AFL-CIO * AFSCME * Alaska Public Interest Research Group * Alliance for Justice * American Association for Justice * Americans for Financial Reform * Asbestos Disease Awareness Organization (ADAO) * Center for Food Safety *Center for Justice & Democracy * Center for Progressive Reform * Clean Water Action * Connecticut Council on Occupational Safety and Health (ConnectiCOSH) * Consumer Federation of America * Consumers for Auto Reliability and Safety * Consumers Union * Daily Kos * Earthjustice * Economic Policy Institute * Greenpeace * Homeowners Against Deficient Dwellings * Institute for Agriculture and Trade Policy * International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) * League of Conservation Voters * Massachusetts Consumers Council * MassCOSH * National Association of Consumer Advocates * National Consumer Law Center (on behalf of its low income clients) * National Council for Occupational Safety and Health (COSH) * National Council of Jewish Women * National Council of La Raza * National Employment Law Project * National Employment Lawyers Association * National Women's Law Center * Natural Resources Defense Council * NETWORK Lobby for Catholic Social Justice * Project On Government Oversight (POGO) * Public Citizen * Public Justice Center * Public Knowledge * SafeWork Washington * U.S. PIRG * Union of Concerned Scientists * Virginia Citizens Consumer Council * Women's Voices for the Earth * Worksafe

January 3, 2017

RE: Floor vote of the Midnight Rules Relief Act of 2017

We, the undersigned consumer, small business, labor, good government, financial protection, community, health, environmental, civil rights and public interest groups, strongly urge you to oppose the Midnight Rules Relief Act of 2017 (MRRA).

H.R. 21 would amend the Congressional Review Act (CRA) to allow en bloc disapproval of all regulations finalized near the end of presidential terms. This bill would jeopardize public protections affecting public health, safety, and the environment that often are years, if not decades, in the making.

The proposed legislation is based on a flawed premise—namely, that regulations which are being finalized during the so-called "midnight" rulemaking period are rushed and inadequately vetted.

In fact, the opposite is generally the case. The vast majority of the public health and safety regulations this bill would target have been in the regulatory process for years or decades, including many that date from the Obama Administration's first term or that implement laws passed in the first term. Some even predate the Obama Administration entirely.

In addition, many of these regulations are mandated by Congress and have missed rulemaking deadlines prescribed by Congress. Referring to regulations that have been under consideration by federal agencies for years, and in some instances decades, as "rushed" is misleading and inaccurate.

More generally, proponents of midnight regulations have not presented any persuasive empirical evidence supporting claims that regulations finalized near the end of previous presidential terms were rushed or did not involve diligent compliance with mandated rulemaking procedures. Instead, those opponents make unsubstantiated claims based solely on when a regulation was finalized, ignoring the marathon rulemaking process that those rules likely underwent.

In reality, compliance with the current lengthy regulatory process prevents agencies from finalizing new regulations efficiently, earlier in presidential terms. This is because many of the regulations that Congress intended to provide the greatest benefits to the public's health, safety, financial security, and the environment currently take several years, decades in some instances, for agencies to implement due to the

extensive and, in many cases, redundant procedural and analytical requirements that comprise the rulemaking process.

It is difficult to overlook the tragic irony at the heart of MRRA. The bill would empower Congress to use the CRA—a process that is rushed, nontransparent, and discourages informed decision-making—to block, at the 11th hour, rules that have completed the journey through the onerous rulemaking process.

Unlike the CRA's expedited procedures, agency rules are subjected to a myriad of 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.

A small sampling of long-delayed but now finalized public protections that could be blocked by MRRA illustrates what kind of important public protections are at stake:

- Environmental Protection Agency's truck greenhouse gas emissions rule will make tomorrow's trucks run cleaner and go farther on a gallon of fuel
- Department of Labor's fair pay and safe workplaces protection rule helps to eradicate all forms of discrimination in the workplace and promote good jobs for women
- Health and Human Services' nursing home standard banning the use of forced arbitration in contracts will improve the care and safety for nearly 1.5 million Americans in long-term care facilities
- Environmental Protection Agency's Risk Management Program regulations for chemical facilities will reduce the likelihood of accidental releases at these sites and improve emergency response activities

This bill would throw all these protections into jeopardy. It would, in effect, presume that all members of Congress have adequate expertise on the complexities of all of the rules that would be targeted by a single en bloc disapproval resolution on which they would be voting. Such a scenario would be highly unlikely.

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. Surely, this approach to policymaking cannot be defended as superior to the careful process undertaken by regulatory agencies for each separate rule.

It is also crucial to underscore the far-reaching and negative consequences that such en bloc disapproval resolutions would have. According to the CRA, resolutions of disapproval not only nullify the regulation in question, but also prohibit a federal agency from issuing another regulation that is "substantially the same" in the future, unless specifically authorized to do so by a future act of Congress. Accordingly, broad en bloc disapproval resolutions could significantly curtail agencies' ability to address pressing public threats, indefinitely, potentially forever. That would be a drastic consequence from an act of Congress that is sure to be highly politicized and unlikely to receive appropriately careful consideration.

This Administration ends on January 20, 2017. It is incumbent on Administration officials to do their constitutional duty to exercise their authority to execute the laws as entrusted by Congress until that date.

We strongly urge you to oppose the Midnight Rules Relief Act and to reject the false and misleading rhetoric behind it, which bears no relation to the real problems of excessive and systemic delay in the regulatory process.

We strongly urge opposition to the Midnight Rules Relief Act of 2017.

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Consumer Federation of America
Consumers for Auto Reliability and Safety
Consumers Union
Daily Kos
Earthjustice
Economic Policy Institute
Greenpeace
Homeowners Against Deficient Dwellings
Institute for Agriculture and Trade Policy
International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW)
League of Conservation Voters
Massachusetts Consumers Council
MassCOSH
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Council for Occupational Safety and Health (COSH)
National Council of Jewish Women
National Council of La Raza
National Employment Law Project
National Employment Lawyers Association
National Women's Law Center
Natural Resources Defense Council
NETWORK Lobby for Catholic Social Justice
Project On Government Oversight (POGO)
Public Citizen
Public Justice Center
Public Knowledge
SafeWork Washington
U.S. PIRG
Union of Concerned Scientists
Virginia Citizens Consumer Council
Women’s Voices for the Earth
Worksafe