consistent with case law from this Court and the circuit courts. For these reasons, and those provided by the City of Los Angeles,

ATA's petition for a writ of certiorari should be denied.



STATEMENT OF THE CASE

The Port is the leading seaport in North America in terms of shipping container volume and cargo value. Pet. App. 70a.¹ In 2008, the Port handled more than \$240 billion in cargo. Pet. App. 69a. While the nation's economy benefits from the cargo moved through the Port, over two million people living near the Port, and millions more residing throughout the Los Angeles region, breathe toxic air pollution created by Port operations. Pet. App. 69a, 73a-74a. Harbor-area communities suffer an average cancer risk from air pollution that is more than 60 percent higher than the average in the region. Pet. App. 74a. Air pollution generated by port-serving trucks is a major contributor to this problem. Pet. App. 75a.

As a result of unaddressed health risks caused by Port operations, environmental and community groups effectively stalled all major Port development projects for *seven* years during a decade of exponential cargo growth at ports nationwide. Pet. App. 75a, 121a. Most notably, in 2002, NRDC obtained an injunction that halted construction of a major Port

¹ "Pet. App. XX" refers to the appendix attached to Petitioner American Trucking Associations, Inc.'s Petition for a Writ of Certiorari.

expansion project. Pet. App. 76a. The basis for the injunction was the Port's failure to fully disclose the project's environmental impacts. *Id.*; *Natural Res. Def. Council v. City of Los Angeles*, 103 Cal. App. 4th 268 (2002). This lawsuit resulted in a settlement agreement costing the Port more than \$80 million. Pet. App. 77a.

In response to the environmental concerns that had blocked Port expansion, the Port changed its business model and adopted a "green growth" strategy. Pet. App. 77a, 122a. In 2006, the Port adopted its Clean Air Action Plan ("CAAP"), in which the Port committed to enacting a slate of clean air initiatives. Pet. App. 79a. The Clean Truck Program was one of those initiatives. Pet. App. 79a-80a. The CAAP states:

The Ports recognize that their ability to accommodate the projected growth in trade will depend upon their ability to address adverse environmental impacts (and, in particular, air quality impacts) that result from such trade. The [CAAP] is designed to develop mitigation measures and incentive programs necessary to reduce health risks while allowing port development to continue.

Pet. App. 79a. The history of the Clean Truck Program demonstrates that while the Port adopted the concession agreement knowing that it would benefit the environment, the ultimate objective of the agreement was to advance the Port's economic interests.

Today, despite progress at the Port in reducing air pollution, opposition to Port growth absent meaningful environmental mitigation remains strong. For example, the Port is currently facing intense opposition related to a proposed rail yard project that may be sited on a large strip of Port-owned land four miles from its facility.² The project aims to increase Port cargo capacity and efficiency by enhancing rail operations.³ Advocates of the rail yard say the project is necessary to bolster the competitiveness of the Port in anticipation of the expansion of the Panama Canal, which threatens to divert cargo from West Coast ports once completed in 2014.⁴ If built, the rail yard will be located in close proximity to thousands of residents and a few hundred yards from public schools – affecting the health of Wilmington and West Long

² Sean Belk, *Opposition Builds Over Port of L.A.'s Rail Yard Analysis*, Long Beach Business Journal, Jan. 31, 2012, <http://lbbusinessjournal.com/long-beach-business-journal-photos-in-the-news/83-january-31st/326-opposition-builds-over-port-of-las-rail-yard-analysis-long-beach-city-officials-school-district-others-say-eir-on-bnsf-project-flawed.html>.

³ *Id.*

⁴ *Id.* Advocates of the rail yard include the “Beat the Canal” campaign, *id.*, which warns that “[t]he widening of the Panama Canal now underway will give large container ships crossing the Pacific the ability to bypass ports in California and dock in East Coast and Gulf ports.” Beat the Canal, <http://www.beatthecanal.com/> (last visited Feb. 15, 2012). Beat the Canal advocates seek to “enhance the competitiveness of our green ports and corridors . . . by the time the widened Canal doubles current capacity when it opens in 2014.” *Id.*

Beach communities.⁵ Community advocates, environmentalists, academics, City of Long Beach officials, the Long Beach Unified School District, and the region’s air quality regulators are concerned over how the rail yard might increase air pollution and negatively impact the quality of life of local residents, and have rallied against flaws they perceive in the environmental study for the project.⁶ The controversy over this rail yard project represents the “business” challenges the Port faces due to the health risks its operations impose on the Los Angeles region. It also illustrates how any attempt by the Port to abandon its green growth strategy would severely threaten the vitality of its operations.



