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Congress of the United States
House of Representatives
Washington, DC 20515-0550
August 9, 2011

COMMITTEE ON
ENERGY AND COMMERCE
SUBCOMMITTEE ON
ENERGY AND POWER
SUBCOMMITTEE ON
COMMUNICATION AND TECHNOLOGY
SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATION
HOUSE REPUBLICAN
POLICY COMMITTEE
IMMIGRATION REFORM
CAUCUS, CHAIRMAN

The Honorable Ray LaHood
Secretary, U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

The Honorable Randy Babbitt
Administrator, Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

The Honorable Lisa Jackson
Administrator, U.S. Environmental Protection
Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Secretary LaHood and Administrators Babbitt and Jackson:

We are writing to request that you intervene in a critical legal matter facing the aviation industry that involves both your agencies.

On May 9, 2011, the Center for Environmental Health (CEH), based in Oakland, California, notified dozens of aviation fuel suppliers and airport fixed base operators (FBO) that they have allegedly violated California's Proposition 65 (Prop 65) by selling aviation gasoline (avgas) and failing to warn the public that it contains lead. CEH plans to file a "citizens" suit in state court on behalf of all Californians to block the supply and use of leaded aviation gasoline in the state and to force these companies to pay huge civil penalties and CEH's attorneys' fees. As nearly all piston-engine aircraft today are required to use leaded fuel (for safety reasons), the remedy sought by CEH would effectively bring to a halt general aviation in California – and much of the national airspace system, which depends on access to that state's airports.

The Prop 65 action would, if allowed to move forward, interfere with the national interest in ensuring uniform and workable regulation of aircraft engine emissions for the sake of both aviation safety and our environment. Indeed, within the last year, both the Federal Aviation Administration and the U.S. Environmental Protection Agency have initiated rulemaking proceedings to resolve the very issue CEH wants to settle in court. Allowing a California judge to dictate *ad hoc* the content of lead in aviation gasoline before the U.S. government can address the problem would disrupt these efforts to transition the aviation industry to an unleaded fuel. That is why CEH's threat must be taken seriously.

In response, a coalition of small businesses and others targeted by CEH have asked a federal court in Fresno, California, to enjoin the misuse of Prop 65 to regulate the supply and use of leaded avgas. Their case is called *Loyd's Aviation, Inc. et al. v. Center for Environmental Health* (E.D. Cal.) (Case No. 1:11-CV-01078-AWI-DLB). The coalition points out that federal law preempts California (or any other state) from regulating in this area: the Federal Aviation Act bars states from regulating air carrier routes (including those served by every charter operator who flies a piston-engine plane), while the federal Clean Air Act bars them from setting unique local standards for emissions from aircraft or engines. Moreover, a ban on the use of lead in avgas would usurp the Federal Aviation Administration's safety certification system for aircraft and engines and effectively override approval of airplane designs. Only the U.S. Environmental Protection Agency and the Federal Aviation Administration, acting together, can regulate emissions from aircraft.

General aviation is a national resource that provides economic growth and thousands of jobs throughout the United States. A misguided "citizens" suit that interfered with the supply and use or distribution of aviation gasoline in California would have potentially devastating consequences that would not be confined to that state.

We believe federal interests must be protected in this California litigation and would request that you instruct your counsel to intervene in the *Loyd's* case by supporting the coalition's request that the court grant an injunction. As the judge has set a hearing for October 3, it is important that you act on this request in the near future.

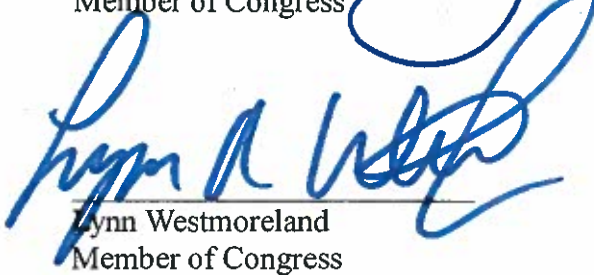
Sincerely,



Brian P. Bilbray
Member of Congress



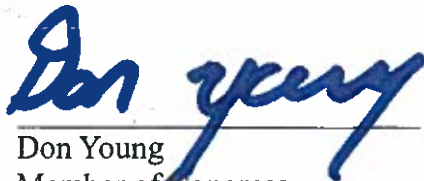
Sam Graves
Member of Congress



Lynn Westmoreland
Member of Congress



Tom McClintock
Member of Congress



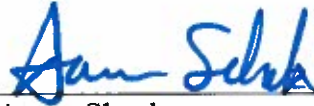
Don Young
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Leonard Boswell
Member of Congress



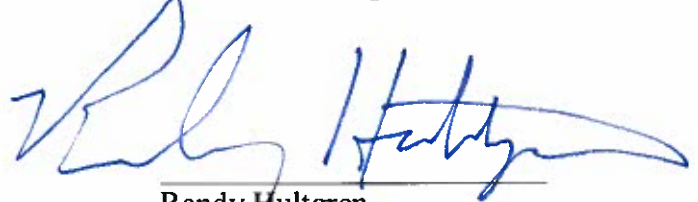
Richard Hanna
Member of Congress



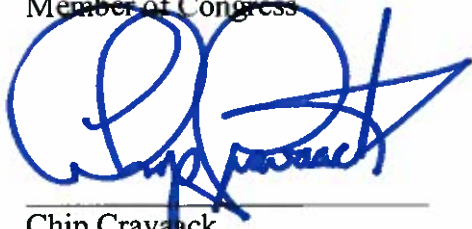
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cc: Attorney General Eric Holder