The California Chamber of Commerce has just lost its case against the state's cap-and-trade auction, with the news from the *Los Angeles Times* that the California Supreme Court has refused to hear an appeal from the state appellate court. This means the auction mechanism in the cap-and-trade program is valid at least through 2020.

As we've covered on this blog before (most recently with Ann's post from last fall, which links to our other posts), industry plaintiffs had argued that the auction represented a tax that required two-thirds approval of the legislature, under Proposition 13. But the auction isn't like a tax, the courts have now consistently and definitively ruled, allowing the current mechanism to continue through 2020.

After 2020, the auction may be subject to a different legal analysis under 2010's voter-approved Proposition 26, which legally converted many "fees" to taxes and therefore extended the reach of the two-thirds bar. AB 32, the law that authorized the cap-and-trade program, passed in 2006 and therefore wasn't subject to Proposition 26, which came later. Since AB 32 authorized the program specifically through 2020, it can now continue at least through that year without needing two-thirds vote in the legislature or facing further court challenges.

This is a significant win for the state for two reasons: first, it allows the auction to continue, which is a crucial feature for distributing allowances to pollute under the cap. It holds businesses economically accountable for on-site emissions reductions, rather than allowing them to get allowances for free (although there may be other, more convoluted ways that they could purchase auctions and avoid court challenges). Perhaps more importantly from a political perspective, the auction generates proceeds for the state that have been used to fund everything from high speed rail to transit and weatherization for low-income households.

Second, it means industry loses a bit of leverage to shape cap-and-trade going forward in the legislature, which is debating proposals to extend the program now. The case has loomed in the background on these debates, with industry potentially wielding it as a negotiation piece to extract concessions, implicitly if not explicitly. Coming on the heels of the passage of SB 32 and AB 197 last year, which directed more command-and-control type approaches to emissions reductions at regulated facilities, it represents another loss of leverage for industry going forward.

Meanwhile, cap-and-trade post-2020 debates are heating up at the Capitol, with the governor determined to extend the system before the August auction and solidify the program's place through 2030, in part to ensure a continued revenue stream for high speed

rail. Industry is now on board as well (although they're trying to weaken the program as much as they can), as they've lost their fall back option of killing the auction completely in court and simultaneously face much more draconian command-and-control regulation if cap and trade doesn't continue.

It makes me wonder what might have happened had the Obama Administration chose to use the Clean Air Act more aggressively back in 2009, which (if successful in court) would have made cap-and-trade at the federal level similarly more appealing for industry.

We'll never know. But in the meantime, we can watch the political dynamic play out at the state level here in California, with one less card for industry to play at the negotiating table, courtesy of the state Supreme Court.