

My colleague Jonathan Zasloff [suggests](#) that environmental justice groups are using litigation to try to get leverage for some sort of compensation or other measures, rather than to actually stop the state's cap-and-trade program for greenhouse gases. I doubt that.

But what I do wonder — with no evidence, but I can speculate wildly on a blog, can't I? — is whether this litigation actually might start the state on a path away from cap-and-trade.

EJ groups have been vehemently and implacably opposed to cap-and-trade from the beginning. They said from the beginning – before the law even passed – that they would oppose cap-and-trade for GHGs in whatever way they could. And then they did. Now I assume they will try to take advantage of legal leverage and a changed political climate to reduce or eliminate the cap and trade program from the AB 32 scoping plan. Perhaps there's something else they will settle for, but I have no doubt that their goal is to get cap-and-trade removed.

But here's where I'll really speculate: perhaps Governor Brown will use the injunction against the program's implementation, and the court's mandate to study alternatives to cap and trade more seriously, as a segue to a different set of policy tools for regulating greenhouse gases.

Remember, AB 32 doesn't require a cap and trade program; that was the Governor's decision. While former Governor Schwarzenegger was very gung-ho about it, there's no real reason to think that Governor Brown will necessarily continue on the same path. And as I pointed out in a [prior post](#), cap and trade isn't even responsible for a large percentage of the overall GHG emissions reductions projected under AB 32.

Moreover, political support for cap and trade in the business community was very high when the Air Resources Board was first developing the program. Now, despite the defeat of Proposition 23 (which lost because the opponents hammered home the idea that the measure was funded by outside oil interests, while studiously avoiding using the phrase "climate change"), I believe political support for cap-and-trade might be lagging in the business community, as evidenced by the failure of federal cap-and-trade legislation that seemed possible just a couple of years ago. And many environmental groups (though certainly not all) are agnostic about the proper policy tools for GHG reduction; they just want meaningful action, and have believed that cap-and-trade is the most politically viable option.

The court decision, which may (depending on any decisions to stay the outcome pending appeal) delay the program implementation, and which certainly will require significant new work to study alternatives to cap-and-trade, may give the Governor the opportunity to revisit

Might recent events allow Governor Brown to consider a new direction for AB 32 implementation? | 2

the program, if he's so inclined.

Governor Brown has offered bold initiatives in other contexts, including audacious tax proposals. If he believes that another path is more likely to achieve emission reductions with fewer political or practical barriers, he might decide to do that. The downside is that time is of the essence, both in terms of the regulatory deadlines and our need to reduce greenhouse gas emissions dramatically, and soon.