

**Floor Statement by Sen. Lisa Murkowski (R-AK), Dec. 14, 2009:
Disapproval Resolution for Endangerment Finding December 2009**

Mr. President, I know the Senate is primarily focused on health care right now, but I've come to the floor to speak on another important topic, and that's climate change. I'd like to discuss a recent action by the Environmental Protection Agency, the consequences it could entail for our economy, and why Congress must prevent it from taking effect.

Let me start by reminding my colleagues that I have committed to a careful evaluation of all options to address climate change, in order to develop an approach that will benefit both our environment and our economy. Over time, it has become increasingly apparent that some approaches are greatly superior to others. And while we have not found the right approach, yet, we have certainly identified the wrong one – EPA regulation of greenhouse gases under the Clean Air Act. I believe this option should be taken off the table, so that we can focus our attention on more viable policies.

My concerns led me to introduce an amendment in September that would have limited EPA's ability to regulate certain greenhouse gas emissions for a period of one fiscal year. I offered my amendment for two simple reasons: to ensure that Congress had sufficient time to work on climate legislation, and to ensure that the worst of our options, EPA regulation, did not take effect before that point.

Even though Congress was – and today remains – nowhere close to completing legislation, the majority chose to block debate on my amendment. Since then, the EPA has continued its steady march towards regulation, and last week the Administrator signed an endangerment finding for carbon dioxide and five other greenhouse gases. This finding is supposedly rooted in concerns about the public health and public welfare, but what it really endangers are jobs, economic recovery, and American competitiveness.

Some have praised the endangerment finding as a step forward in our nation's efforts to reduce its emissions. They merely view it as an affirmation of the scientific assertion that human activities contribute to global climate change. Such a conclusion is within the EPA's authority, and appears to be appropriate given the years of research indicating that is the case. Those same scientific findings underscore my desire to address this challenge in a proactive way.

Unfortunately, the endangerment finding is not just a finding. And despite what some in the administration have claimed, its effect is not limited to the science of global climate change. In reality, the finding opens the door to a sweeping and convoluted process that will require the EPA to issue economy-wide, command-and-control regulations. Once the finding is finalized, the EPA no longer has discretion over whether or not they impose regulations. As the Administrator noted last week, the agency is now "obligated" and "compelled" to take action.

Here it becomes evident that EPA regulation is an awful choice for climate policy. You see, if a pollutant is regulated under one section of the Clean Air Act, it triggers identical

treatment in other sections of that statute. So while the EPA initially intends to address only mobile source emissions – meaning vehicles – the agency will also be required to regulate stationary source emissions, as well. Think of it this way: if the EPA attempts to control any greenhouse gas emissions, the agency will be required to control all greenhouse gas emissions.

Because EPA regulations will consist of command-and-control directives, rather than market-based decisions, this approach will increase the price of energy, add greatly to administrative costs, and create many new layers of bureaucracy that must be cut through. That’s why you’ll often see EPA regulations described as “intrusive” or “byzantine” or “maze-like.”

While the permitting process that will be created is unclear, the consequences of imposing these regulations are not – our economy will suffer. Businesses will be forced to cut jobs, if not close their doors for good. Domestic energy production will be severely restricted, increasing our dependence on foreign suppliers and threatening our national security. Housing will become less affordable, and consumer goods more expensive, as the impacts of the EPA’s regulations ripple and rake their way across our economy.

In the wake of the majority’s decision to block my effort to establish a one-year timeout for this process, we now find ourselves in quite a bind. Even though Congress is working on climate legislation, the EPA is proceeding with a tremendously expensive regulatory scheme. It appears increasingly likely that the EPA will finalize its regulations before Congress has an opportunity to complete debate on climate legislation – and that outcome is simply unacceptable as our nation struggles to regain its economic footing.

So today, Mr. President, I’ve come to the floor to announce that I intend to file a Disapproval Resolution – under the provisions of the Congressional Review Act – related to the EPA’s endangerment finding. I have this resolution drafted, and will introduce it as soon as the EPA formally submits its rule to Congress or publishes it in the Federal Register, as required by law.

My resolution would stop the endangerment finding. In general terms, I’m proposing that Congress veto it. Like my previous amendment, this one is also rooted in a desire to see Congress pass climate legislation because the policy is sound on its own merits and not merely as a defense against the threat of harmful regulations. And while I know the passage of this resolution will be an uphill battle, I believe it is the best course of action available to us – a chance to ensure that Congress, not un-elected bureaucrats, decides how our nation will reduce its emissions.

To understand why my resolution is so critically important, we must dig deeper into the economic consequences that will result from regulations based upon the endangerment finding. Because there are no regulations within the finding itself, the agency has omitted any projection of what they might cost our nation. The issue here is not necessarily the finding itself, but the regulations it allows to be imposed on the American economy. We

have a narrow window to stop this series of events, and we should take advantage of it by passing the resolution I intend to offer.

Even though the EPA has not prepared projections of what these regulations will cost, I expect the totals would be staggering. The price tags attached to the climate bills pending in the Senate, which a majority of members have concluded are too high, would almost certainly pale in comparison.

