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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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September 24, 2007

Mr. James L. Connaughton
Chairman
Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503

Dear Mr. Chairman:

Documents provided to the Committee indicate that the White House approved a behind-the-scenes lobbying effort to block California from regulating greenhouse gas emissions from motor vehicles. The lobbying campaign was personally directed by the Secretary of Transportation. According to the documents and interviews with senior officials, the goal was to urge members of Congress and state governors to oppose EPA approval of the new California motor vehicle standards.

I am writing to ask you to repudiate these efforts. Under the federal Clean Air Act, EPA's decision on California's application to regulate greenhouse gases from motor vehicles is supposed to be made on the merits. If you or Transportation Secretary Mary Peters have views about the merits of the decision, you should submit comments to EPA that are considered on their merits. It is not an appropriate use of taxpayer dollars to organize a lobbying campaign to politicize this vital regulatory decision.

Background

For nearly 50 years, California has been the world leader in regulating emissions from motor vehicles. California established the first requirement for automotive emissions control technology in the nation in 1961, set the first standards for hydrocarbons and carbon monoxide emissions in 1966, established the first tailpipe standards for nitrogen oxides in 1971, first brought catalytic converters into use in 1975, and acted first to limit lead in gasoline in 1976.¹ The state's leadership in this area continues to this day with landmark standards for diesel engines, low sulfur

¹ California Air Resources Board, California's Air Quality History Key Events (July 31, 2007)(online at <http://www.arb.ca.gov/html/brochure/history.htm>).

diesel fuel, and, of course, greenhouse gas emissions from automobiles.² In recognition of the state's leadership role, the federal Clean Air Act allows California to promulgate its own standards for motor vehicle emissions. Other states then have the choice of adopting the California standards or relying on the federal motor vehicle standards set by the Environmental Protection Agency. For over three decades, I have fought hard in Congress to preserve California's right to set motor vehicle standards.

Under the Clean Air Act, California must receive approval (also called a waiver) from EPA before its motor vehicle standards can go into effect. Over the years, this has been a routine process, which has never denied California the ability to establish a standard. The law requires EPA to approve the California standards unless the EPA Administrator determines: (1) that state acted arbitrarily or capriciously; (2) that California does not need more stringent state standards to meet its compelling environmental objectives; or (3) that the state standards and accompanying enforcement provisions would conflict with federal motor vehicle standards.³ The Administrator's determination is made after a full notice-and-comment process.⁴ If the waiver is granted, other states may adopt and enforce California's more protective standards instead of the federal standards.⁵

On December 21, 2005, California sent a request for a Clean Air Act waiver to EPA.⁶ California sought the waiver to implement new standards requiring cars and light-duty trucks to limit greenhouse gas emissions. The standards begin with the 2009 model year and phase-in gradually over eight years. By the 2016 model year, they would reduce global warming pollution from new vehicles by almost 30%. Eleven other states have already adopted these standards but cannot enforce them until EPA grants the waiver.⁷

EPA has been considering the petition for nearly two years. The agency finally closed the public comment period on June 15, 2007. Throughout this period, the agency has consistently maintained that its decision will be based on the merits of California's application, using the standards set by the Clean Air Act. In his July 26, 2007, testimony before the Senate Environment and Public Works Committee, EPA Administrator Steven Johnson stated: "The agency is performing a rigorous analysis in order to properly consider the legal and technical issues that we

² *Id.*

³ 42 U.S.C. 7543.

⁴ *Id.*

⁵ *Id.*

⁶ Letter from Catherine Witherspoon, Executive Officer, California Air Resources Board, to Stephen L. Johnson, Administrator, U.S. Environmental Protection Agency (Dec. 21, 2005).

⁷ The eleven states are Connecticut, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington.

Mr. James L. Connaughton
September 24, 2007
Page 3

must address in making a decision under the Clean Air Act waiver criteria.”⁸ Neither the White House nor any other federal agencies have taken an official position on California’s request for a waiver.

