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4 MARKUP OF H.R. 1493, THE "SUNSHINE FOR REGULATORY DECREES

5 AND SETTLEMENTS ACT OF 2013"; AND

6 H.R. 2542, THE "REGULATORY FLEXIBILITY IMPROVEMENTS ACT OF

7 2013"

8 Wednesday, July 10, 2013

9 House of Representatives

10 Subcommittee on Regulatory Reform, Commercial

11 and Antitrust Law

12 Committee on the Judiciary

13 Washington, D.C.

14 The subcommittee met, pursuant to call, at 10:04 a.m.,

15 in Room 2141, Rayburn Office Building, Hon. Spencer Bachus

16 [chairman of the subcommittee] presiding.

17 Present: Representatives Bachus, Marino, Farenthold,
18 Holding, Collins, Smith, Cohen, DelBene, and Garcia.

19 Staff present: Shelley Husband, Staff Director; Branden
20 Ritchie, Deputy Staff Director/Chief Counsel; Allison
21 Halataei, Parliamentarian; Kelsey Deterding, Clerk; Daniel
22 Flores, Counsel; Perry Apelbaum, Minority Staff Director;
23 Danielle Brown, Minority Staff Parliamentarian; and James
24 Park, Minority Staff Counsel.

25

26 Mr. Bachus. The Subcommittee on Regulatory Reform,
27 Commercial and Antitrust Law will come to order.

28 Without objection, the chair is authorized to declare a
29 recess at any time.

30 Pursuant to notice, I now call up H.R. 1493 for purposes
31 of markup. The clerk will report the bill.

32 Ms. Deterding. H.R. 1493 --

33 Mr. Bachus. Without objection, the bill is considered
34 as read and open for amendment at any time.

35 [The information follows:]

36

37 Mr. Bachus. I will begin by recognizing myself and the
38 ranking member for an opening statement.

39 Today, the subcommittee is marking up H.R. 1493, the
40 Sunshine for Regulatory Decrees and Settlements Act of 2013,
41 which is designated to address a problem commonly known as
42 "sue and settle."

43 Let me thank subcommittee member Representative Doug
44 Collins of Georgia for introducing this bill, of which I am
45 pleased to be an original cosponsor.

46 We have been reminded recently it is essential that
47 government agencies perform their duties with full
48 transparency and accountability. This includes allowing all
49 members of the public a proper opportunity to provide
50 comment and input during an open regulatory process.

51 Particularly in recent years, we have seen an increase
52 in the use of consent decrees in settlement agreements in
53 Federal litigation. These settlements can circumvent the
54 normal regulatory process and at times run contrary to the
55 legislative intent of the elected representatives of
56 Congress.

57 They are often a product of litigation between a Federal

58 and a pro-regulatory outside group. Parties then come to an
59 agreement or consent decree that has a binding effect. And
60 that, in essence, sets new policy without allowing outside
61 parties any input on the final terms.

62 And I will say a personal aside there. I did a law
63 review article about one such consent settlement that led to
64 a massive bankruptcy of a government agency.

65 As chairman of the Regulatory Reform Subcommittee, I am
66 particularly concerned that the practice of "sue and settle"
67 can allow agencies to do an end-run around the public
68 participation and thorough analysis required by the
69 Administrative Practice Act, the Regulatory Flexibility Act,
70 and other requirements for rulemaking.

71 Consent decrees should not be entered into lightly.
72 They have the force of law and are difficult to overturn,
73 and they typically offer the public no opportunity for
74 comment.

75 They can have long-lasting effects and tie hands of
76 future administrations, preventing them from establishing
77 policies based on new facts and data. They also bind other
78 parties not a party to the litigation, some which don't even

79 have notice, as we heard from the director of the EPA of the
80 State of Indiana, where they were bound by a decree that
81 they weren't even aware of.

82 This is a problem that needs to be dealt with.
83 According to a Chamber of Commerce study, the current
84 administration has entered into more than 70 "sue and
85 settle" agreements, which have led to the issuance of
86 hundreds of new regulations. One entity alone was
87 responsible for 34 of these 70-plus new agreements.

88 The Sunshine for Regulatory Decrees and Settlements Act
89 will provide much-needed transparency and notice to allow
90 input from all stakeholders, and provide a better process
91 for Federal decisionmaking.

92 I urge all my colleagues to join with me to pass this
93 bipartisan legislation.

94 And Ranking Member Mr. Cohen is now recognized.

95 Mr. Cohen. Thank you, sir.

96 What we were doing over here is we were looking at a
97 Latin phrase, which I knew a long time ago, and I used to
98 use it when I was a senator at certain moments when I would
99 propose progressive, farsighted proposals that would get

100 nowhere in Tennessee.

101 And it is: "Ave, Imperator, morituri te salutant,"

102 which means, "Those who are about to die salute you."

103 Yes, Tom knows it.

104 So with that, as we go into this markup, I am going to
105 do something that is normally not done. I am going to waive
106 the reading of my remarks, which basically say this is a bad
107 bill and more of the same, et cetera, et cetera, et cetera.
108 But not to do more of the same, I am just going to introduce
109 it and ask that it be introduced as written and not waste
110 the 5 minutes. And I would hope that some of the others
111 would follow with us as we go along, because we know --
112 that's Mr. Conyers, and introduce his, too -- that we could
113 go along and get this over with painlessly.