REASONS FOR DENYING THE PETITION

I. THE COURT OF APPEALS’ APPLICATION OF THE MARKET PARTICIPANT DOCTRINE WAS BASED ON THE DISTRICT COURT’S EXTENSIVE FACTUAL FINDINGS, WHICH ATA NEVER CHALLENGED

The market participant doctrine distinguishes between the State’s role as a regulator and as a market participant. *See, e.g., Engine Mfrs. Ass’n v. S.*

⁵ Belk, *supra* note 2.

⁶ *Id.* (referencing concerns by Long Beach officials, among others, that the project as proposed “fails to provide adequate mitigations to air quality, noise, and business impacts”).

Coast Air Quality Mgmt. Dist., 498 F.3d 1031, 1040-41 (9th Cir. 2007) (“Not all actions by state or local government entities . . . constitute regulation, for such an entity, like a private person, may buy and sell or own and manage property in the marketplace.”). In applying the market participant doctrine, the majority correctly⁷ undertook “a single inquiry: whether the challenged program constitute[s] direct [S]tate participation in the market.” Pet. App. 21a (quoting *Reeves, Inc. v. Stake*, 447 U.S. 429, 435 n.7 (1980)). This inquiry is fact based.

After six days of trial, hearing the testimony from 17 witnesses, and touring the Port, the District Court detailed the specific facts of this case within 105 findings, and concluded that the concession agreement was a “business necessity.” Pet. App. 122a. These facts were never challenged by ATA, and form the basis of the Court of Appeals’ decision. Because these facts are critical to why the majority correctly applied the market participant doctrine to protect the concession agreement, we dedicate the remainder of this section to a discussion of them.

⁷ The City of Los Angeles’ Brief in Opposition explains how the majority’s reliance on the “single inquiry” test is consistent with Supreme Court precedent and the development of the market participant doctrine in other Courts of Appeals. We do not repeat that discussion here.

A. Port Operations Generate Significant Air Pollution And Health Risks

The Port is an independent, self-funding department of the City of Los Angeles. Pet. App. 68a. It is the leading container port in the United States in terms of shipping container volume and cargo volume. Pet. App. 69a. In 2008, the Port handled more than \$240 billion in cargo. *Id.*

The Port operates as a landlord; it develops terminal facilities and then leases those facilities to shipping lines and stevedoring companies. Pet. App. 71a. It is located along 43 miles of the coast of San Pedro Bay, approximately 20 miles south of downtown Los Angeles adjacent to the Port of Long Beach. Pet. App. 69a. Several residential areas adjoin the Port, including the neighborhoods of San Pedro and Wilmington. *Id.* Over two million people reside in these and other communities surrounding the two ports. *Id.*

“Drayage” trucks, which haul cargo to and from the Port, are integral to the Port’s operations. Pet. App. 71a-72a. The Port has a direct financial interest in the unhindered and efficient flow of cargo through its terminals and in increasing container traffic through the Port terminals. Pet. App. 72a. The Port’s revenue is directly tied to the volume of containers moved through the terminals. *Id.* The greater the volume of containers handled at the Port, the greater are the Port’s revenues. *Id.*

The Port expects its cargo volumes to at least double the demand for cargo-handling capacity over the next decade. *Id.* The Port faces competition from other U.S. ports and foreign ports emerging in Mexico and Canada. Pet. App. 73a. As a result, the Port needs to continually upgrade and renovate its facility, and improve the efficiency of cargo operations to maintain its competitive position and capture additional business. *Id.*

The Port is located in California's South Coast Air Basin (the "Basin"), which violates federal air quality standards for ozone and fine particulate matter. Pet. App. 73a-74a. In 2008, the Basin had the worst air quality in the nation for these pollutants. Pet. App. 74a. Emissions data from 2002 indicates that activities at the Ports of Los Angeles and Long Beach greatly contributed to the Basin's air pollution problem – producing, for example, almost one-quarter of the total diesel particulate matter emitted in the Basin. *Id.* In 2008, the South Coast Air Quality Management District ("SCAQMD") discovered that communities around the Port suffered an average cancer risk from air pollution that was more than 60 percent higher than the average in the Basin. *Id.*

