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ICYMI: *Los Angeles Times* and *Sacramento Bee* Outline Legal Questions with Cap-and-Trade Program

(SACRAMENTO)— In a set of pieces that ran this weekend, *Sacramento Bee* columnist Dan Walters and the *Los Angeles Times* wrote about the upcoming oral arguments in the case *California Chamber et al. v. State Air Resources Board et al.* The Air Resources Board has been collecting billions of dollars from Californians through the cap-and-trade auction program, claiming it is “revenue incidental to regulation.” But the truth is that the cap-and-trade is an illegal tax on every Californian because the legislation that authorized it was not passed with a 2/3 vote, as required by law.

***Sacramento Bee*: Legal, political clashes will settle future of California’s cap-and-trade system**

California’s highly controversial cap-and-trade approach to reducing carbon emissions has many moving parts – bureaucratic, legal and political – and the next few months will determine whether they coalesce into an enduring system or the entire structure collapses.

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However, legislative approval is uncertain. To make it legally bulletproof, Brown wants a two-thirds legislative vote, due to a 2010 ballot measure that tightens the legal definition of a tax.

A pending lawsuit, brought by the California Chamber of Commerce and supported by other business groups, doesn’t oppose cap-and-trade itself but contends that the current auction system, which has raised several billion dollars, is an illegal tax.

“The challenged action by an unelected, politically appointed state board to engraft into a regulatory program a massive revenue raising device is unlawful because it ... imposes what is an invalid tax,” the chamber says in its appellate brief.

Although a trial judge narrowly rejected that contention, an appeals court gave some indirect indications that it might uphold it and will hear oral arguments on the issue this week.

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The auctions had been expected to raise about \$2.4 billion a year for projects supposedly enhancing carbon reduction. The state has spent \$3.4 billion from previous auctions, including a \$500 million transfer into the state’s general fund, and Brown’s 2017-18 budget proposes \$2.2 billion more, including a big chunk to underwrite his pet bullet train project that is very short on financing.

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Cap-and-trade has financed a wide array of projects and programs, many of which have, at best, tenuous connection to reducing greenhouse gases. That pork barrel approach, especially the general fund diversion, undercuts the high-minded bromides of politicians and makes it resemble just another tax on business and, ultimately, on consumers.

Read the entire column [here](#).

Los Angeles Times: The immediate threat to California's climate-change fight isn't Trump, it's this

With President Trump in the Oval Office, California officials are bracing for the possibility that the new administration will undermine the state's landmark policies on climate change. But the more immediate threat isn't coming from Washington; it lies in a lawsuit that has been slowly winding its way through state courts.

The 4-year-old legal challenge pursued by the California Chamber of Commerce and a collection of business interests argues that the cap-and-trade program represents an unconstitutional tax. The system, intended to create a financial incentive to reduce greenhouse gas emissions, requires companies to purchase permits to pollute.

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The result was cap and trade, which auctioned off its first permits in 2012. Revenue from the auctions, which has ranged from hundreds of millions of dollars to nearly \$2 billion a year, is then spent by lawmakers on initiatives intended to further reduce emissions. One of those projects is the \$68-billion bullet train from Los Angeles to San Francisco.

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Opponents disagree, noting that the state is collecting revenue through a program that wasn't created with a two-thirds vote in both houses of the Legislature, the threshold needed to approve taxes.

"What they're doing is simply outside the law," said Loren Kaye, president of the California Foundation for Commerce and Education, a think tank affiliated with the Chamber of Commerce.

Read the entire article [here](#).