

Sheppard Mullin Secures Victory for IETA and the State of California in Environmental Suit

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Sheppard Mullin represented the International Emissions Trading Association (IETA) as co-defendant with the State of California, and today succeeded in defending the State's greenhouse gas (GHG) emissions trading system against a federal lawsuit seeking to sever the program's link with Quebec.

In its decision today, the Court rejected the Department of Justice's (DOJ) claim that the linkage of the two markets, which allows businesses in California and Quebec to cooperate to reduce GHG emissions through a market system, was an unconstitutional incursion by California into foreign policy, which is the sole preserve of the federal government. It found that California's program was not preempted because it was "entirely consistent" with the objectives of the 1992 UNFCCC (the United Nations Framework Convention on Climate Change), to which the US is and remains a party.

The Court also found that the cap-and-trade program does not present a conflict with any federal foreign policy. It rejected the DOJ's assertions that the cross-border linkage of the emission markets frustrates the US government's decision to withdraw from the Paris Agreement. In doing so it echoed IETA's argument that even if California sought to contravene US foreign policy by enabling Canada to use California credits under Article 6 of the Paris Agreement, it cannot because the federal government would have to approve the transaction, and it can only do as a party to the agreement.

"We hope the Department of Justice will stand down from its legally baseless attack on efficient market mechanisms," said Sheppard Mullin partner Nico van Aelstyn, who represented IETA in the lawsuit. "However, if it does choose to appeal, we are ready to carry the fight to the Court of Appeals, which we are confident will uphold the District Court's well-reasoned decision."

The Sheppard Mullin team also included Zachary Norris and Angela Reid.

[Click here to read the decision.](#)

Attorneys

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Environmental

Real Estate, Energy, Land Use & Environmental