September 18, 2024

The Honorable Jim Jordan
Chairman
House Judiciary Committee
Washington, DC 20515

The Honorable Jerrold Nadler
Ranking Member
House Judiciary Committee
Washington, DC 20515

Dear Chairman Jordan and Ranking Member Nadler:

The Coalition for Sensible Safeguards (CSS), an alliance of over 200 labor, scientific, research, good government, faith, community, health, environmental, and public interest organizations that represent millions of Americans and advocate for effective regulations to protect the public, strongly urges you to oppose H.R. 115, the Midnight Rules Relief Act of 2023.

H.R. 115 would amend the Congressional Review Act (CRA) to allow simultaneous disapproval of dozens of regulations finalized near the end of presidential terms using a single joint resolution. The effect of this bill would be to greatly expand the CRA's anti-regulatory force by amplifying the harmful impact of the CRA's "salt the earth" provision, which bars agencies from issuing new rules that are substantially similar to the rules that are repealed. It would also make it easier for narrow majorities of lawmakers to repeal recently completed safeguards. As such, the operation of the bill would significantly constrain agencies' authority to carry out their statutory missions.

The proposed legislation is based on a fatally flawed premise—namely, that regulations which are proposed or finalized during the so-called "midnight" rulemaking period are rushed and inadequately vetted. In fact, the very opposite is true. In recent months, the Biden Administration has finalized regulations that increase overtime pay to put more money in the pockets of working families, limit carbon emissions from polluters to fight climate change, increase fuel efficiency standards to make cars cleaner, protect workers from harmful "non-compete" clauses in employment contracts, block companies from taking advantage of consumers with "junk fees," put new limits on toxic "forever chemicals" that poison communities across the country, and many more. Many of these regulations that will benefit the American public had been in the regulatory process for years.

In July 2016, Public Citizen released a report that compared rulemaking lengths for rules finalized at the end of the term or during the presidential transition period to those that were finalized outside of this period. The results were noteworthy. The report found that rules issued during the presidential transition period spent *even more time* in the rulemaking process and received *even more extensive vetting* than other rules.

Prominent administrative law experts have also concluded that the concerns regarding these regulations are not borne out by the evidence. For example, in 2012 the Administrative Conference of the United States (ACUS) conducted an extensive study of regulations finalized near the end of previous presidential terms and found that many end-of-term regulations were "relatively routine matters not implicating new policy initiatives by incumbent administrations."

ACUS also found that the "majority of the rules appear to be the result of finishing tasks that were initiated before the Presidential transition period or the result of deadlines outside the agency's control (such as year-end statutory or court-ordered deadlines)." ACUS concluded that "the perception of midnight rulemaking as an unseemly practice is worse than the reality."

No persuasive empirical evidence supporting claims that regulations were rushed near the end of presidential terms has been presented. Likewise, no evidence has been presented that such regulations did not involve diligent compliance with mandated rulemaking procedures. In reality, compliance with the current lengthy regulatory process prevents agencies from finalizing new regulations efficiently, and thus earlier in presidential terms.

In the end, it is difficult to overlook the tragic irony at the heart of H.R. 115. It would empower Congress to use the Congressional Review Act (CRA)—a process that is rushed, nontransparent and discourages informed decision-making—to block rules that have completed the long journey through the rulemaking process.

Unlike the CRA's expedited procedures, agency rules are subjected to myriad accountability mechanisms, and, for each rule, the agency must articulate a policy rationale that is supported by the rulemaking record and consistent with the requirements of the authorizing statute. In contrast, members of Congress do not have to articulate a valid policy rationale—or any rationale at all—in support of CRA resolutions of disapproval. Quite simply, they can be, and often are, an act of pure politics. H.R. 115 would make the situation even worse. It would, in effect, demand that all members of Congress have adequate expertise on all of the rules that would be targeted by a single disapproval resolution. Such a scenario would be highly unlikely.

It would also risk encouraging members to engage in "horse trading" to add still more rules to the disapproval resolution until enough votes have been gathered to ensure the resolution's passage. Surely, this approach to policymaking cannot be defended as superior to that undertaken by regulatory agencies.

CSS is actively tracking the CRA resolutions introduced in the 118th Congress. There have been over 80 rules targeted for repeal through the CRA. As of May 28, 2024, 21 out of 80 CRA resolutions faced votes on the House or Senate floor. The targeted rules protect small businesses,

workers, consumers, students, veterans, investors, people of color, clean air, clean water, renewable energy, wildlife, gun safety, among others.

Further, instead of empowering Congress to bundle CRA resolutions, Congress should investigate if the Government Accountability Office's (GAO) role in evaluating whether agency actions are rules, and therefore subject to the CRA, is an appropriate authority for the comptroller of the GAO given that the CRA provides GAO with no authority whatsoever to make such determinations. This review overrides an agency decision that the particular action was not a rule and gives members of Congress the ability to request a determination that could lead to a resolution of disapproval under the CRA.

CSS agrees that the CRA is in dire need of reform, but instead of expanding its harmful effects, as the Midnight Rules Relief Act of 2023 would do, we encourage the Committee to evaluate proposals that would limit those effects. One such measure is H.R. 1507, the "Stop Corporate Capture Act." Among its many real and meaningful reforms to strengthen the regulatory process, the Stop Corporate Capture Act would address one of the most problematic aspects of the CRA by eliminating the "salt the earth" provision discussed above. . Critically, the Stop Corporate Capture Act would also create a fast-track reinstatement process for rules that were the subject of resolutions of disapproval.

We look forward to assisting the Committee in ensuring that our regulatory process is working effectively and efficiently to protect the American public.

CSS strongly urges opposition to H.R. 115, the Midnight Rules Relief Act of 2023.

Sincerely,

Rachel Weintraub
Executive Director
Coalition for Sensible Safeguards

CC: Members of the House Judiciary Committee