



April 19, 2010

To Members of the United States Senate:

We urge you to support S. J. Res. 26, the bipartisan legislation sponsored by Sen. Lisa Murkowski (R-Alaska) to overturn the legal force and effect of EPA's endangerment finding with respect to greenhouse gases (GHGs).

If allowed to stand, the endangerment finding will trigger a regulatory cascade, making carbon dioxide (CO₂) emissions "subject to regulation" under several Clean Air Act (CAA) programs. America could end up with a regulatory regime

more costly than any climate bill or treaty the Senate has declined to pass or ratify, yet without the people's representatives ever voting on it.

At a minimum, the endangerment finding will allow EPA to deal itself into a position to determine fuel economy standards for the auto industry, control CO₂ emissions from stationary sources, and, more broadly, set climate policy for the nation – powers never delegated to the agency by Congress.

The endangerment finding leads to “absurd results,” as EPA itself admits. EPA and its state counterparts will have to process an estimated 41,000 Prevention of Significant Deterioration (PSD) pre-construction permits annually (instead of 280), and 6.1 million Title V operating permits (instead of 14,700) – workloads far exceeding agencies' administrative resources. The permitting programs will develop enormous, ever-growing backlogs, blocking new construction and forcing millions of firms to operate in legal limbo. The endangerment finding endangers an already uncertain economic recovery.

To avoid a debacle of its own making, EPA proposes to “tailor” the CAA so that firms emitting less than 50,000 tons per year (TPY) of CO₂-equivalent greenhouse gases are exempt from the permitting programs for six years. But the Act plainly prescribes 250 TPY and 100 TPY as the applicability thresholds for PSD and Title V. In effect, EPA proposes to amend the CAA – another breach of the separation of powers on top of EPA's bid to ‘enact’ fuel economy standards and climate policy. The Murkowski resolution would nip all this mischief in the bud.

Although the scientific basis of the endangerment finding is controversial, that is not what the Murkowski resolution is about. The resolution is a referendum not on climate science but on who should make the big decisions affecting America's economic future. Is climate policy to be made by the people's representatives or by politically unaccountable bureaucrats, trial lawyers, and activist judges?

Only one answer to that question passes constitutional muster. EPA has no authority to do an end-run around the democratic process. Climate policy is too important to be made by an administrative agency without new and specific statutory guidance from Congress.

Sincerely,

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