Air pollution from drayage trucks greatly contribute to this problem. Pet. App. 75a. Drayage trucks that serve the Port have historically tended to be older and more polluting than those used by national long-haul truck fleets. *Id.* Drayage trucks typically start out as long-haul trucks that are then sold to smaller, lower-cost carriers who use them to the end

of their useful long-haul lives before selling the trucks to drayage carriers for Port use. *Id.* Prior to the implementation of the Clean Truck Program, drayage trucks accounted for between 10 and 24 percent of the total emissions of diesel particulate matter and nitrogen-oxides from all Port sources. *Id.* SCAQMD calculated that the Basin could not achieve federal clean air standards without significant reductions in air pollution from Port operations, including dramatic reductions in emissions from drayage trucks. Pet. App. 74a, 75a.

B. Environmental And Community Groups Stymie All Major Port Expansion Projects For Seven Years

As a result of the Port's refusal to acknowledge and abate the health risks caused by Port operations, environmental and community groups mobilized to oppose Port expansion projects and blocked a series of projects at the Port from 2001 to 2008. Pet. App. 75a.

In 2001, NRDC, the Coalition for Clean Air, and certain community groups filed a lawsuit in state court against the Port alleging that it had violated the California Environmental Quality Act with respect to an agreement it entered with the China Shipping Line Company for the lease of a new container terminal facility at the Port. Pet. App. 76a; *Natural Res. Def. Council v. City of Los Angeles*, 103 Cal. App. 4th 268 (2002). In 2002, the Second District

Court of Appeal ruled in favor of NRDC and enjoined further construction at the terminal. *Id.* The following year, the Port and NRDC reached a settlement that enabled the Port to proceed with the China Shipping expansion project subject to a number of mitigation measures. Pet. App. 76a. Pursuant to the settlement, the Port was required to establish a special fund for mitigation of air quality and aesthetic impacts in the community due to the new terminal. Pet. App. 76a-77a. The Port also committed to extensive equipment modifications in the terminal as well as requiring ships to turn off ship engines and switch to shore-side electrical power when docked, a process called “cold ironing.” Pet. App. 77a. The settlement cost the Port more than \$80 million. *Id.* Funds for the settlement came entirely from Port revenue, without contributions from either the City of Los Angeles or China Shipping. *Id.* Following the China Shipping settlement, the Port resolved to address air quality and environmental issues related to its operations and adopted a “green growth” strategy. *Id.*

Subsequent to the China Shipping settlement, the Port continued to face pressure from the surrounding community and environmental groups such as NRDC in connection with proposed development projects that were anticipated to result in higher levels of pollution. *Id.* For example, in 2007, NRDC opposed the Port’s proposal to expand the “TraPac” terminal to 243 acres from 176, to add on-dock rail facilities, and to reconfigure area roadways to better accommodate additional traffic. *Id.* NRDC filed an

appeal with the Los Angeles City Council seeking to reverse the Port's approval of the project and indicated a willingness to initiate a lawsuit to prevent the expansion. Pet. App. 78a. The Port considered the TraPac expansion project critical because TraPac's customers, Asian shipping lines, had begun using a new generation of larger container ships, which could not be accommodated at TraPac's facilities as configured. *Id.* In the summer of 2007, three Asian shipping lines that regularly sent approximately 12,000 cargo containers per month through the TraPac terminal announced plans to take their business to the Port of Long Beach. *Id.* This decision represented a significant revenue loss for both TraPac and the Port. *Id.* Ultimately, litigation over the TraPac expansion project was averted through an agreement that permitted the project to proceed on the condition that the Port fund a study of off-port impacts on health and land use in the communities of San Pedro and Wilmington, and establish a five-year mitigation fund to offset the environmental impact of the expansion. *Id.*

C. The Port Adopts A “Green Growth” Strategy

At trial, then President of the Port Board of Harbor Commissioners (“BHC”), S. David Freeman,⁸

