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Trump vs. California: The biggest legal clashes

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The Trump administration and California are fighting a furious multifront legal war, and every week seems to bring a new courtroom battle.

“It’s bloody combat,” Jessica Levinson, who teaches at Loyola Law School in Los Angeles, said Tuesday. “This isn’t a cold war. It’s a scorching hot war. And that’s politically expedient for both sides.”

The state has filed 29 lawsuits against the federal government since President Donald Trump took office, on issues including immigration, the environment and voting rights.

“Government by litigation isn’t what the American people voted for,” Attorney General Jeff Sessions said Monday, “and attempting to thwart an administration’s elected agenda through endless, meritless lawsuits is a dangerous precedent.”

That same day, Sessions filed suit against the state, accusing it of interfering with the sale of federal lands. It followed a separate suit last month to block three state laws that sought to protect unauthorized immigrants.

Clashes between states and the federal government are nothing new, said Ilya Somin, a law professor at George Mason University.

“This has happened throughout American history, but under the Obama and Trump administrations it has happened more often,” he said.

In the Obama years, red states tried to strike down the heart of the Affordable Care Act and succeeded in blocking a major immigration program. “Now we see the blue states battling Trump over sanctuary cities, the census and other issues,” Somin said.

Greg Abbott, now the governor of Texas, used to say that his job description as the state’s attorney general was simple: “I go to the office in the morning, I sue Barack Obama, and then I go home.”

Xavier Becerra, California’s attorney general, has said that his attitude is slightly different. “We don’t wake up in the morning looking to pick a fight with the Trump administration,” he said. “But we will do what is necessary to defend our values.”

Texas sued the Obama administration at least 48 times, according to a survey conducted by The Texas Tribune. The Trump administration is a little more than a year old, and California is already within striking distance of those numbers.

California has been doing well in court, winning more than a dozen rulings against the administration. Many of those victories came from federal judges in the state, and Sessions may have been referring to them when he complained about “ideological judging.”

The state is also likely to receive receptive hearings when its cases reach the 9th U.S. Circuit Court of Appeals, in San Francisco, which has been a frequent target of Trump’s criticism. The Supreme Court is a more attractive forum from the administration’s perspective, but the justices agree to hear very few cases.

The lawsuits all have distinct features, but collectively they pose fascinating questions about the Constitution’s allocation of power between the federal government and the states. They also give rise to a teachable moment in legal opportunism.

“Blue states and blue cities are making arguments about limited federal power that are traditionally associated with the political right,” Somin said. “On the other hand, the Trump administration is staking out a very broad position on federal power.”

Land Use

On Monday, the Trump administration sued to strike down a state law that made it harder for the federal government to sell or transfer federal lands by giving a state commission the right of first refusal.

The law was meant to protect the state’s natural resources, Becerra said. “Our public lands should not be on the auction block to the highest bidder,” he said in a statement.

The administration’s legal arguments are substantial, drawing on the Constitution and the law under which California was admitted to the Union.

Article IV of the Constitution, which is concerned with the relationship between the federal government and the states, includes the Property Clause: “The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.”

And the 1850 law admitting California to the Union, making it the 31st state, was explicit: “California is admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned.”

Levinson said her preliminary assessment of the suit was that “it looks like the federal government has quite a strong argument.”

But Professor Michael Blumm, who teaches at Lewis and Clark Law School in Portland, Oregon, said “it isn’t clear why the federal government claims it’s not possible to recognize a right of first refusal and carry out its other obligations.”

He added, “Isn’t there some irony in a DOJ headed by an ardent states-rightser, Jeff Sessions, arguing for federal pre-emption of state authority under the Property Clause?”

California has not yet filed its response to the suit. Based on the Trump administration’s complaint, though, the state law appears to be in trouble.

Sanctuary Laws

Last month, the Trump administration sued California over parts of three so-called sanctuary laws protecting unauthorized immigrants. “Immigration law is the province of the federal government,” Sessions said in announcing the suit. But, he added, “California has enacted a number of laws designed to intentionally obstruct the work of our sworn immigration enforcement officers — to intentionally use every power it has to undermine duly-established immigration law in America.”

One of the challenged laws, for instance, prohibits state officials from telling federal ones when unauthorized immigrants are to be released from state custody.

“The executive branch should be able to remove criminal aliens from a jail instead of your neighborhood,” Sessions said in a statement Monday.

Becerra responded: “We’re not going to let the Trump administration coerce us into doing the federal government’s job of enforcing federal immigration law. We’re in the business of public safety, not deportation.”

A second challenged law requires state officials to inspect some facilities that house people detained on behalf of the federal government. A third restricts employers from cooperating with immigration officials.

Legal experts differed about the strength of the administration’s suit. Somin wrote that the legal questions were difficult but that “California ought to prevail on all three issues.”