There are a few figures that can help us put the potential costs in perspective. In one of its recent proposals, the EPA noted that some six million “sources” could be required to obtain new operating permits if greenhouse gases are regulated. The word “sources” refers to the businesses, schools, hospitals, and other fixtures found in every town in America that would suddenly face scrutiny due to their carbon footprints. Farms, landfills, and any other “source” that emits more than 250 tons of greenhouse gases per year would be caught in the same net.

Facing the heaviest regulation will be the facilities that are subject to the Clean Air Act’s “Prevention of Significant Deterioration” permitting process. Today, 300 facilities are covered by that requirement; under EPA regulation, that number would soar to 40,000. The PSD process prevents existing facilities from making certain modifications until the EPA has granted its approval. The same holds true for new construction as well – any facility expected to emit more than 250 tons per year would not be allowed to break ground until their owners have secured the EPA’s permission to proceed.

The PSD process is already hugely expensive and time-consuming for affected facilities. It can take years, and cost tens if not hundreds of thousands of dollars, to navigate the PSD process. And that’s true today, well before the number of facilities it covers is increased by an order of magnitude.

Earlier this year, in sharing their preference for congressional action, the editors of the *Washington Post* provided a good description of what EPA regulation would be like on a daily basis:

“The EPA in theory ... could go shopping mall by shopping mall, apartment building by apartment building ... But even plant by plant, how can you “limit” greenhouse gas? The short answer is, you can’t. Or, no one knows. Or, you can’t, yet. Take, for example, a coal-fired power plant. EPA regulation would be triggered only when someone wanted to build one or update an old one. At that point, the agency could demand that the plant use the ‘best available control technology’ (BACT) to limit emissions.

“Right now, no such BACT exists for coal-fired plants beyond better efficiency measures. A lot of attention has been focused on carbon capture and sequestration, but it wouldn’t be considered BACT until it was up and running successfully in a coal-fired power plant somewhere in the United States. Even then, its use would have to be weighed against a number of other factors, such as

the amount of energy used, the environmental impact and the effect on the output of other regulated pollutants. If past practice applies, the issuance of the final permit would be followed by a series of lawsuits. The whole process could take a decade or more -- and that would be multiplied hundreds or thousands of times across the country.”

No one is more aware of how damaging these regulations could be than the EPA itself, so it's no surprise the agency has sought to dramatically increase the Clean Air Act's regulatory threshold – from 250 tons per year right now, to 25,000 tons per year for greenhouse gases. As the EPA admitted earlier this year, if the Clean Air Act's current threshold is not lifted, “the administrative burdens would be immense, and they would immediately and completely overwhelm the permitting authorities” – meaning, of course, the EPA and its state and local counterparts.

Now, I do give some credit to the EPA for recognizing that the 250 ton per year threshold is “not feasible” for greenhouse gases. While most pollutants are measured in much smaller amounts, greenhouse gases are far more abundant – after all, nearly every form of economic activity results in at least some level of emissions. But I'm also deeply disturbed that instead of recognizing and accepting that the Clean Air Act is simply not suited for this task, the agency attempted to make it so by ignoring its explicit, statutory requirements.

As we all know, whenever an executive agency fails to adhere to the laws passed by Congress, it opens itself up to litigation. The EPA's so-called “tailoring rule” is no exception, and I fully expect that lawsuits will be filed if the agency issues it. Once the rule is challenged, I expect the courts will reject it, as it has no legal basis, and restore the regulatory threshold to 250 tons per year. At that point, the agency will be mired in the regulatory nightmare it hopes to avoid.

In the meantime, it's also worth noting that the EPA is proceeding with the regulation of greenhouse gases even though the tailoring proposal is not part of the existing statute. So for all of the agency's promises of regulatory relief, and a safety net to help minimize the pain associated with these regulations – there's nothing behind that yet. And given the larger conversation that needs to take place about amending the Clean Air Act, that relief may never materialize.

Given the tremendous economic, administrative, and bureaucratic drawbacks associated with EPA regulation, it should come as no surprise that members of the majority, the administration, and environmental groups have expressed their preference for congressional legislation.

The Democratic Chairman of the House Agriculture Committee declared that EPA regulation would result “in one of the largest and most bureaucratic nightmares that the U.S. economy and Americans have ever seen.” He went on to add, “Let me be clear, this is not a responsibility we want to leave in the hands of EPA.”

The most senior member of the House of Representatives, a Democrat who's served our country for more than half a century, has concluded that EPA regulation would create a "glorious mess." He's also said that, "As a matter of national policy, it seems to me to be insane that we would be talking about leaving this kind of judgment, which everybody tells us has to be addressed with great immediacy, to a long and complex process of regulatory action."

Shortly before I introduced my amendment in September, the EPA Administrator herself insisted that "new legislation is the best way to deal with climate change pollution." You wouldn't guess that by looking at the efforts of some in her agency to help defeat my amendment, but just last week, she re-iterated the claim by stating, "I firmly believe ... and the president has said all along that new legislation is the best way to deal climate change."

