

**RULEMAKERS MUST FOLLOW THE RULES, TOO:
OVERSIGHT OF AGENCY COMPLIANCE WITH
THE CONGRESSIONAL REVIEW ACT**

HEARING
BEFORE THE
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COMMERCIAL AND ANTITRUST LAW
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CONTENTS

SEPTEMBER 28, 2017

OPENING STATEMENTS

	Page
The Honorable Darrell Issa, California, Chairman, Subcommittee on Courts, Intellectual Property, and the Internet	1
The Honorable David Cicilline, Rhode Island, Ranking Member, Subcommittee on Regulatory Reform, Commercial and Antitrust Law, Committee on the Judiciary	2

WITNESSES

Mr. Paul J. Larkin Jr., Esq., Senior Legal Research Fellow, Institute for Constitutional Government, The Heritage Foundation Oral Statement	4
Mr. Todd F. Gaziano, Esq., Executive Director, Pacific Legal Foundation DC Center Oral Statement	6
Mr. Jason H. Carter, Executive Director, Virginia Cattlemens Association Oral Statement	8
Prof. Rena Steinzor, Esq., Edward M. Robertson Professor of Law, University of Maryland Francis King Carey School of Law Oral Statement	9

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Article submitted by the John Conyers Jr., Michigan, Ranking Member, Committee on the Judiciary. This material is available at the Committee and can be accessed on the Committee Repository at:
<http://docs.house.gov/meetings/JU/JU05/20170928/106432/HHRG-115-JU05-20170928-SD001.pdf>

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TOO: OVERSIGHT OF AGENCY COMPLIANCE
WITH THE CONGRESSIONAL REVIEW ACT**

THURSDAY, SEPTEMBER 28, 2017

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND
ANTITRUST LAW

COMMITTEE ON THE JUDICIARY

Washington, DC

The Subcommittee met, pursuant to call, at 9:30 a.m., in room 2141, Rayburn House Office Building, Hon. Darrell Issa presiding.

Present: Representatives Issa, Collins, Buck, Handel, Cicilline, Conyers, and Schneider.

Staff Present: Dan Huff, Counsel; Andrea Woodard, Clerk, and Slade Bond, Minority Counsel.

Mr. ISSA. Good morning.

The Committee will come to order. And the Subcommittee on Regulatory Reform, Commercial and Antitrust Law meets today, and without objection, the Chair is authorized to declare a recess at any time.

We welcome everyone here today for a hearing on “Rulemakers Must Follow the Rules, Too: Oversight of Agency Compliance with the Congressional Review Act.”

And now, I recognize myself for a short opening statement, which the title of this hearing was pretty much an opening statement.

Two things are clear. First, the Congressional Review Act, or CRA, requires agencies to submit new rules to Congress, underlined, before they can take effect.

Second, in too many cases agencies have not complied with the submission requirement. The question is, what will we do about it? Thousands of existing rules were never submitted to Congress, some may be noncontroversial and require little special attention. Some are major rules. Certainly, these major rules could now be submitted for approval or disapproval, and many of them are not submitted because they are known that they would be disapproved of.

Many have fiscal consideration, and we, Congress, are paying the price, and our economy is paying the price. Consider the sum cost of compliance. Industries in some cases, State and local agencies, may already have spent huge sums complying to otherwise—implementing rules which are in fact not really rules. Disapproving

these rules now would serve little purpose since the compliance has already occurred, and in many case, the sum cost is most of the cost of compliance. On the other hand, we are likely to be—there are likely to be newer and particularly burdensome rules that warrant disapproval and need to be eliminated now.

I am eager to hear the witnesses and their views on whether or not my opening statement was accurate, whether or not they believe that compliance has been substantially complied with. And particularly, I would like to hear things about Section 805 of the law, which states, determination, finding, action, or omission under the chapter shall be subject to judicial review. Others maintain that 805 only focuses on judicial review of Congress's action. And that is a particular question for today.

In closing, one of the challenges we face is that agencies' power to intimidate is undeniable. What they will call not a rule, but if you don't comply with, you stand in peril of other actions, is undeniable.

I will close by saying, we are just now, after years of seeing something called Operation Chokepoint, the cut-off making relationships with thousands of lawful businesses, simply because banks were afraid and intimidated by regulators without ever the proposal of a rule, and only a letter that served to intimidate the banks. We know the power of regulators. In the case of banking, they can take away your very business.

So with that, I will recognize the Ranking Member for his opening statement.

Mr. CICILLINE. Thank you, Mr. Chairman. And welcome to our witnesses, thank you for being here this morning.

Today's hearing concerns agencies compliance with the Congressional Review Act. Enacted in 1996, this law requires agencies to physically submit every legislative and non-legislative rule, about 4,000 to 5,000 per year, to the House, the Senate, and the Government Accountability Office. Although this reporting requirement may have made sense in the age of dial-up Internet, it would be charitable to refer to it as government waste today.