⁸ Mr. Freeman served as President of the Port Board of Harbor Commissioners from September 2005 until May 2009. Transcript of Proceedings (Apr. 27, 2010) at 36:24-37:4, *ATA v.*

(Continued on following page)

testified that when he was appointed to the BHC in 2005, his “management objectives” were to:

[D]eal with the twin problems of growth and pollution. And we quickly realized that in order to grow the port, we had to abate the pollution because the people in San Pedro and Wilmington were not only angry and not only suffering from terrible air pollution, but they had learned that the law was there to protect them, and the NRDC and others had filed lawsuits, and they had stopped the port from growing. So green growth which is what we called it was an absolute business necessity for us to grow. . . . [T]he concerns we had was how we were going to continue to be Number 1 and have the jobs that came with that when we had a situation where the consumers nearby were, in effect, subsidizing the goods movements with their lungs, and everybody knew it, and they had legal power to stop us from going forward. . . .

Transcript of Proceedings (Apr. 27, 2010) at 46:6-20, 47:22-48:2, *ATA v. City of Los Angeles*, 2010 WL 3386436 (C.D. Cal. Aug. 26, 2010), *rev'd in part*, 660 F.3d 384 (9th Cir. 2011); *see also* Pet. App. 122a (quoting Mr. Freeman’s trial testimony).

City of Los Angeles, 2010 WL 3386436 (C.D. Cal. Aug. 26, 2010), *rev'd in part*, 660 F.3d 384 (9th Cir. 2011). Mr. Freeman’s prior work experience includes running the Tennessee Valley Authority, Lower Colorado River Authority, New York Power Authority, Los Angeles Department of Water and Power, and Sacramento Municipal Utility District. *Id.* at 38:1-16.

Consistent with these objectives, and in response to the air quality and environmental concerns that had halted Port expansion projects, the Port, jointly with the Port of Long Beach, adopted a Clean Air Action Plan (“CAAP”) in November 2006. Pet. App. 79a. The CAAP states:

The Ports recognize that their ability to accommodate the projected growth in trade will depend upon their ability to address adverse environmental impacts (and, in particular, air quality impacts) that result from such trade. The [CAAP] is designed to develop mitigation measures and incentive programs necessary to reduce health risks while allowing port development to continue.

Id. The CAAP identified trucks as a significant source of air pollution and called for the rapid replacement or retrofitting of the entire drayage truck fleet serving the Port – over 16,000 trucks – within a five-year period. Pet. App. 80a.

From November 2006 through February 2008, the two ports worked together to develop the Clean Truck Program, and held numerous meetings and workshops to gather different ideas for possible implementation. *Id.* Ultimately, the Clean Truck Program embodied several components: a progressive ban on older, more polluting trucks, a fee charged on older trucks that enter the Port, grants and subsidies funded by the Port to encourage motor carriers to replace or retrofit their older trucks, and a concession agreement that created a direct contractual

relationship between the Port and motor carriers performing drayage services. Pet. App. 83a-84a. The Port determined that requiring drayage trucks serving the Port to be registered under a concession agreement would best serve the Port's proprietary objectives of cleaner air, enhanced safety and security, and a reliable workforce. Pet. App. 85a. In connection with its decision to move forward with a concession agreement, the Port reiterated that a failure to significantly reduce the health and traffic impacts of Port operations on the millions of residents in neighboring communities would impede the Port's ability to handle increased volumes of trade in the future. Pet. App. 86a.

The Court of Appeals' ruling incorporated these facts into its opinion. *See* Pet. App. 5a-13a.

II. THE COURT OF APPEALS' APPLICATION OF THE MARKET PARTICIPANT DOCTRINE TO THE PORT'S ENVIRONMENTAL PROGRAM IS CONSISTENT WITH ESTABLISHED LAW

The record shows that while the Clean Truck Program was understood to have major environmental benefits, it was developed to promote and sustain the Port's commercial enterprise. As a result, the District Court concluded that the concession agreement was "essentially proprietary." Pet. App.