Writing in *The Wall Street Journal*, Professor Josh Blackman, who teaches at South Texas College of Law, and Ilya Shapiro, a lawyer with the Cato Institute, a libertarian group, said the federal government seemed to have the better of the legal argument as to two of the three state laws.

“Resistance to unpopular federal laws — whether over tariffs or immigration, or marijuana, gambling, guns or a host of other areas of possible conflict — is permissible,” they wrote, “only within the bounds of federalism.”

The administration’s lawsuit seems likely to give rise to a split decision, with courts upholding some but not all of the state’s laws.

The Census

Last month, California sued the Trump administration over its decision to add a question about citizenship to the forms to be used in the 2020 census. Several other states have filed a separate suit.

The Constitution requires an “actual enumeration” of the nation’s residents every 10 years. The information gathered is used to allocate congressional seats and to disburse federal money.

“The federal government should have an accurate count of who can legally vote in our federal elections,” Sessions said Monday. California’s lawsuit said that adding a question on citizenship would depress participation and hurt communities with a high proportion of unauthorized immigrants. It said it has more to lose than any other state, as it has more foreign-born residents and noncitizens than any other.

The administration said the citizenship information was needed to enforce the Voting Rights Act of 1965, but critics said that has not otherwise been a priority.

In 2016, the Supreme Court ruled that states may count all residents, whether or not they are eligible to vote, in drawing election districts. That is the method currently used by every state. Some conservative groups say only eligible voters should be considered in drawing districts.

Counting all people amplifies the voting power of places that have large numbers of residents who cannot vote legally — including immigrants who are here legally but are not citizens, unauthorized immigrants and children. Those places tend to be urban and to vote Democratic.

The Supreme Court did not decide whether other methods of counting were permissible. Many political scientists say that the available information is not sufficient to count only eligible voters, and the new census question may have been added in part to gather such information.

The state’s lawsuit has a decent chance of success. The decision to alter the census form was sudden and consequential, and courts may be reluctant to allow such a drastic change.

Sanctuary Cities

Last year, California sued the administration over its plans to deny federal funding to so-called sanctuary cities unless they begin cooperating with federal immigration agents.

“The Trump administration cannot manipulate federal grant fund requirements to pressure states, counties or municipalities to enforce federal immigration laws,” Becerra said at the time.

A Justice Department spokesman responded that the state was putting the welfare of unauthorized immigrants ahead of public safety.

The state lost a round in the case in March, when Judge William H. Orrick of the U.S. District Court in San Francisco declined to issue a preliminary injunction. Orrick, noting that courts around the nation had come to varying conclusions in similar suits, said “the issues in this case will benefit from further development.”

Somin has written that attaching conditions to federal grants can be at odds with federalism.

“Some conservatives may cheer when the current administration uses this tool against sanctuary cities,” he wrote. “But they are likely to regret their enthusiasm if a liberal Democratic president uses the same tactic to force states to increase gun control, adopt a ‘common core’ curriculum or pursue liberal policies on transgender bathroom accommodations.”

It is hard to say whether the state will prevail in its suit, as much depends on how, when and why the federal government denies funding. But there is little question that some denials can give rise to constitutional problems.

DACA

In January, California won a major victory, persuading a judge to block the Trump administration’s efforts to shut down a program that shields some 700,000 young unauthorized immigrants from deportation. The Supreme Court turned down a hail-Mary appeal from the administration in February, and the case will now make its way up the court system in the usual way.

Trump ended the program, Deferred Action for Childhood Arrivals, or DACA, last September, calling it an unconstitutional use of executive power by his predecessor and reviving the threat of deportation for immigrants who had been brought to the United States illegally as young children.

But Judge William H. Alsup ordered the administration to maintain major pieces of the program while legal challenges move forward, notably by requiring the administration to allow people enrolled in it to renew their protected status. The administration has not sought a stay of that injunction.

Alsup ruled that the administration had abused its discretion and had acted arbitrarily and capriciously in rescinding the program. He acknowledged that presidents have broad powers to alter the policies of earlier administrations, but said the Trump administration’s justifications for rescinding the program did not withstand scrutiny.

In a statement on Monday, Sessions expressed incredulity that the administration should not be able to rescind what he called “an unlawful policy intended to usurp Congress’ role in passing immigration laws.”

The 9th Circuit is set to hear arguments in the case in May, and the state’s chances of winning in that court are good. But the Supreme Court may well hear an appeal, and there the state could face headwinds.

Emissions

The next major court fight between California and the Trump administration may involve greenhouse gas emissions.

The state has a waiver under the Clean Air Act that allows it to enforce stronger air pollution standards than those set by the federal government.

Scott Pruitt, the administrator of the Environmental Protection Agency, has said he is dissatisfied with that state of affairs.

“California is not the arbiter of these issues,” he said in an interview with Bloomberg TV last month.

On Monday, the agency took steps to challenge California’s waiver. Though the process may take some time, it is likely to produce another clash between the Trump administration and the state that has emerged as its most determined foe.

California, Becerra said, is “ready to file suit.”