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SB 469 Shouldn't Be Rushed

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This week, Attorney General Buddy Caldwell did the right thing when he asked Gov. Bobby Jindal to postpone signing into law Senate Bill 469 — a bill the governor had promoted for months, which would effectively kill the Southeast Louisiana Flood Protection Authority-East’s lawsuit against more than 90 oil and gas companies. The governor, for his part, was wise to pause before signing the bill.

Why did they do it?

Over the weekend, we joined our fellow legal scholars and took a close look at SB469 — and realized, to our horror, that it could potentially wipe out billions of dollars’ worth of legitimate claims made by state and local entities in Louisiana for the Deepwater Horizon oil spill.

By weakening Louisiana’s coastal zone management law, SB469 also relinquishes some authority of the state and local governments to protect their rights related to harmful activities within Louisiana’s coastal zone.

On Saturday, we joined our colleagues and wrote an open letter detailing our concerns about SB469. That letter made its way to Attorney General Caldwell. He decided he’d better look into the matter further.

Gov. Jindal said at a Monday news conference that he was only temporarily putting off signing the bill, “out of an abundance of caution,” because the attorney general had asked him to do so. The governor also said he did not believe there was any substance to the argument that SB469 threatened his state’s claims against BP.

But even as the governor downplayed the danger SB469 poses to his state’s Deepwater Horizon claims, more and more legal scholars around the country were becoming alarmed about them. By Monday night, another eight professors of law and a retired Louisiana judge had also signed our letter warning about SB469’s effect on the Deepwater Horizon claims. By Tuesday morning, there were 23 of us who’d signed the letter, including professors from the law schools at LSU, Tulane and Loyola.

Gov. Jindal says he believes SB469 cannot harm his state’s claims against BP because most of them are made under the Oil Pollution Act. He says OPA, a federal law, will always pre-empt SB469, a state law. Clearly, many of our colleagues disagree with him. And so do attorneys for 11 of Louisiana’s coastal parishes, who’ve just recently argued
in a brief to the U.S. Supreme Court that federal law does NOT pre-empt state law in the Deepwater Horizon case.

Knowing that lawyers disagree on these issues, how can the governor know that a court will interpret SB469 the way he does and not some other way? Is he willing to gamble billions of dollars of his state’s claims on it?

For now, at least, Gov. Jindal is willing to pause and let legal scholars weigh in on this bill. Hopefully, he and Attorney General Caldwell will also take the time to consider what scholars are saying about this bill, rather than rushing through their analysis.

Clearly this issue has hit a nerve. ... Since we started writing this, four more law professors have signed our letter.

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