Although the law entitles California to a decision on the merits, I learned in June that an official in the Department of Transportation had been making calls to congressional offices to urge members of Congress to oppose EPA approval of the California standards. As I wrote Mary Peters, the Secretary of Transportation:

The staff of a member of Congress recently received a voicemail message from Heidah Shahmoradi, special assistant for governmental affairs in the Office of the Secretary of the Department of Transportation, suggesting that the member (1) submit comments to EPA opposing California’s request and (2) “reach out to your governor’s office for them to submit comments since this would greatly impact auto facilities within your district.” The voicemail stated:

Hi ... this is Heideh Shahmoradi out here with the Department of Transportation. I’m not sure if you’re aware but EPA is currently considering a petition from the State of California to set its own CO2 standards. We just wanted to let you know that if California were to receive this waiver it could lead to a patchwork of regulations on vehicle emissions which could have significant impacts on the light truck and car industry. EPA is currently receiving the comments and the docket is open until June 15th, however tomorrow the EPA Administrator will decide whether or not to extend that deadline. We’re gauging to see if your boss would be interested in submitting comments or reaching out to your governor’s office for them to submit comments to the docket, since this would greatly impact the auto facilities within your district. ... If you could just call me and see if you guys have any interest, or, if you guys are going, or, would like to submit comments, or need any further information, I could get that to you. ... Thanks a lot, appreciate it, bye-bye.⁹

The voicemail from Ms. Shahmoradi raised questions about whether California’s request would receive the independent and objective consideration that the Clean Air Act requires. For this reason, I asked Secretary Peters to provide the Committee all documents relating to (1) communications with members of Congress or their staffs regarding the California waiver request or (2) communications with EPA or other federal entities, including the White House, regarding

⁸ Senate Committee on Environment and Public Works, Testimony of Steven L. Johnson, Administrator, U.S. Environmental Protection Agency (July 26, 2007).

⁹ Letter from Rep. Henry A. Waxman to Mary Peters, Secretary of Transportation (June 12, 2007).

the California waiver request.¹⁰ As part of the Committee's investigation, Committee staff also conducted transcribed interviews with Simon Gros, the former Deputy Chief of Staff at the Department of Transportation, and Marty Hall, your Chief of Staff at the White House Council on Environmental Quality.

The Lobbying Campaign

The documents obtained and the interviews conducted by the Committee provide significant new information about the efforts of Administration officials to block approval of the California standards. The documents and interviews show that senior Administration officials initiated an organized, systematic effort to lobby members of Congress and state governors to oppose California's petition for a Clean Air Act waiver. This lobbying effort was personally directed by the Secretary of Transportation, Mary Peters, apparently approved by your Chief of Staff in the White House Council on Environmental Quality, and coordinated with the motor vehicle industry.

Some officials had qualms about the intensity of the lobbying effort. At one point, Ms. Shahmoradi e-mailed Mr. Gros: "we are a bit concerned ... appears to sound more like lobbying ... looking back, I may have said more that I should have."¹¹ An Assistant Secretary e-mailed: "I think we need to be a bit careful with this."¹² The next day, the Chief of Staff for the Transportation Department wrote: "The last e-mail isn't a good conversation for e-mail."¹³

There is also evidence that the Environmental Protection Agency, which is supposed to make its decision solely on the merits, approved the lobbying campaign and took steps to assure the Department of Transportation that comments generated by the campaign would be considered by the EPA Administrator even if they arrived after the end of the public comment period.

The Role of Secretary Peters

The documents and interviews reveal that Transportation Secretary Mary Peters played a leading role in the effort to organize opposition to the California standards. According to a May 22, 2007, e-mail from Jeff Shane, Under Secretary of Transportation for Policy, Secretary Peters tasked her staff to develop a plan for opposing the California effort:

¹⁰ *Id.*

¹¹ E-mail from Heideh Shahmoradi to Simon Gros (June 7, 2007; 10:47 a.m.)(Ellipses included in original).

¹² E-mail from Tyler Duvall to Jeff Shane, et al. (May 22, 2007; 11:35 a.m.).

¹³ E-mail from Robert Johnson to Jeff Shane (May 23, 2007; 11:37 a.m.).

S1 [Secretary Peters] asked that we develop some ideas asap about facilitating a pushback from governors (esp. D's) and others opposed to piecemeal regulation of emissions, as per CA's waiver petition. She has heard that such objections could have an important effect on the way Congress looks at the issue.¹⁴

The next day, Mr. Shane asked Tyler Duvall, Assistant Secretary for Transportation Policy: "Are we making any headway in identifying sympathetic governors? S1 asked me about them again this morning. ... She's going to want to address it this afternoon."¹⁵

Secretary Peters instructed her staff to contact members of Congress as part of the lobbying efforts and expressed her willingness to contact them directly. On June 7, Katherine Stusrud, policy assistant to the Secretary, e-mailed Mr. Gros to report: "S1 wanted me to touch base with you asap regarding the California Clean Air Act Waiver request. She would like us to contact Members."¹⁶ Mr. Gros responded: "I have been in control with Tyler this morning and have and continue to make calls."¹⁷ Ms. Stusrud replied: "Great – S1 also said last night that she could make phone calls if necessary today."¹⁸ Mr. Gros then wrote: "I don't think it's going to be necessary – we are casting our net wide on this one."¹⁹

