

**National Affairs and Legislation Committee**  
**The Garden Club of America**  
**111th Congress, 2nd Session — May 25, 2010**

**Update #10**

- Murkowski Amendment Seeks to Overturn EPA Regulations—  
Vote Scheduled for June 10**

**GCA policy:**

In 2010, the Garden Club of America reissued its 2007 official position in support of strategies to slow global warming, specifically endorsing federal, state and local legislation to control greenhouse gases (GHG) and slow global warming. It cites the harm that climate change will do to plant diversity, oceans and forests.

**How you can help:**

Contact your Senators and urge them to vote against Senator Murkowski's resolution that would veto EPA's finding that greenhouse gases endanger human health and welfare. The vote is scheduled for June 10. If the Murkowski resolution passes in the Senate, that could lessen the odds Congress will pass a comprehensive climate bill.

**EPA using regulations to curb greenhouse gases:**

The EPA's Clean Air administrator Gina McCarthy and the EPA administrator Lisa Jackson told the NAL and Conservation Committees at our Washington, DC meetings that they would use the tools available to them to limit greenhouse gas (GHG) emissions. They have followed through on that pledge. On December 7, 2009, EPA released its finding under the Clean Air Act that GHGs endanger public health and welfare. This paved the way for EPA to issue regulations limiting GHG emissions of cars and trucks, and stationary sources that are large emitters of GHGs. Under a tailoring provision, regulation of smaller entities will be gradually phased in:

- July 1, 2011: new construction projects that emit at least 100,000 tons of GHGs and existing facilities emitting at last 75,000 tons
- July 1, 2012: additional sources emitting 50,000 tons or more
- April 30, 2016: additional sources emitting less than 50,000 tons.

**EPA regulations are leverage for the climate debate:**

The Obama administration and EPA officials have stated on repeated occasions that the *best* way to limit GHG emissions is legislation enacted by Congress, not regulations promulgated by EPA. But in the absence of legislation they are using the only set of tools available to them under current law. Legislative Update #8 detailed the many problems with the regulatory approach, particularly the difficulty states will face in processing approximately 14,000 permit applications. No one thinks the EPA regulations are ideal.



The Kerry-Lieberman draft (and every other significant climate proposal before Congress) would curtail EPA's authority to regulate GHGs under the Clean Air Act and replace it with rules spelled out by Congress. Thus, the choice for Senators is: do you want to live with the clunky EPA regulatory approach, or do you want legislation that institutes new rules that Congress has devised after listening to all the affected groups and interests?

The Murkowski resolution could be a game changer. Even if the resolution were to pass the Senate with a simple majority, it is almost certain to draw a veto. So although the threat of this becoming law is very low, if it does pass in the Senate, Senators might start thinking they have a third choice: no regulations and no

legislation. A number of them view this as the ideal outcome. That is why it is so important to stop the Murkowski resolution in its tracks.

Conversely, if the Murkowski resolution fails, this keeps the pressure on the Senate to pass a climate bill that, among many other things, would preempt EPA's regulatory authority.

If the Murkowski resolution fails but garners a substantial number of votes, that might encourage Kerry-Lieberman bill opponents to believe that they can filibuster the climate bill to death. Votes for Murkowski might translate into votes against cloture.<sup>1</sup> So it is important not only to defeat it, but to defeat it *soundly*.

### **Murkowski resolution:**

Senator Lisa Murkowski introduced S. J. Res 26 on January 21, using the language specified under the Congressional Review Act (CRA). As mentioned in the April 13, 2009 Legislative Update #2, the CRA provides for an expedited Congressional decision on recently promulgated Executive Branch regulations: no Senate filibuster, 10 hours of debate, no amendments, passage by a simple 51-vote majority. Under CRA, a vote must occur by June 7 on the Murkowski resolution. However, the Senate schedule is jammed up with a supplemental appropriations bill and other matters. Sen. Murkowski and Senate Majority Leader Reid reached agreement Monday to schedule the vote on June 10 using the "unanimous consent" procedure to assure that the CRA rules would still apply three days past the deadline.

Sen. Murkowski is not saying whether she has 51 votes. She already has signed up 41 cosponsors. Republican cosponsors are Alexander (TN), Barrasso (WY), Bennett (UT), Bond (MO), Brownback (KS), Bunning (KY), Burr (NC), Chambliss (GA), Coburn (OK), Cochran (MS), Corker (TN), Cornyn (TX), Crapo (ID), DeMint (SC), Ensign (NV), Enzi (WY), Graham (SC), Grassley (IA), Gregg (NH), Hatch (UT), Hutchison (TX), Inhofe (OK), Isakson (GA), Johanns (NE), Kyl (AZ), LeMieux (FL), Lugar (IN), McCain (AZ), McConnell (KY), Risch (ID), Roberts (KS), Sessions (AL), Shelby (AL), Thune (SD), Vitter (LA), Voinovich (OH), and Wicker (MS). Although co-sponsorship does not *necessarily* guarantee support on the floor, it takes some creative explaining to cosponsor a resolution and then vote against it. Still, it might be possible to dislodge one or two of the cosponsors.

