



Federal Court Blocks California Carbon Emissions Rule

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A federal district court has put a temporary stop to a California Air Resources Board (CARB) rule restricting carbon dioxide emissions from transportation fuels. According to the court, the rule violates the U.S. Constitution's Commerce Clause by discriminating against oil and biofuel producers located outside the state of California.

The court's Dec. 29 decision did not take issue with CARB's asserted authority to impose carbon dioxide restrictions and stringent reporting requirements. The decision requires CARB rules to avoid discriminating against fuel sources based on where they are produced.

'A Belated Christmas Present'

"I, along with every single California consumer, was given a belated Christmas present when the Eastern District of California Federal Court placed a stay on the implementation and enforcement of California's Low Carbon Fuel Standard," said Tom Tanton, president of T2 & Associates, an energy technology firm, and a fellow in environmental studies at the Pacific Research Institute. "Potentially increasing fuel costs by 20 or 30 percent for no discernible benefit flies in the face of good government and environmental protection."

Tanton also said it was "high time" the CARB was challenged on its members' "roughshod" treatment of Californians.

Damaging California's Economy

"Oil and gasoline are used in transportation vehicles precisely because they are less expensive than alternative fuel sources," said Heartland Institute science director Jay Lehr. "Reducing carbon dioxide emissions by punishing inexpensive energy sources is only going to hurt California consumers. The court gave California consumers an economic break by halting the CARB Rule."

"Oil and gasoline are also more dependable fuel sources than the proposed alternatives," Lehr explained. "California has for years been trying to impose alternative

fuel mandates on its consumers, but even the enormous power of the state has been unable to force such a transition. The state has done its best to create and encourage hydrogen highways, hybrid vehicles, electric plug-in vehicles, fuel-cell vehicles, etc., but where are the results from all these expensive programs? The results are merely been money sent down the drain.”

‘Facially Discriminatory’

Trevor Burrus, a legal associate with the Cato Institute’s Center for Constitutional Studies, said the court’s decision will likely withstand appellate court review.

“At the very least,” he said, “it will not be easily overturned.”

The in-state versus-out-of-state discrepancies involved in the California case provide solid cause for discrimination charges, Burrus says.

“As the court describes, the different treatment between out-of-state providers and identical in-state providers is facially discriminatory and thus must meet strict scrutiny, ... the highest level of constitutional scrutiny,” he said. “In order to survive, a law must not only forward a compelling interest of the state, but it must be narrowly tailored to reach that goal.”

In other words, Burrus explained, “if there are other methods of accomplishing the goal that do not discriminate, then the law will fail.”