The same day, Mr. Gros and Secretary Peters discussed Rep. Joe Knollenberg's efforts to oppose the California regulations. She asked: "Do I need to touch base with Knollenberg to coordinate our efforts?"²⁰ Mr. Gros responded: "If you'd like but he is very much on point. His staff is also going to ping other members of the automotive caucus for us. My staff this morning called just about every auto-friendly member of this issue."²¹ Secretary Peters replied: "Why don't you let staff at Knollenberg's office know that I would be happy to have a discussion with him if he thinks that would be helpful, and to let them know that I/we appreciate his efforts."²²

¹⁴ E-mail from Jeff Shane to Tyler Duvall (May 22, 2007; 3:04 p.m.).

¹⁵ E-mail from Jeff Shane to Tyler Duvall (May 23, 2007; 11:30 a.m.).

¹⁶ E-mail from Katherine Stusrud to Simon Gros (June 7, 2007; 9:14 a.m.).

¹⁷ E-mail from Simon Gros to Katherine Stusrud (June 7, 2007; 9:15 a.m.).

¹⁸ E-mail from Katherine Stusrud to Simon Gros (June 7, 2007; 9:16 a.m.).

¹⁹ E-mail from Simon Gros to Katherine Stusrud (June 7, 2007; 9:23 a.m.).

²⁰ E-mail from Mary Peters to Simon Gros (June 7, 2007; 12:59 p.m.).

²¹ E-mail from Simon Gros to Mary Peters (June 7, 2007; 1:04 p.m.).

²² E-mail from Mary Peters to Simon Gros (June 7, 2007; 1:06 p.m.).

In his interview with Committee staff, Mr. Gros confirmed that the lobbying effort had been approved by Secretary Peters and that she was kept apprised of its progress.²³ According to Mr. Gros, Secretary Peters requested updates on the lobbying efforts “once a day, once every couple of days.”²⁴

White House Approval

The documents also indicate that Secretary Peters was not acting on her own, but had the approval of your office in the White House. On May 25, 2007, an executive assistant in the Secretary’s office e-mailed the Department’s Chief of Staff, Robert Johnson, that your chief of staff, Marty Hall, was “Ok with S1 making calls.”²⁵

Subsequent e-mails show that having the backing of the White House was a concern of Secretary Peters. On May 31, Secretary Peters wrote to her Chief of Staff: “Tyler/Jenny mentioned yesterday that they thought the WH had approved calls to the Gov’s on the issue.”²⁶ Mr. Johnson responded: “They have and I asked Tyler to talk to you about those calls he thought you should make.”²⁷

Another e-mail indicates that the White House did not want the Department of Transportation to publicize its opposition to the waiver request. The Department’s Chief of Staff e-mailed Under Secretary Shane on May 23: “At least on the press side WH was clear yesterday in telling us to leave it to the other agency.”²⁸

Your Chief of Staff, Mr. Hall, was asked about the White House role when the Committee staff interviewed him. He did not confirm or deny White House involvement. He said he could not remember specifics. At least twenty times during the interview, he responded to questions about his knowledge of the lobbying campaign with variations of “I don’t recall.”²⁹

²³ Committee on Oversight and Government Reform, Preliminary Transcript of Interview of Simon Gros (Sept. 21, 2007).

²⁴ *Id.* at 23.

²⁵ E-mail from Sandy Snyder to Robert Johnson (May 25, 007; 12:24 p.m.).

²⁶ E-mail from Mary Peters to Robert Johnson (May 31, 2007; 8:45 a.m.).

²⁷ E-mail from Robert Johnson to Mary Peters (May 31, 2007; 9:18 a.m.).

²⁸ E-mail from Robert Johnson to Jeff Shane (May 23, 2007; 11:37 a.m.).

²⁹ Committee on Oversight and Government Reform, Interview of Marty Hall (Sept. 13, 2007).

