



March 20, 2024

Representative Jim Jordan
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Representative Jerrold Nadler
Ranking Member
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Jordan and Ranking Member Nadler:

The Coalition for Sensible Safeguards (CSS), an alliance of over 180 labor, scientific, research, good government, faith, community, health, environmental, and public interest groups, is writing regarding the House Judiciary Committee’s markup of the Prove It Act of 2024, H.R. 7198.

The Prove It Act would expand the authority of the Small Business Administration’s Office of Advocacy instead of addressing fundamental flaws of the Regulatory Flexibility Act. Further, this bill will slow down the regulatory process and empower an office that has been neither appropriately focused on small business concerns nor adequately transparent in how it carries out its actions.

The ostensible purpose of the Regulatory Flexibility Act is to ensure that small businesses continue to play a role in the U.S. economy. In practice, though, the implementation of the Regulatory Flexibility Act has failed to achieve this basic purpose, as it has instead been wielded as a blunt weapon to weaken regulatory requirements for firms of all sizes. The result is that protections of public health, safety, and the environment have been sacrificed without substantially improving the competitive position of small businesses in their respective industrial sectors relative to that of larger firms. These flaws are most apparent in the Regulatory Flexibility Act’s burdensome analytical requirements, which are designed to weaken regulatory safeguards rather than promote small business competitiveness. H.R. 7198 does not fix this basic problem, however. Instead, it would expand those analytical requirements and make them more onerous.

The Prove It Act would enhance the authority of the Small Business Administration’s Office of Advocacy in harmful ways. H.R. 7198, in Section 2(a)(3), would allow for endless petitions from “Any small entity, group of small entities, or organization representing the interests of small entities” that challenge a rulemaking agency’s certification that its rule would not have a significant economic impact on a substantial number of small entities. In many cases, these petitions would trigger burdensome hearings conducted by the Chief Counsel for the Office of Advocacy, after which the Chief Counsel could then force the rulemaking agency to retract the certification and instead perform the full suite of burdensome analyses mandated by the

Regulatory Flexibility Act. The bill also provides for expanded judicial review opportunities against agency certifications, which would further tie up rulemakings in wasteful and time-consuming litigation.

We urge members of this committee to consider reforms that would instead place greater constraints on the Office of Advocacy to ensure that it is actually helping, rather than harming, real small businesses. A scathing 2014 report¹ by the Government Accountability Office (GAO) found significant deficiencies in the Small Business Administration's Office of Advocacy's compliance with its own internal procedures when it intervenes in regulatory actions or engages in commissioning research on regulatory costs to small businesses. Specifically, GAO found that: (1) the Office failed to ensure that the research projects its sponsored received the required peer review; (2) the Office had no policies dictating when individual staff should intervene in individual rulemakings, making it susceptible to improper industry influence; (3) the Office repeatedly cited small business input in its regulatory comments but could provide no evidence or documentation supporting this input; and (4) the Office failed to fulfill basic transparency requirements for its controversial regulatory "roundtables."

Evidence has also demonstrated the extent to which the Office of Advocacy has been captured by regulated industry. The Office has often worked with large trade associations to weaken rules in ways that benefit large businesses, at the expense of small ones.² These interventions have the effect of harming small business, contrary to the Office's statutory mission. Nevertheless, this bill would give the Small Business Administration's Office of Advocacy even greater authority to intervene in and block agency rules.

Additionally, the Prove It Act would further delay needed regulatory actions – causing real harm to public health and safety and the environment – without improving the quality of agency decision-making. Numerous studies have demonstrated how existing regulatory analyses and procedural requirements contribute to extensive delays of agency rulemakings. These studies³ confirm that existing Regulatory Flexibility Act requirements are among the biggest contributors to these delays. By creating new analytical and procedural requirements, this bill would increase those delays. These additional delays are unjustifiable because they do not result in better regulatory decisions.

Finally, the bill would empower the federal judiciary to block regulations by making agency compliance with its new analytical and procedural requirements judicially reviewable. This would provide judges with an additional new tool for blocking needed public protections.

Providing the Small Business Administration's Office of Advocacy with more authority to block, delay, or weaken new regulatory safeguards, without enacting the significant reforms recommended by GAO and others, will leave the public even more at risk to health, safety, and economic security threats. The numerous petitions, time-consuming hearings, and expanded

¹ <http://www.gao.gov/assets/670/665104.pdf>

² https://cpr-assets.s3.amazonaws.com/documents/Small_Biz_Charade_Silica_1501.pdf

³ <https://www.citizen.org/article/unsafe-delays/>

judicial review that this legislation would allow will thwart needed protections while failing to help small businesses with better designed regulations.

CSS urges the House Judiciary Committee to oppose the Prove It Act and encourages the Committee to evaluate proposals that offer real and meaningful reforms to strengthen the regulatory process, such as H.R. 1507, the “Stop Corporate Capture Act.”

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

We strongly urge opposition to the Prove It Act of 2024, H.R. 7198.

Sincerely,

A handwritten signature in black ink that reads "Rachel Weintraub". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Rachel Weintraub
Executive Director
Coalition for Sensible Safeguards

Cc: Members of House Judiciary Committee