120a-124a.⁹ Similarly, in affirming the District Court’s application of the market participant doctrine to two of the concession agreement’s provisions, the Court of Appeals held:

⁹ The District Court held:

The Concession Agreement helps the Port manage its property and facilities as any private landlord and facilities operator would. . . . Indeed, through the Concession Agreement, [the Port] aims to secure the provision of responsible motor carrier services that are necessary for the maintenance and growth of its commercial operations. . . . As cargo volumes rise, Port revenues increase, and thus to remain competitive the Port has a strong interest in upgrading and expanding its facilities to increase cargo volumes. . . . [T]he evidence demonstrates that Port-generated air pollution interfered with Port growth and has jeopardized the Port’s continued viability as a commercial enterprise. . . . [Environmental and community opposition] effectively stalled all major Port expansion projects for seven years. . . . In response, in order to be able to grow, the Port enacted the Clean Air Action Plan, which spawned the Clean Truck Program and the Concession Agreement, to mitigate Port-generated air pollution from Port-serving vehicles and equipment. . . . [T]he Port adopted the Clean Truck Program, which included the Concession Agreement as a “business necessity,” in order to eliminate evident obstacles to its growth. . . . While the Port had not previously required drayage services providers to contract with it to access Port property, it made an economically driven decision to do so via the Concession Agreement in its capacity as a landlord and facilities operator.

Pet. App. 120a-123a.

[W]hen an independent State entity manages access to its facilities, and imposes conditions similar to those that would be imposed by a private landlord in the State's position, the State may claim the market participant doctrine. . . . The Port has a financial interest in ensuring that drayage services are provided in a manner that is safe, reliable, and consistent with the Port's overall goals for facilities management. A private port owner could (and probably would) enter into concession-type agreements with licensed motor carriers in order to further its goals. . . . We therefore conclude that the Port acted in its proprietary capacity as a market participant when it decided to enter into concession agreements.

Pet. App. 29a. This decision is grounded in Supreme Court precedent and consistent with cases decided within the Ninth and Second Circuits over the last two and a half decades.

First, the Court of Appeals' ruling follows leading market participant cases where government restrictions that were adopted to protect the environment and public health were upheld against Commerce Clause and federal preemption challenges. In *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794, 809 (1976), this Court applied the market participant doctrine to uphold a Maryland program aimed at reducing the environmental impacts associated with old abandoned automobiles that littered the State's streets. The plaintiff in that case alleged that Maryland's

program violated the Commerce Clause. *Id.* at 802-03.

In *Engine Manufacturers Ass'n*, the Ninth Circuit applied the market participant doctrine to uphold air district rules that required state and local governments to purchase alternative fuel vehicles in order to reduce air pollution in the Los Angeles region. 498 F.3d at 1045-46. The industry association in that case argued that the rules were preempted by the federal Clean Air Act. *Id.* at 1035-37. And in *Sprint Spectrum v. Mills*, 283 F.3d 404, 410, 421 (2nd Cir. 2002), the Second Circuit applied the market participant doctrine to uphold restrictions placed by a school district on a telecommunications company that sought to build a cellular communications tower on a high school roof. The restrictions were necessary to protect the health and safety of schoolchildren from radio frequency emissions, and were alleged by the plaintiff to be preempted by the Telecommunications Act. *Id.* at 410.

These cases, in addition to the extensive findings made by the District Court, refute arguments by *Amici* Chamber of Commerce *et al.* that the concession agreement does not further the Port's proprietary interests because it promotes "environmental policies." Brief for the Chamber of Commerce *et al.* as *Amici Curiae* Supporting ATA, at 11-12, 16. "That a state or local governmental entity may have policy goals that it seeks to further through its participation in the market does not preclude the doctrine's application, so long as the action in question is the state's

own market participation.” *Engine Mfrs. Ass’n*, 498 F.3d at 1046 (citing *Alexandria Scrap*, 426 U.S. at 809).

