

# *California vs. the Constitution*

*Sacramento can't run its own foreign policy on climate change.*

*[Editorial]*

Democrats in California believe they can impose their laws on the rest of the country, and they even think they can ignore the Constitution when it conflicts with their progressive policies. Credit to the Justice Department for attempting to make clear that California isn't a separate nation under the law, and that climate change isn't a license for a state to conduct its own foreign policy.

Last week the Justice Department sued California for entering a cap-and-trade agreement with Canada's Quebec province. Since 2013 California and Quebec have jointly held auctions in which businesses may buy permits to emit carbon if they exceed their regulatory cap. Businesses across the two jurisdictions can also trade permits.

The problem for California is the small legal detail known as the U.S. Constitution, Article I grants Congress the authority to "regulate Commerce with foreign Nations" and prohibits states "without the Consent of Congress" from "enter[ing] into any Agreement or Compact . . . with a foreign Power." Under Article II the President has exclusive power to conduct foreign affairs.

As the Supreme Court held in *Hines v. Davidowitz*, (1941), "our system of government is such that the interest of the cities, counties and states, no less than the interest of the people of the whole nation, imperatively requires that federal power in the field affecting foreign relations be left entirely free from local interference."

California can decide on its own to comply with emissions reductions that Barack Obama committed the U.S. to in Paris in 2015 even if President Trump has since withdrawn from the agreement. But California can't make its own agreement with a foreign power to regulate

CO2 emissions. Carbon permits are essentially an economic commodity, and more than 220 million permits worth some \$3 billion have been exchanged since 2013.

Justice notes in its suit that California's agreement "complexifies and burdens the United States' task, as a collective of the states and territories, of negotiating competitive international agreements" and encourages other states to form agreements with foreign powers. Imagine the liberal outcry if North Dakota during Mr. Obama's Presidency had cut an oil pipeline deal with Alberta province.

**California Democrats say they have a right to negotiate climate accords with foreign governments because President Trump has abdicated on carbon regulation. But the Supreme Court in *Zschernig v. Miller (1968)* ruled that the federal government has exclusive power over foreign-policy matters it hasn't directly addressed.**

President Trump doesn't want to use trade deals to *impose carbon-emissions limits*, but Democrats do. California's cap-and-trade agreement with Quebec could make it harder for a future Democratic President or Congress to do so, especially if other states decide they can go their own way. Elizabeth Warren has promised to ban oil exports, but what if Texas strikes a deal with Mexico?

As Justice John Paul Stevens wrote in *Massachusetts v. EPA (2007)*—the Court decision that let the EPA regulate CO2 emissions—"*[w]hen a State enters the Union, it surrenders certain sovereign prerogatives. Massachusetts cannot invade Rhode Island to force reductions in greenhouse gas emissions [and] it cannot negotiate an emissions treaty with China or India.*" Gov. Gavin Newsom says California's cap-and-trade deal with Quebec is constitutionally kosher because "carbon pollution knows no borders." We're glad he's finally acknowledging that California's climate policies won't have a meaningful impact on climate change. And, by the way, California is one of only six states whose carbon emissions have *increased* since 2013 despite cap and trade.

Try as they may, Democrats in Sacramento can't nullify the Constitution. Let's hope the courts drive home the point.