

December 16, 2024

Representative Mike Johnson
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Representative Hakeem Jeffries
Democratic Leader
U.S. House of Representatives
Washington, DC 20515

CC: Members of the House of Representatives

Dear Speaker Johnson and Democratic Leader Jeffries:

The [Coalition for Sensible Safeguards](#) (CSS)¹ and the undersigned organizations strongly urge 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 bill also would create unnecessary confusion about whether rules issued outside of the lookback period can be swept in. 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the earth" provision, which bars agencies from issuing new rules that are substantially the same as the rules that are repealed. It would also make it easier for narrow majorities of lawmakers to repeal recently completed safeguards without the due consideration and deliberation that Congress should employ before taking such drastic steps. As such, the operation of the bill would significantly constrain agencies' authority to carry out their statutory missions to protect the public.

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. Unlike CRA resolutions, which can sprint through Congress in just a few weeks,

¹ 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.

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.”

Supporters of H.R. 115 have presented no persuasive empirical evidence supporting their claims that regulations were rushed near the end of presidential terms. Likewise, they have supplied no evidence 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.

Public Citizen, which co-chairs CSS, is actively [tracking](#) the CRA resolutions introduced in the 119th Congress. At least 50 rules are vulnerable to repeal through the CRA, and another 52 would be vulnerable if finalized before the end of the current administration. In the current Congress, 22 out of at least [109 CRA resolutions](#) have 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 U.S. Comptroller General 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,

Accountable.US

AFL-CIO

American Bird Conservancy

American Federation of State, County and Municipal Employees (AFSCME)

Americans for Financial Reform

Animal Welfare Institute

CalWild

Center for Biological Diversity

Center for Economic Integrity
Center for Food Safety
Center for Progressive Reform
Center for Responsible Lending
Christian Council of Delmarva
Citizen Action/Illinois
Coalition for Sensible Safeguards
Consumer Action
Consumer Federation of America
Consumer Federation of California
Consumers for Auto Reliability and Safety
Earthjustice
Economic Action Maryland Fund
Economic Policy Institute
Endangered Habitats League
Endangered Species Coalition
FOUR PAWS USA
Friends of the Earth
Government Information Watch
Greenpeace USA
Impact Fund
Interfaith Center on Corporate Responsibility
Kettle Range Conservation Group
Large Carnivore Fund
League of Conservation Voters
National Association for Latino Community Asset Builders
National Consumers League

National Health Law Program
National Wolfwatcher Coalition
National Women's Law Center
Natural Resources Defense Council
Oceana
P Street
People Power United
Physicians for Social Responsibility
Public Citizen
Public Justice Center
Resource Renewal Institute
RESTORE: The North Woods
Rise Economy
Southern Environmental Law Center
Team Wolf
Texas Appleseed
Tzedek DC
United Auto Workers (UAW)
United Steelworkers (USW)
Vermont Public Interest Research Group
Virginia Citizens Consumer Council
Womxn From The Mountain
Wyoming Wildlife Advocates