Mechanics of the Lobbying Effort

In his interview with the Committee staff, Mr. Gros, who was the Deputy Chief of Staff in the Transportation Department, provided details about how the lobbying campaign was conducted. He explained that five Department staffers contacted between 20 and 25 members of Congress.³⁰ He also said that Secretary Peters personally called between two and four governors.³¹

Mr. Gros also confirmed the purpose of the campaign. He told the Committee: "We were hoping to solicit comments against the California waiver."³² Mr. Gros informed the Committee that he was unaware of the Department ever conducting such a lobbying effort in the past.³³

The lobbying campaign was coordinated with the auto industry. On June 5, the Auto Alliance provided a list of automotive facilities organized by congressional district to the Department.³⁴ According to Mr. Gros, the Department then used this document to create a target list of members of Congress to lobby.³⁵ In an e-mail, Mr. Gros wrote "just hit the members/senators with the really big facilities."³⁶ In the same e-mail, Mr. Gros indicated that staff "should reach out to the govts offices in TN, SC, MO, DE, KY, IN, TX."³⁷

According to a summary of the calls, which appears to have been prepared on June 8, officials from the Department spoke with or left messages for the staffs of at least three senators, 23 representatives from Ohio and Michigan, and seven governors.³⁸

Mr. Gros approved the script used by DOT staff in contacting members of Congress.³⁹ This script generally tracks the voicemail message left by Ms. Shahmoradi. However, the script also notes: "[If asked our position, we say we are in opposition of the waiver.]"⁴⁰

³⁰ Committee on Oversight and Government Reform, Preliminary Transcript of Interview of Simon Gros (Sept. 21, 2007) at 6-7.

³¹ *Id.* at 21.

³² *Id.* at 10.

³³ *Id.* at 13.

³⁴ E-mail from Clinton Blair to Michael Harrington (June 5, 2007; 3:37 p.m.).

³⁵ Committee on Oversight and Government Reform, Preliminary Transcript of Interview of Simon Gros (Sept. 21, 2007) at 28.

³⁶ E-mail from Simon Gros to Janae Barker, Heideh Shahmoradi, and Bill Rayball (June 7, 2007; 9:30 a.m.).

³⁷ E-mail from Simon Gros to Janae Barker, Heideh Shahmoradi, and Bill Rayball (June 7, 2007; 9:30 a.m.).

³⁸ U.S. Department of Transportation, Member Calls (undated).

Documents show that some officials were concerned that their conduct might be inappropriate. On May 22, the Assistant Secretary for Transportation Policy, Tyler Duvall, wrote in an e-mail: "I think we need to be a bit careful with this."⁴¹ The next day, Mr. Johnson, the Department's Chief of Staff, wrote to Mr. Shane, the Under Secretary: "The last e-mail isn't a good conversation for e-mail."⁴² Mr. Shane responded: "Our boss is getting impatient for information, is probably not happy about relying on the other agency."⁴³

Subsequently, Ms. Shahmoradi e-mailed Mr. Gros:

Simon – we are a bit concerned about the conversation on this task ... appears to sound more like lobbying. So we want to be careful on what exactly we say. Can you look over the points below and see if this does the trick. I have already made a bunch of calls ... looking back, I may have said more that I should have ... will let you know what was said ... but Kelly [Kolb] and Bill [Rayball of the Office of Governmental Affairs] have me a bit paranoid now. Of the folks I talked to, most have said they need to check with their bosses.⁴⁴

Mr. Gros dismissed her concerns, replying: "These are fine but there is no problem with going farther if asked. I have cleared it with Lindy."⁴⁵ "Lindy" is a reference to Rosalind Knapp, then-Acting General Counsel of the Department of Transportation.⁴⁶

Coordination with EPA

Some of the documents indicate that the lobbying campaign was coordinated with the Environmental Protection Agency. Any such coordination would be especially problematic because EPA is charged with making an independent and objective decision on the California application.

³⁹ Committee on Oversight and Government Reform, Preliminary Transcript of Interview of Simon Gros (Sept. 21, 2007) at 11-12.

⁴⁰ E-mail from Heideh Shahmoradi to Janae Barker (June 7, 2007; 2:10 p.m.).

⁴¹ E-mail from Tyler Duvall to Jeff Shane, *et al.* (May 22, 2007; 11:35 a.m.).

⁴² E-mail from Robert Johnson to Jeff Shane (May 23, 2007; 11:37 a.m.).

⁴³ E-mail from Jeff Shane to Robert Johnson (May 23, 2007; 11:43 a.m.).

⁴⁴ E-mail from Heideh Shahmoradi to Simon Gros (June 7, 2007; 10:47 a.m.) (Ellipses included in original).

⁴⁵ E-mail from Simon Gros to Heideh Shahmoradi (June 7, 2007; 10:49 a.m.).

⁴⁶ Committee on Oversight and Government Reform, Preliminary Transcript of Interview of Simon Gros (Sept. 21, 2007) at 35.

