

David Hadley: Green lawsuit threatens to ground private planes

By David Hadley Beach Cities Republican Club

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Let's say you are Kamala Harris, California's attorney general. Your challenge is to preserve your strong environmentalist credentials without getting blamed for grounding the California private plane industry. It's going to be tougher than it sounds.

You barely squeaked into office in 2010, needing a recount to win when Democrats were cruising in every other statewide race. Even in a true-blue state, many Democratic and independent voters thought you were too liberal for the job.

You owe your left-wing support and your uberliberal reputation partly to your zealous pursuit of "environmental justice." When you were the district attorney of San Francisco, you established the city's first environmental justice unit. Your attorney general campaign endorsements included the Sierra Club and the California League of Conservation Voters.

But now one of your allies may have gone too far.

On May 9, the Center for Environmental Health notified your office that it was planning to sue dozens of companies in the California general aviation industry - private planes - for emitting lead into the environment. CEH threatened its suits under Proposition 65, which allows "private parties in the public interest" (read: entrepreneurial lawyers) to sue companies for discharging harmful chemicals into California water.

Lead is a harmful substance that can cause birth defects, illness and death. Sounds like a no-brainer for you to pile onto this suit.

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But you know lead is necessary to keep private planes aloft. Of private planes in the U.S., 70 percent are piston-powered (non-jets) and run on "avgas," or aviation gasoline.

You also know that lead has been eliminated from many applications over the decades, such as car gasoline and paint. U.S. lead emissions have declined more than 99 percent since 1970. And avgas is a rounding error, accounting for only one-tenth of one percent of current emissions.

The CEH lawsuits threaten an entire industry. You can't force CEH to back off. You appear to have two choices - you can let CEH proceed with their suits or you can take the cases over.

You don't like either option. You don't want to be held responsible for shutting down the whole industry, but you will disappoint your environmentalist friends if you don't get in on CEH's action.

Couldn't you quietly ask CEH to go easy? CEH won't want to; Proposition 65 litigation is its business. CEH generates much of its revenue by suing - or threatening to sue - alleged Proposition 65 violators, and then collecting "reasonable" attorney's fees from the same violators.

But CEH doesn't want to cross you either. Proposition 65 gives you, as attorney general, the right to argue in court for CEH to receive payments from defendants who have been found to violate Proposition 65. So your good word - on this case or others - can boost CEH's revenue.

Fortunately, you don't have to make your decision just yet. On July 2, a coalition of general-aviation companies sued your office and CEH to prevent you from filing any Proposition 65 lawsuits while the federal government tries to identify safe and reliable alternatives to leaded avgas.

The feds might bail you out! The July 2 suit argues that the federal Clean Air Act bars states from applying their own emissions standards to aircraft. You're off the hook for now.

And while you wait, best to lie low. Your office has issued more than 80 press releases since you took office in January, but you are as quiet as a vacant airstrip on this issue.

I spoke with Richard Seals this week. Seals is the owner of South Bay Aviation, based at Zamperini Field in Torrance, and his company has pumped most of the avgas at that airport for years. He worked and played at that airfield when he was a kid, and he has owned South Bay Aviation for 23 years.

South Bay Aviation employs 14 people.

Seals' company is paying three law firms, both directly and as part of the coalition that hired national law firm Jones Day to sue CEH and the attorney general in July. This is largely an industry of small companies; the costs of such litigation will be unsustainable for many if it goes on for very long.

In addition to Zamperini Field in Torrance, our community has airfields in Compton, Hawthorne, Long Beach and Santa Monica. Each airport has multiple companies in the same boat as South Bay Aviation, their livelihoods endangered for selling a legal product. However the CEH threats work out, you can be sure that none of these small businesses will ever see any of its legal dollars again.

In California, the environmental movement - generally supported by the California public - has been busy for decades. They advocate for ever-higher environmental standards for pretty much everything. Proposition 65 (1986). Zero-emission vehicles (1990). Cap-and-trade (2006). Utilities sourcing one-third of their 2020 electricity from "green" sources (2011).

Opponents of ever-greater environmental fantasy seek balance and responsible environmental stewardship but are cast as shills for corporate polluters. And their prophecies of economic doom never seem to come true. The state's abundant natural resources, its world-class industries (Silicon Valley, Hollywood, aerospace), and the dot.com and housing bubbles allowed environmental fantasy and prosperity to coexist.

But in 2011, what if the sky finally is falling? California's 12 percent unemployment rate is the second-highest in the country. Corporate executives rank our business climate as the country's worst. A recent New York Times headline about California declared, "Green Jobs Predictions Proving a Pipe Dream." Maybe there is a connection between ever-more-fantastic environmental policies and our state's economic woes.

And Kamala Harris can't stop the litigation madness even if she wants to.

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