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Justice Dept. Sues California to Stop Climate Initiative From Extending to Canada

By Lisa Friedman and Katie Benner

WASHINGTON — The Trump administration took another legal shot at California on Wednesday, suing to block part of the state's greenhouse gas reduction program and limit its ability to take international leadership in curbing planet warming emissions.

In a lawsuit filed in the Eastern District of California, the Justice Department said that a regional system created by California's air resources board, which caps planet-warming greenhouse gas emissions but lets corporations trade emissions credits within that cap, was **unlawful because it included Quebec, Canada. The Justice Department cited the constitutional prohibition on states making their own treaties or agreements with foreign governments.**

"The state of California has veered outside of its proper constitutional lane to enter into an international emissions agreement," Jeffrey Bossert Clark, the head of the Justice Department's Environment and Natural Resources Division, said in a statement.

"The power to enter into such agreements is reserved to the federal government, which must be able to speak with one voice in the area of U.S. foreign policy," Mr. Clark said.

What on Earth Is Going On?

The suit brought immediate condemnation from California Governor Gavin Newsom, who called it a "political vendetta" and only one in a series of acts against a liberal state government that has defied President Trump on immigration, his tax returns and climate change.

“Carbon pollution knows no borders, and the Trump administration’s abysmal record of denying climate change and propping up big polluters makes cross-border collaboration all the more necessary,” Mr. Newsom said in a statement. “This latest attack shows that the White House has its head in the sand when it comes to climate change and serves no purpose other than continued political retribution,” he added.

Read the lawsuit filed by the [Justice Department against California](#).

California has been [defying the Trump administration](#) since it took office. Sacramento alone has brought more than 30 environmental lawsuits, most of them to stop the [rollbacks of climate change regulations](#) enacted under the Obama administration.

But tensions have risen significantly since the Trump administration vowed to eliminate [California’s authority under the Clean Air Act](#) to set automobile emissions standards that are stricter than those set by the federal government.

California officials struck a deal in July with four automakers willing to abide by the state’s tougher gas mileage standards in defiance of Mr. Trump, a move that reportedly [enraged the president](#). The E.P.A. then formally revoked California’s authority, which [triggered a lawsuit from the state and 13 others](#) that follow California’s stricter standards and want to preserve their authority to enact tougher environmental rules.

The Trump administration followed with [a threat to withhold highway funding](#) because of what it said was inaction on state-level pollution plans, and a warning from the administrator of the Environmental Protection Agency that California was failing to meet federal water quality standards. The [letter that delivered that warning bypassed the regional experts based in San Francisco](#).

The Justice Department also opened an [antitrust investigation into California’s deal](#) with the carmakers.

Legal experts differed over whether the newest legal accusations had merit. But all agreed that if successful, blocking California from extending its cap-and-trade system beyond the borders of the United States would impede the state's effort to show the world that states, cities and businesses can tackle climate change even if the Trump administration refuses to recognize it.

"It would have a chilling effect on anything California would do," said Richard L. Revesz, a professor of environmental law at New York University. "Any state that does something significant is going to have to worry about finding itself in the cross hairs of federal litigation."

The Justice Department said that California's regional carbon trading system "undermines the President's ability to negotiate competitive agreements with other nations, as the President sees fit."

Mr. Revesz said he does not believe the administration's argument would stand up in court and likened California's agreement to trade missions that states and cities routinely take to open new markets for state products.

Michael Wara, director of the Climate and Energy Policy Program at the Woods Institute for the Environment at Stanford University, said the legal question could come down to whether California's agreement is viewed as a treaty or merely a memorandum of understanding that does not rise to the level of a contract in possible violation of the president's exclusive authority to set agreements with foreign nations.

He noted that the state crafted its deal with Quebec mindful of its Supreme Court loss in a 2003 case where the state tried to require insurance companies to provide information about their Holocaust-era policies. In that case, the court decided California's Holocaust Victim Insurance Relief Act, which would have revoked the license of any company that did not comply with its law, unconstitutionally interfered with the president's conduct of the nation's foreign policy.

“I think there are definitely ways that California will defend itself, but there’s an intuitive idea that the federal government speaks with the voice of America to other countries,” Mr. Wara said. “And to some degree what California is doing is counter to that.”

That argument, he said “might turn out to be effective before the current Supreme Court.”

The Western Climate Initiative — [whose board includes representatives from California, Quebec and Nova Scotia, another Canadian province](#) — is also a defendant in the lawsuit. A similar cap-and-trade system, [the Regional Greenhouse Gas Initiative](#), covers power-plant emissions in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island and Vermont, but does not stray beyond the borders of the United States.

Robert N. Stavins, a professor of economics at Harvard University, said linking California’s cap-and-trade system to Canada’s enables cost savings for electricity generators in both places.

“If the lawsuit were successful, both policies would remain in place, but the costs to compliance entities and to the broader economies (including consumers) would increase,” he said in an emailed comment. “That outcome would be in no one’s interest!”

Experts noted that California’s trading system predated its agreement with Quebec and would remain standing even if the agreement with the Canadian province was successfully challenged. But some worried that the legal fight could cripple the willingness of businesses and others to work with the state.

“It’s very important that the actors in the California market have confidence the market will endure,” Mr. Wara said, adding, “Does this harm market confidence, especially as California is getting into the second phase where targets are going to be more stringent? We’re going to have to see how it plays out.”