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Congress of the United States
House of Representatives
Washington, DC

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Secretary Stephen Pritchard
Massachusetts Environmental Policy Act Office
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02114

Dear Secretary Pritchard,

You have received a submission from the corporation seeking to construct an LNG tank in the northern part of Fall River which comments, inter alia, on Section 1948 of the Transportation Bill of 2005, a provision sponsored by my colleague Congressman James McGovern, with the enthusiastic support of myself and our Senators.

Sadly, this submission is an example of the shoddy logic, intellectual dishonesty, and disregard for inconvenient facts that has marked so much of Hess' presentation. To begin, as one who has studied and taught Constitutional Law, and has taken an oath thirteen times to uphold the US Constitution, and more importantly as one who believes that the US Constitution is a wonderful document that should be treated respectfully, I deeply resent Hess' effort to distort our Constitution for its own financial gain.

I refer specifically to the absurd assertion that Mr. McGovern's provision "is legally and constitutionally flawed..." As to its being legally flawed, this of course makes no sense at all. This was an amendment passed by the US Congress and signed into law by the President. No one has alleged that there was any fraud in the process, and it simply makes no sense to argue that a law passed and signed by the President is "legally flawed." Something is legally flawed if it is not in compliance with the law. Only in Hess' fervent desire to say anything that might help them get their project approved can you define a law that was recently passed as somehow being in conflict with the law. It is of course a well-known principle of legislation that laws that have been passed and are on the books can be amended by later laws. Thus, Hess' argument that this particular enactment somehow is invalid because it is in conflict with earlier laws has absolutely no basis.

Since they are obviously aware that the "legally flawed" argument is a weak one, Hess then goes on to say that it is "constitutionally flawed." What is particularly striking here is the absence of any reference to any particular part of the Constitution. As people who are serious about the question of the Constitution understand, things are not unconstitutional in general. The Constitution is not what Justice Oliver Wendell Holmes once described "as a brooding omnipresence in the sky," to be used in a vague and general way to swat down specific legislative enactments that one finds inconvenient. Things are only "constitutionally flawed" if they conflict with some provision of the Constitution. Hess' failure to cite any such provision is of course an implicit admission by them that they know that this is simply nonsense. And I repeat that as someone who believes strongly in the US Constitution and spends a good deal of my time to defend it, I am especially disappointed when people try to use it in such a transparently unjustified way. At the very least, Hess ought to be asked what is the "constitutional flaw" which they find in this. And indeed, I have written a letter to Hess asking that

specific question. I would hope they would have the decency either to cite a specific Constitutional provision that they think Mr. McGovern's amendment violates, or admit that they were simply, shamefully trying to hide behind our Constitution to advance their financial purposes.

I also found astonishing the professed concern of Hess for the "ongoing cost to Massachusetts of first refurbishing and restoring, then operating the old bridge..." This is a corporation that is seeking to impose very significant costs on the City of Fall River, the Town of Somerset, Bristol County, and the Commonwealth. It is clear that if their wholly unsuitable proposal is accepted and an LNG tank is put in such an inappropriate location, the cost to the state, county and local governments will be enormous on a continual basis, and there is of course no serious provision for helping with those costs. For a corporation that is so indifferent to the economic costs it would impose on our region to now complain because they think Massachusetts will have to spend too much money on a bridge tender is equivalent to The Three Stooges denouncing someone else for being silly.

Finally, the argument that this provision undermines the basis for the decision to build a new bridge is also essentially wrong. I am as responsible as anyone for the decision to construct a new Brightman bridge. The single biggest problem we sought to remedy with this construction was the traffic delay that is caused by the need frequently to open the existing bridge. In the future, once the bridge is constructed – and that has taken the State of Massachusetts far longer than it should have in my judgment to get this done – we will not have the traffic problems that we now have. That is, because the new bridge is so much higher than the old bridge, there will be far less need to open it to allow traffic to come in, and it is of course further upriver, which will also be relevant in this regard. It is true that the old bridge has a narrower opening in the water, but while expanding the water level opening was one of the things that we did in designing the new bridge, it was never the major reason for the construction. To repeat in the face of Hess' effort to deny the plain facts, the major advantage of the new bridge was to reduce the traffic delays – and the consequent air pollution from idling cars – that comes from the more frequent need to open the existing bridge. This of course means that the construction of the new bridge and the continuation of the old one are essentially compatible and if anyone doubts this, I recommend that they go back to the debates that led up to our collective decision to build the new bridge.

In summary, the argument that this is legally flawed shows of course no understanding of the basic principles of legislating. The argument that it is constitutionally flawed is a transparent effort to invoke that great document with no serious basis whatsoever for its use in this case. The concern with the expenditure of public funds for Massachusetts is one of the greatest examples of hypocrisy I have seen in public debate. And the failure to recognize that the major advantage of the new bridge is the substantial diminution in traffic stoppage is of course consistent with Hess' effort to transform the facts throughout this debate.



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