Second, the Court of Appeals’ decision responds to the directive in *Building & Construction Trades Council v. Associated Builders & Contractors*, 507 U.S. 218, 231-32 (1993), which instructs: “[i]n the absence of any express or implied indication by Congress that a State may not manage its own property when it pursues purely proprietary interests, and where analogous private conduct would be permitted, this Court will not infer such a restriction.” The concession agreement enables the Port to act as a private business owner in the management of its property. Pet. App. 29a. Further, the Port’s green growth strategy typifies private market behavior. A recent study co-authored by MIT Sloan Management Review reports that 88% of business executives believe that “sustainability-driven strategies will be necessary to be competitive – if not right now, then soon.”¹⁰ The study went on to report that “[m]ost companies . . . are looking toward a world where

¹⁰ MIT Sloan Management Review and The Boston Consulting Group, *Sustainability: The ‘Embracers’ Seize Advantage*, at 18 (Winter 2011), available at <http://www.bcg.com/documents/file71538.pdf>. The authors of this study surveyed more than “3,000 business executives and managers from organizations located around the world,” and included responses from “individuals in organizations in every major industry, ranging from those with fewer than 500 employees to those with more than 500,000 employees.” *Id.* at 23.

sustainability is becoming a mainstream, if not required, part of the business strategy.”¹¹

Walmart has a “sustainability” program that commits the company to “be supplied 100 percent by renewable energy;” “create zero waste;” and “sell products that sustain people and the environment.”¹² Proctor and Gamble – “the largest consumer packaged goods company in the world” – vows to “grow responsibly” and “accelerate [its] commitment to helping solve some of the world’s sustainability challenges.”¹³ Patagonia, best known for its outdoor apparel, manufactures clothing from recycled material, promotes fair labor practices and safe working conditions throughout its supply chain, and encourages environmental activism on its website on issues such as river restoration and water conservation.¹⁴ Scores of other private companies from Verizon Communications to McDonalds to Shell Oil are also implementing sustainability

¹¹ *Id.*

¹² Walmart, Sustainability, <http://walmartstores.com/Sustainability/> (last visited Feb. 15, 2012).

¹³ Proctor & Gamble, Environmental Sustainability: Moving toward a long term vision by focusing on our products and our operations, http://www.pg.com/en_US/sustainability/environmental_sustainability/index.shtml (last visited Feb. 15, 2012).

¹⁴ Patagonia, Patagonia’s Common Threads Initiative, <http://www.patagonia.com/us/common-threads/recycle> (last visited Feb. 15, 2012); Patagonia, Company Info: Corporate Responsibility, <http://www.patagonia.com/us/patagonia.go?assetid=37492> (last visited Feb. 15, 2012); Patagonia, Environmentalism: Take Action, <http://www.patagonia.com/us/patagonia.go?assetid=58848> (last visited Feb. 15, 2012).

programs to improve their corporate image, build community goodwill, and, ultimately, increase their bottom line.¹⁵

We do not suggest that any action taken by the State to “green” its operations or increase its profits is protected from preemption under the market participant doctrine. Nor do the facts underlying the Court of Appeals’ ruling imply that result. *See* Pet. App. 5a-13a, 25a-30a. The record amply demonstrates, under the facts of this one case, that the Port has extensive commercial interests in the concession agreement and in port drayage services. The law of this Court and that of the circuit courts protects those interests under the market participant doctrine.



¹⁵ *See* Verizon, Corporate Responsibility, <http://responsibility.verizon.com/home/results/environment/> (last visited Feb. 15, 2012); McDonalds, The Road to Sustainability, http://www.mcdonalds.com/us/en/our_story/values_in_action/the_road_to_sustainability.html (last visited Feb 15, 2012); Shell Oil, Environment & Society, http://www.shell.com/home/content/environment_society/ (last visited Feb. 15, 2012); *see also, e.g.*, Gap, Social Responsibility, <http://www.gapinc.com/content/gapinc/html/csr.html> (last visited Feb. 15, 2012); Home Depot, Corporate Responsibilities, <https://corporate.homedepot.com/CorporateResponsibility/Pages/default.aspx> (last visited Feb. 15, 2012); Apple, Apple and the Environment, <http://www.apple.com/environment/> (last visited Feb. 15, 2012); General Mills, Environment, <http://www.generalmills.com/Responsibility/Environment.aspx> (last visited Feb. 15, 2012); General Motors, Sustainability Report, http://www.gmsustainability.com/SUPPLY_CHAIN.html (last visited Feb. 15, 2012).

CONCLUSION

The Court of Appeals' application of the market participant doctrine is based on established law and extensive factual findings that ATA never challenged. For these reasons, and those submitted by the City of Los Angeles, ATA's petition for a writ of certiorari should be denied.

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