Three Republicans have not cosponsored the Murkowski resolution: Snowe and Collins of Maine, and Scott Brown of Massachusetts. Only three Democrats have cosponsored: Landrieu (LA), Lincoln (AR), and Nelson (NE).

The Murkowski resolution is not alone. There are competing approaches. However under the CRA rules, these competing approaches cannot be offered as amendments. Therefore, Sen. Murkowski might not be able to get support from supporters of these alternative approaches.

- Sen. Rockefeller (D-WV) introduced S. 3072, a bill that would stop EPA for two years from regulating carbon dioxide or methane emissions from stationary sources (i.e. power plants, industrial facilities). It would not apply to vehicles. Cosponsors of S. 3072: Conrad (D-ND), Dorgan (D-ND), Johnson (D-SD), and McCaskill (D-MO).
- Senator Voinovich has drafted an amendment to be offered when the climate bill is debated. It would stop regulation of GHGs under any laws, including the Endangered Species Act, the Clean Water Act, and the National Environmental Policy Act. (NEPA).
- Senators Carper (D-DE) and Casey (D-PA) would preclude EPA from regulating small stationary sources. This is essentially what EPA is already doing under its "tailoring" proposal.
- As stated above, the Kerry-Lieberman American Power Act draft that was released May 12, the Boxer proposal marked up in 2009, and the House-passed American Clean Energy and Security

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<sup>1</sup> Sixty votes are required to cut off debate in the Senate and move to consideration of amendments and final passage.

Act all would preempt EPA from regulating GHG emissions on the basis of any other statute than the provisions contained in those bills.

### **States suing EPA**

After EPA issued its finding, legal challenges erupted. A number of states have joined in, some in defense of EPA and some in opposition. Of course, just because a state's governor or attorney general has taken a position does not mean that its senators will follow suit.

Supporting EPA: Arizona, California, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont and Washington.

Opposing EPA: Alabama, Alaska, Florida, Hawaii, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, Utah, and Virginia.

### **Outlook:**

If the Murkowski resolution passes, it must then be taken up in the House. The deadline for action under the CRA will have passed, and the House was not party to the unanimous consent agreement between Reid and Murkowski. So consideration of the resolution in the House would occur under regular order, using House rules and procedures to control debate. Few observers believe the resolution would be passed by the House. But if it were, it would go to the White House where it would be vetoed. A veto override requires a two-thirds of both House and Senate—and that will never happen. So the reason to fight the Murkowski resolution in the Senate is not fear that it will be enacted but rather fear that it could spell serious trouble ahead for climate legislation.

### **How you can help:**

If you support climate legislation, and if you are concerned about climate change, then quick, quick—contact your senators and urge them to oppose the Murkowski resolution. If they are at Memorial Day events, that would be the ideal time.

Even if they are already Murkowski cosponsors, they need to hear that they have constituents who don't agree with their position. They should understand that opinion in their state is divided on this issue.

If your Senators are on board in support of climate legislation, they still need to hear that they are on the right track, and so letting them know you hope they will oppose the Murkowski resolution will encourage them to stay the course. You could ask them to speak up on during the floor debate in opposition to the Murkowski resolution. Tell them you will be watching for them on C-SPAN on June 10.

### **How to contact your legislators:**

To send e-mail to your senator, go to [http://www.senate.gov/general/contact\\_information/senators\\_cfm.cfm](http://www.senate.gov/general/contact_information/senators_cfm.cfm) and scroll to the senator's name. There you will see a "web form" address in red type. Click on that address and follow the directions for sending e-mail.

To telephone any senator: Call the Capitol switchboard: 202-224-3121. Ask for your Senator's office. When the phone is answered, say that you want to leave a message about upcoming legislation. A young aide will take the message or send you to the legislator's voice mail. This seems impersonal, but is nevertheless effective—legislators keep track of how many calls come in on different issues and the direction in which sentiment is running. Even a relatively small number of calls are enough to warrant serious consideration of the view expressed.

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NAL updates serve in an advisory capacity, based on committee research. Individual clubs and members may act on any issue as they choose.

Editor: Martha Phillips (mhphillips@optonline.net). All e-mails and faxes are sent from GCA Headquarters.

To unsubscribe: Contact Mary Jane at GCA Headquarters, 212-753-8287, or maryjane@gcamerica.or