

APRIL 9TH, 2019

THE HON. SENATOR ROSA GALVEZ

Chair, Standing Committee on Energy, the
Environment and Natural Resources,
Senate of Canada

Dear Senator Galvez,

I am writing to you in your role as Chair of the Senate of Canada's Standing Committee on Energy, the Environment and Natural Resources, with respect to your ongoing hearings into Bill C-69, Impact Assessment Act and Canadian Energy Regulator Act.

I have twice requested an opportunity to appear before your committee on behalf of the Official Opposition in the Alberta Legislature. I regret that I have not yet been invited to do so. I am therefore offering this written submission, which I ask that you share with members of your committee.

If the United Conservative Party is elected as the next government of the Province of Alberta on April 16th, 2019, we intend to file a constitutional challenge of Bill C-69, if it is adopted without significant amendments that address its serious constitutional infirmities, including its unacceptable incursion into areas of exclusive provincial jurisdiction.

As drafted, Bill C-69 exceeds federal jurisdiction by purporting to grant to a new federal regulator the power to regulate provincial projects, such as in situ oil sands developments and petrochemical refineries, that are entirely within a single province and already subject to provincial regulation. In our view, such a broad review and decision-making process would be especially problematic for projects or activities that constitute "Local Works and Undertakings" (per Section 92(10) of the Constitution Act, 1867), for projects involved in the exploration of natural resources, and for "sites and facilities in the province" for electrical production, all of which fall within exclusive provincial jurisdiction.

Bill C-69 purports to give the federal government final say on the construction or operation of such provincial projects based on factors unrelated to a legitimate federal matter. This is directly contrary to the Supreme Court of Canada's holding in *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 SCR 3 that federal environmental assessments "can only affect matters that are truly in relation to an institution or activity that is within federal legislative jurisdiction." Given the absence of express limitations on the scope of federal assessments and approvals, Bill C-69 upsets the balance struck by the constitutional division of powers.

We are also deeply concerned that Bill C-69 ignores the exclusive provincial powers over projects relating to non-renewable natural resources under Section 92A, which constrains federal heads of power. As you will know, Section 92A was sought and secured by then-Premier of Alberta Peter Lougheed as a condition of Alberta's agreement to the patriation of the Canadian Constitution in 1982. It is therefore of particular significance to Albertans. Section 92A provides "exclusive" powers to the provinces to make laws in relation to:

"exploration for non-renewable natural resources in the province";

"development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom"; and

"development, conservation and management of sites and facilities in the province for the generation and production of electrical energy."

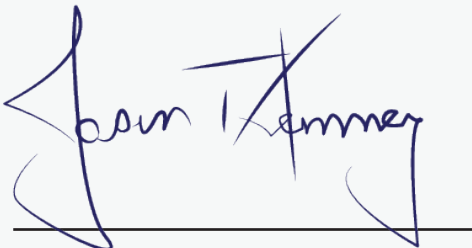
Bill C-69's apparent assumption that the federal government could effectively veto a wholly intra-provincial work or undertaking – especially when it is not relying on its powers over specific undertakings granted by section 92(10)(c) – cannot be squared with the plain language and purpose of Section 92A, which clearly carves out "exclusive jurisdiction" for the provinces over non-renewable resource development projects.

In 1980, Premier Peter Lougheed described the National Energy Program as “the Ottawa government without negotiation and without agreement – simply walked into our homes and occupied the living room.” That is a perfectly apt description for Bill C-69.

It should go without saying that Albertans are committed to the goal of reducing greenhouse gas emissions and conserving our natural environment for future generations. Indeed, the United Conservative Party platform – Alberta Strong and Free: Getting Alberta Back to Work – lays out a practical plan for ensuring that Alberta's economic growth is driven by environmentally-sustainable energy development and clean technologies that will fight climate change both here in Canada and globally. In light of our plan, which will reduce greenhouse gas emissions using provincial regulations, Bill C-69 is unnecessary as well as unconstitutional.

It is our view that Bill C-69 is so profoundly flawed that it is irredeemable by amendment. We ask that your committee understand the devastating long-term consequences this bill would have on our resource industries in general, and Alberta in particular, by not reporting the bill back to the Senate during the current Parliament. However, if your committee decides to proceed with the bill, we would ask that it be substantially re-written to respect exclusive jurisdiction as outlined above, helping to avoid a costly and time consuming constitutional dispute which will only deepen the growing lack of investor confidence in the Canadian economy, and the subsequent impact on jobs and growth.

Sincerely,



THE HON. JASON KENNEY
Leader, United Conservative Party