



Chairman Jim Jordan  
U.S. House Committee on the Judiciary  
2138 Rayburn House Building  
Washington, DC 20515

Ranking Member Jerrold Nadler  
U.S. House Committee on the Judiciary  
2138 Rayburn House Building  
Washington, DC 20515

September 19<sup>th</sup>, 2024

**Re: Please Oppose H.R.115, the “Midnight Rules Relief Act,” and H.R. 358, “Small Business Regulatory Flexibility Improvements Act” (SBRFIA)**

Dear Chairman Jordan and Ranking Member Nadler,

On behalf of Earthjustice, I urge you to oppose H.R. 115 and 358, set for full Committee markup this Thursday in the House Judiciary Committee. These two anti-regulatory bills, which purport to address non-existent problems, pose a significant threat to public health and environmental protections. Your role in this matter is crucial. In the interest of public health and environmental protections that keep us all safe, I implore you to oppose the entire package of anti-regulatory bills and **vote NO** on these controversial and damaging bills.

H.R. 115, titled **“The Midnight Rules Relief Act,”** would amend the Congressional Review Act (CRA) to allow Congress to bundle an unlimited number of regulations finalized in the last months of a President’s term into a single CRA resolution of disapproval, instead of blocking them one at a time as permitted under current law. The ability to reach back and place a multitude of an Administration’s major rules under the draconian provisions of the Congressional Review Act is very dangerous and outrageous.

A resolution of disapproval containing dozens, if not hundreds, of administrative rules finalized over the previous potentially six months that dealing with the environment, public health, labor, education, and a myriad of other issues would get merely 10 hours of debate. Frankly, neither the full content of the resolution nor its sweeping implications would receive anything like the scrutiny such a draconian measure deserves. In marked contrast, the very rules targeted by such a resolution would have been many years in the making and have had public engagement as required under the Administrative Procedure Act and other federal laws. Even worse than “repealing” in one fell swoop safeguards developed over the years is the CRA’s requirement that an agency may not reissue the rule in “substantially the same form.” In essence, proponents of this bill seek a permanent 11th-hour veto of essential safeguards, as Congress would never likely successfully re-legislate dozens or hundreds of rules.

There is no plausible good governance justification for Congress repealing a substantially large number of rules in one blunt measure. The various concerns raised to justify this amendment to the CRA are a pure

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fallacy. Proponents of H.R.115 presume that “midnight rules,” that is, rules finalized towards the end of a presidential term, lack the quality of analysis required in the rule-making process that helps justify regulations. However, most rules finalized in the last months of an administration, irrespective of political party, have gone through multiple years of review and processing, sometimes predating the administration's releasing the final rule.<sup>1</sup>

The bill would also risk encouraging members of Congress to engage in “horse trading” to add still more rules to the en bloc disapproval resolution until enough votes have been gathered to ensure the resolution’s passage. Indeed, this approach to policymaking cannot be defended as superior to the careful process undertaken by regulatory agencies for each separate rule.

In its current iteration, the CRA is an extremely blunt instrument that can permanently damage crucial public health and safety measures. It disregards the extensive work and expertise that went into the rulemaking process, limits transparency in the political process, devalues public participation in rulemaking, and provides no judicial review. This legislative proposal would only intensify the dramatic and problematic consequences of the CRA by allowing Congress to bundle rules into one single resolution of disapproval.

H.R. 358, titled the **Small Business Regulatory Flexibility Improvements Act (SBRFIA)**, inappropriately increases the authority of the Office of Advocacy in the Small Business Administration. The Office would generally act as a voice for polluting and big corporations and the trade associations dominated by them – not small businesses or the taxpaying public.

Federal agencies are charged with many essential environmental, health and safety, and public protections that we all rely on. The bill creates burdens of time, money, and resources on already underfunded federal agencies by adding a multitude of unnecessary new analytical requirements for rulemaking and guidance documents that could impact small businesses, including indirect effects. Rulemaking already includes many requirements, staff, expertise, and administrative record creation that can take years to complete on a flattened budget. This legislation would further delay the finalization of policies and eat into an already tight budget.

One of the most egregious components of H.R. 358 is its creation of mechanisms to provide corporations and polluting industries a get-out-of-jail-free card if they violate federal policy and are considered a “first-time offender” to that particular agency. An agency head is stripped of its discretion in enforcing policies by imposing a civil fine. While there are exceptions to this rule, like a violation that “presents a danger to public health or safety or a danger to the public interest’, the legislation still allows a safe harbor for “first-time offenders” to “correct” the noncompliance within 24 hours. The agency head must weigh several factors before allowing or denying them the grace period. If they do not provide a grace period and still issue a civil fine, they must report the issuance to Congress. These provisions, in essence, seek to create

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<sup>1</sup> Administrative Office of the United States, Administrative Conference Recommendation 2012–2; Midnight Rules 1–2 (June 14, 2012)



loopholes in compliance and avoidance of accountability for large corporations and trade associations, not small businesses.

These anti-regulatory bills are dangerous assaults on public protections that keep us all safe and healthy. We ask that you **OPPOSE** both bills at Thursday's House Judiciary Committee markup.

Sincerely,

**Brielle L. Green, Esq.**

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