There are multiple e-mails that contain references to communications between EPA, the Transportation Department, and the White House. On May 25, the Secretary's executive assistant e-mailed Mr. Johnson, the Department's Chief of Staff, that Marty Hall, your Chief of Staff, "spoke with Steve Johnson," the EPA Administrator, before approving the Secretary's calls to governors.⁴⁷ In a May 31 e-mail to her Chief of Staff, Robert Johnson, Secretary Peters refers to "calls to the Gov's on the issue I had discussed with Administrator Johnson."⁴⁸ On June 6, the Secretary's executive assistant wrote: "Administrator Johnson just called and would like to speak with S1 this morning."⁴⁹ Mr. Duvall, the Assistant Secretary, responded: "Ok – they think it may be about the CA waiver."⁵⁰

One issue addressed in these communications appears to be the length of the comment period. Transportation Department officials were concerned that comments submitted by members of Congress or governors might arrive at EPA after the close of the comment period. EPA assured the Transportation officials that the comments could be considered anyway. On June 7, Jennifer Brosnahan, Deputy General Counsel at the Transportation Department, reported:

EPA GC's office says the Administrator is leaning toward NOT extending the comment period, but wants people to know that he has the discretion to accept late-filed comments. So the legislators and Governors should not despair if they can't meet the June 15 deadline. Also, they asked for feedback asap (next hour or two) on whether we are ok with Adm. Johnson saying at the hearing tomorrow that he is not extending the comment period. Now's our chance to "raise a red flag" if we want to.⁵¹

Conclusion

The Transportation Department has defended its actions by saying they did not violate the Anti-Lobbying Act because only "grassroots" lobbying of the public is prohibited by the Anti-Lobbying Act. According to the Department, since its lobbying efforts in this case involved members of Congress and governors, they are permissible under that law.⁵²

In the past, Republican members of Congress have disputed this interpretation of the Anti-Lobbying Act and asserted that Administration officials commit a crime if they lobby members of

⁴⁷ E-mail from Sandy Snyder to Robert Johnson (May 25, 2007; 12:24 p.m.).

⁴⁸ E-mail from Mary Peters to Robert Johnson (May 31, 2007; 8:46 a.m.).

⁴⁹ E-mail from Sandy Snyder to Tyler Duvall, et al. (June 6, 2007; 9:46 a.m.).

⁵⁰ E-mail from Tyler Duvall to Husein Cumber, et al. (June 6, 2007; 10:59 a.m.).

⁵¹ E-mail from Jennifer Brosnahan to Tyler Duvall, et al. (June 7, 2007; 11:23 a.m.).

⁵² Letter from Rosalind A. Knapp, Acting General Counsel, U.S. Department of Transportation to Rep. Henry A. Waxman (June 12, 2007).

Mr. James L. Connaughton
September 24, 2007
Page 10

Congress. For example, on April 13, 2000, Chairman Billy Tauzin argued on the House floor that the Federal Communications Commission committed "a criminal violation" when it distributed talking points opposing a particular telecommunications bill. Similarly, Chairman David McIntosh wrote to EPA Administrator Carol Browner on March 2, 1995, questioning EPA's distribution of a fact sheet critical of a piece of regulatory reform legislation.

From my perspective, this debate over the reach of the Anti-Lobbying Act misses the fundamental point. The federal Clean Air Act provides that California is entitled to a decision on the merits of its application. The involvement of senior Administration officials, including Secretary Peters and your staff, in a behind-the-scenes campaign to lobby against EPA approval sends an unmistakable message: the Administration is trying to stack the deck against California's efforts to regulate greenhouse gas emissions from motor vehicles. It suggests that political considerations — not the merits of the issue — will determine how EPA acts. That would violate the Clean Air Act.

I do not object to the consideration of the views of Secretary Peters or your views in the decision-making process. But this involvement should be transparent and based on the merits. If Secretary Peters has concerns about whether California's application meets the legal standards set forth in the Clean Air Act, she should submit comments to EPA making her case. Instead of taking this action, however, she apparently sought and received White House approval to use taxpayer funds to mount a lobbying campaign designed to inject political considerations into the decision.

Emissions of greenhouse gases from motor vehicles are a major source of global warming. To its credit, California, under the leadership of a Republican governor, has promulgated standards that will begin to curb these emissions. I urge you to repudiate the lobbying campaign described in this letter and to take all steps necessary to ensure that the decision on the California waiver is based on the scientific and legal merits of its application.

Sincerely,



Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member