With such widespread, high-level, and bipartisan agreement that EPA regulation is such a bad idea, you'd think it would be easy to suspend the EPA's regulatory efforts. Unfortunately, you'd be mistaken. Many seem convinced that the threat of EPA regulation will force Congress to work more quickly than it otherwise would.

This is not conspiracy theory – it's an open and well-established strategy on the part of the administration, confirmed just this week when a senior White House economic official was quoted as saying "If you don't pass this legislation, then ... the EPA is going to have to regulate in this area ... And it is not going to be able to regulate on a market-based way, so it's going to have to regulate in a command-and-control way, which will probably generate even more uncertainty."

An author of the House cap-and-trade bill has posed the question: "Do you want the EPA to make the decision or would you like your Congressman or Senator to be in the room and drafting legislation?" going on to say that, "Industries across the country will just have to gauge for themselves how lucky they feel if they kill legislation in terms of how the EPA process will include them." The Wall Street Journal has referred to this as the "Dirty Harry' theory of governance."

This approach is often likened, rather starkly, to "putting a gun to Congress' head." Personally, I believe that's a terrible way to pursue climate policy, and beyond that, a terrible way to govern this country. It's difficult to grasp how or why Congress would feel compelled to enact economically-damaging legislation in order to stave off economically-damaging regulations. We're being presented with a false choice that should be rejected outright. The majority and the administration are saying, "Don't make us do this." My answer is, simply, "You don't have to."

Before concluding, I want to spend a few minutes putting to rest some of the criticism that will surely follow my decision to offer a Disapproval Resolution. During the debate over my last amendment, several baseless arguments were made. So I'd like to challenge anyone who finds reason to oppose my resolution to keep their remarks, and thereby this debate, as substantive as possible.

First, I want to re-iterate my desire to take meaningful action to reduce our nation's greenhouse gas emissions. Such a policy can and should be drafted by Congress, and designed to both protect the environment and strengthen our economy. I was a co-sponsor of a climate bill last Congress, and am continuing to work on legislation that will lead to lower emissions. Senator Bingaman and I spent more than six months developing a comprehensive energy bill in committee, and have now held six hearings on our climate policy options.

Next, my resolution is not meant to run contrary to the Supreme Court's decision in *Massachusetts v. EPA*. Remember, I previously sought a one-year delay of this process that would have allowed mobile source emissions to be regulated. That amendment was blocked by the majority from even being considered and, at this point, I am left with little choice but to raise the question of whether the Clean Air Act is capable of effectively regulating greenhouse gas emissions.

Finally, I am not interested in trying to embarrass the President, either here at home or on the international stage. I have stated publicly that I wish the President well in making progress on international issues. And I think it's safe to acknowledge that I didn't choose to release the endangerment finding on the opening day of the Copenhagen climate conference; that was the EPA's decision. As Administrator Jackson reportedly said, the EPA "tried to make sure we had something to talk about" in Copenhagen.

If the administration truly wanted something to highlight in Copenhagen, it should have prioritized climate legislation over health care. The Senate Majority could have devoted weeks spent on a tourism bill and other matters to working through a climate bill here on the floor. And even if climate legislation could not be agreed to, Congress has now had nearly six months to take up the comprehensive bill we reported from the Energy Committee. That bill would have allowed the President to highlight significant accomplishments on energy efficiency, clean energy financing, and renewable energy generation. Instead, he's left to tout regulations that his administration doesn't really want, that a wide range of stakeholders dread, and that many members in both chambers of Congress actively oppose.

We need only look back to the development of the Clean Air Act itself for an example of how this process can, and should, work. The product of both presidential leadership and congressional unity, the 1970 Clean Air Act was unanimously passed by the Senate. I hope the current administration will take note of that example. And should we ever reach a point where the President is able to sign climate legislation into law, I truly hope it will be the result of his administration having brought Congress together to complete this important task.

Right now, though, the administration and the majority in Congress continue to choose a different path. Threatening to disrupt the nation's economy until Congress passes a bad bill by the slimmest of margins won't be much of an accomplishment. Nor is that approach worthy of the institutions and people we serve. It isn't appropriate for a

challenge of this magnitude. No policy that results from it will achieve our common goals or stand the test of time.

As I said earlier, I'm offering this resolution because it will help prevent our worst option for reducing emissions from moving forward. The threat of EPA regulations are not encouraging Congress to work faster; they're now driving us further off course and increasing the division over how to proceed.

I understand that some are comfortable with the threat of EPA regulations hanging over our heads. But in closing, I would simply remind my colleagues of an observation once made by President Eisenhower: "Leadership is the art of getting someone else to do something you want done because he wants to do it."

What we're dealing with right now isn't leadership – it's an attempt at leverage. The EPA's endangerment finding may be intended to help protect our environment, but the regulations that inevitably follow will only endanger our economy. That lack of balance is unacceptable. We can cut emissions, but we can't cut jobs. We can move to cleaner energy, but we can't force our businesses to move overseas. It's past time to remove the EPA's thinly-veiled and ill-advised threat, and we can do that by passing my resolution and giving ourselves time to develop a real solution.

Mr. President, I yield the floor.

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