The Trump attack on California's climate policies has entered a new phase. In addition to revoking the state's permission to regulate tailpipe emissions from cars, investigating auto makers for antitrust violations for cooperating with California on reducing car emissions, threatening to revoke highway funds from the state for Clean Air Act violations while simultaneously taking away the state's best tool for cleaning up its air, and threatening to sue San Francisco for Clean Water Act violations related to its homeless population, today the Department of Justice sued California over its cap-and-trade policies. The lawsuit claims that California is attempting to establish its own independent foreign policy through its arrangement linking Quebec's cap-and-trade program with California's. DOJ argues that California is interfering with foreign affairs by "complexifying and burdening the United States' task of …. negotiating international agreements."

The ironies, of course, abound. The federal government is not interested in negotiating international agreements about climate change. Trump does not recognize the existence of climate change (although the denial largely comes only from statements out of the President's mouth; federal agencies, including the Department of Justice in *Juliana v. the United States*, and the EPA, in regulating greenhouse gases under the Clean Air Act even if weakly, acknowledge not only the existence of climate change but its severity.) The federal government is in the process of withdrawing from the Paris Agreement, the global community's most recent effort to limit greenhouse gases. Nevertheless, to the degree that we have any kind of foreign policy on climate change, we remain a party to the United Nations Framework Convention on Climate Change, which commits the countries of the world to stabilizing greenhouse gases at a safe level. We also remain a party to the Paris Agreement despite Trump's effort to withdraw because the process takes four years before withdrawal takes effect. California is, of course, doing its best to act in a way that is consistent with the Framework and in a way that is consistent with the Paris Agreement.

The constitutional doctrine about foreign affairs is notoriously mushy. It is axiomatic, of course, that the President has broad authority to conduct foreign affairs (I'm resisting here the temptation to discuss the Ukraine scandal). But one central principle about the foreign affairs doctrine is that state actions may be preempted only if they *conflict with* federal action — either expressly or in effect. It is hard to see how California's actions — in cooperating with Quebec to recognize that actions taken in one jurisdiction to reduce greenhouse gases can be used to comply with obligations in another jurisdiction – conflict with U.S. policy. Again, to the extent that the U.S. has an international climate policy, that policy is to stabilize greenhouse gas emissions levels at a safe level. Under the Paris Agreement, country obligations are entirely voluntary. California's linkage policy with Quebec is entirely consistent with policies to stabilize greenhouse gases on a voluntary

basis. There is certainly no express conflict and it is hard to see how there is a conflict in effect.

It is also worth noting that at least some Justices currently on the Supreme Court, including the odd pairing of Justices Ginsburg and Thomas, would find no foreign affairs preemption for a state action unless there is a "clear statement" from the executive branch that conflicts with California policy. Only one Justice currently on the Court, Justice Breyer, was in the majority in the last major case striking down a state policy as in conflict with federal foreign policy, American Insurance Ass'n v. Garamendi, without such a clear statement in place. Justices Ginsburg and Thomas dissented. The U.S. position on climate change is hardly clear cut. Even as Trump has made off-handed statements that climate change isn't real, his administration has issued the National Fourth Climate Assessment, documenting in startling detail the serious effects of climate change not only in the future but today. His Environmental Protection Agency has left in place a finding under the Clean Air Act that greenhouse gas emissions endanger public health and welfare. California's actions are aimed at reducing these harmful pollutants to stave off the harms identified in the Fourth Climate Assessment. These policies are consistent with the official federal policy — as a party to the UNFCC, under the Clean Air Act, and what is set forth in the Fourth Climate Assessment. They do not contradict it.

One legal issue in the new case is arguably trickier. States cannot, under Article 1, Section 10 of the Constitution, enter into "treaties, alliances, or confederation" with foreign nations. DOJ argues that California's agreement with Quebec violates this ban. But the agreement with Quebec is not a treaty, nor is it with a foreign nation. It is an agreement with a provincial government that imposes light responsibilities on each, including to "consult" and "give notice" to resolve differences. As evidence of the looseness of the obligation, as my colleague William Boyd pointed out to me, the province of Ontario had a similar agreement with California and when its government changed leadership, it withdrew from the agreement immediately, leaving California with no recourse. Ontario didn't even respect the 12 month notice provision.

What is really important to note about this new lawsuit is that, as I noted at the outset, it is motivated by spite and vindictiveness, not out of an actual concern that the state is somehow impairing the Trump Administration's foreign policy efforts to forge agreement on climate change. Even to write that sentence is to state the obvious. There is a simple remedy, too, for these vindictive efforts. Vote the Trump Administration out of office and vote in a President who will take the greatest existential environmental threat we have ever faced seriously .