114 I yield back the balance of my time.

115 [The information follows:]

116

117 Mr. Bachus. We appreciate that dose of pain relief.

118 And with that, I will recognize the very able and
119 capable member from Georgia, Mr. Doug Collins.

120 Mr. Collins. Mr. Chairman, I appreciate that, and I
121 appreciate the gentleman from Tennessee.

122 But also, I agree with him, and as I have been told, I
123 am one of the fastest talking Southerners you will hear, so
124 we will go through this quickly.

125 But also, I believe, as we have in North Georgia
126 sometimes, fights are worth fighting, and I believe this is
127 one of those. So you have to take the step, and we make
128 steps and incremental progress.

129 So thank you, Mr. Chairman.

130 In this difficult economic climate, this legislation
131 provides certainty and relief to job creators. H.R. 1493
132 sheds a much-needed light on the backroom deals between
133 special interest groups and unelected bureaucrats.

134 I'm proud to be the sponsor of this legislation. I
135 appreciate the support of the subcommittee chairman, Mr.
136 Bachus, and thank him for bringing this legislation to
137 markup. Thirty members have joined me in championing this

138 legislation because they recognize the real-world impact
139 these deals have on our job creators.

140 By reforming our Nation's regulatory system through this
141 legislation, we can jumpstart the engine of our economy.
142 Increasing transparency in consent decrees and settlements
143 improves access and encourages public participation.

144 Restoring balance to the rulemaking process ensures that
145 the scales aren't tipped in favor of one group or party.
146 The "sue and settle" practice places special interest groups
147 above American job creators and those who would be forced to
148 bear the brunt of compliance costs.

149 Lawsuit settlements that trigger new regulations should
150 not occur behind closed doors. Those who would be impacted
151 by the new regulations that come from these settlements
152 should have the opportunity to make their voice heard.

153 In no way does this legislation hinder or discourage
154 citizens from bringing suits against agencies. It simply
155 ensures that the process is transparent and ends the
156 practice of backroom dealing.

157 Restoring integrity to the rulemaking process is
158 important because it directly impacts every American family.

159 At the subcommittee hearing on H.R. 1493, Mr. Puckett, a
160 small-business owner in Mississippi, testified that due to
161 two "sue and settle" agreements of which he was not allowed
162 to participate in, his small business lost 50 jobs.

163 One cut, two deals, one company, and now 50 families
164 will be wondering where their next paycheck will come from.
165 And this is just one example in one State.

166 These backroom deals are threatening the hundreds of
167 businesses across every State and congressional district.
168 Hardworking men and women are paying the price for this
169 broken rulemaking process that allows these interest groups
170 to skew the balance intended by the Administrative
171 Procedures Act.

172 Fairness, transparency, and equal treatment under the
173 law are not and should not be partisan issues. Everyone has
174 a role to play in the rulemaking process. And this
175 legislation ensures everyone is allowed to play their role.

176 I thank the chairman for allowing this legislation to
177 come before the subcommittee for a vote, and I yield back.

178 Mr. Bachus. I thank the sponsor of this legislation.

179 At this time, I would ask unanimous consent that the

180 chairman of the full committee, the ranking member of the
181 full committee, and any other members who wish to introduce
182 their opening statements, be allowed to do so.

183 [The information follows:]

184

185 Mr. Bachus. At this time, I would like to offer
186 Chairman Goodlatte's opening statement.

187 [The information follows:]

188

189 Mr. Bachus. Are there any amendments?

190 Seeing there are no amendments, a reporting quorum being
191 present, the question is on reporting the bill favorably to
192 the full committee.

193 Those in favor say aye.

194 Those opposed, no.

195 The ayes have it. And the bill, as amended, is ordered
196 reported favorably to the committee without any pain.

197 All right, pursuant to notice, I now call up H.R. 2542
198 for purposes of markup. The clerk will report the bill.

199 Ms. Deterding. H.R. 2542, "To amend chapter 6 of title
200 5, United States Code" --

201 Mr. Bachus. Without objection, the bill is considered
202 as read and open for amendment at any point.

203 [The information follows:]

204

205 Mr. Bachus. I will begin by recognizing myself and the
206 ranking member for opening statements.

207 And if the staff has no objection, I will just submit it
208 in a painless manner. So I will just offer my opening
209 statement for the record.

210 And I will also, if I could at this time, prior to my
211 statement, I would like to offer the statement of the
212 chairman of the full committee, Mr. Goodlatte, if there's no
213 objection.

214 Seeing no objection, I will offer these two amendments
215 and recognize Mr. Cohen.

216 [The information follows:]

217

218 Mr. Cohen. Thank you, Mr. Chair. And I will offer my
219 statements for the record, and the railroad moves along.

220 [The information follows:]

221

222 Mr. Bachus. Thank you. Thank you.

223 Are there no amendment?

224 Seeing there are no amendments, and a reporting quorum
225 being present, the question is reporting the bill favorably
226 to the full committee.

227 Those in favor say aye.

228 Those opposed, no.

229 All right, the ayes have it, and the bill, as amended,
230 is reported favorably to the full committee.

231 All right, I appreciate everyone's attendance. And this
232 concludes the business for today.

233 I thank all the members for being here, and thanks to
234 all our members for attending.

235 And the meeting is adjourned.

236 [Whereupon, at 10:15 a.m., the subcommittee was
237 adjourned.]