It is painfully obvious that requiring agencies to physically submit thousands of rules each year, in triplicate by courier no less, is a waste of American taxpayers' hard-earned money. The House parliamentarian has previously testified in support of narrowing this requirement, observing that this, quote, mass of paperwork, end quote, may not be optimal for Congressional oversight.

Moreover, agencies are already required to publish the text and legal authority of every rule in the Code of Federal Regulations, which is also online and easily accessible. But this is only the tip of the iceberg when it comes to my concerns of the Congressional Review Act. This outdated law has been a failed experiment in Congressional oversight, and an unmitigated disaster for the economic security and safety of hardworking American families.

For more than 20 years, only one rule has been disapproved under the Congressional Review Act. But in the past several months, the Republican Congress has used the Congressional Review Act to undue 14 critical protections for hardworking Americans with little notice or debate. For example, earlier this year, President Trump nullified a landmark privacy protection for con-

sumers through this process. This essential rule would have simply required that Internet providers must get permission from consumers before selling their personal information, such as their browsing history and geolocation. How many jobs were created by abolishing this requirement? None, of course.

When asked if repealing the privacy rule would create jobs or stimulate the economy, the White House Director of Legislative Affairs conceded that, and I quote, “Not each one of these can you look at and say it is necessarily a job creator.” End quote. So if not to create jobs, stimulate the economy, or help working families, why eliminate this commonsense rule?

Special interest groups have spent more than a billion dollars in lobbying and campaign expenditures in opposition to these rules, according to a report by Public Citizen. There can be no mistake that this for-profit President has no interest in putting Americans ahead of corporations and special interests. And now the Trump administration wants to use the Congressional Review Act to take away Americans’ right to a day in court.

This week the Senate is considering a resolution to disapprove the consumer financial protection bureau’s arbitration rule, which restores consumers’ rights to use the justice system to hold corporations accountable for predatory conduct. Backed by the deep pockets of the financial industry, the Trump administration has outwaged the claim that taking away this right would protect consumer choices. As if losing your day in court, thanks to the fine print of take it or leave it contracts, is any choice at all. But it should be no surprise that President Trump is siding with the banks against the American consumers.

President Trump’s top banking regulator is the same attorney who represented Wells Fargo and other banks that defrauded their own customers. And when these megabanks aren’t too busy opening fake checking accounts and draining their own customers’ bank account through manipulated overdraft fees, they are cutting checks to upend protections against forced arbitration.

What is more, once these rules are abolished through the CRA process, agencies are expressly prohibited from adopting these rules again in substantially the same form, absent a Congressional override. And that is why I have introduced the Sunset, the CRA, and Restore American Protections Act, or the SCRAP Act, to address this blatant abuse of process, and to immediately restore these rights.

The Congress must be committed to a legislative process that is accountable, transparent, and open. While, Congress may pass new laws following a change in administration, it is imperative that we debate these proposals in hearings and markups. We cannot run roughshod over a regular order by vacating rules that have gone through years of notice and comment through a politicized vote.

In closing, I hope my colleagues will join me in supporting the SCRAP Act. I thank the witnesses for appearing here today, and yield back the balance of my time.

Mr. ISSA. Thank you. And I would note that as I read the opening statement, and I apologize, I didn’t have a chance to read it beforehand. Apparently, I did not say no before determination, which explains looks on some people’s faces, understandably.

Mr. ISSA. We now introduce our distinguished panel. The witnesses have submitted written statements, which will be entered into the record in their entirety. And I ask that you please use 5 minutes or so to summarize or to extend those written statements.

To help us stay within the time, we will use a light system that we all understand. Green means you may keep going. Yellow means go really fast. And red, of course, we know, means you will get a ticket from the Chairman.

Pursuant to the rules, I would ask all four of you to please rise to take the oath.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Please be seated. Let the record reflect that all witnesses answered in the affirmative.

We now introduce our distinguished panel, Mr. Paul Larkin, Senior Legal Research Fellow at the Institute for Constitutional Government/The Heritage Foundation.

Mr. Todd Gaziano, the Executive Director of the Pacific Legal Foundation Center here in D.C.

Mr. Jason Carter, Executive Director of Virginia Cattlemen's Association.

And Ms. Rena Steinzor, at the Edward M. Robertson, Profession of Law, at the University of Maryland Francis King Carey School of Law.

Welcome. And we are now even. My script was wrong once, and I misread it once, so we are tied. With that, we will go down the row. Mr. Larkin.

TESTIMONY OF PAUL J. LARKIN JR., ESQ., SENIOR LEGAL RESEARCH FELLOW, INSTITUTE FOR CONSTITUTIONAL GOVERNMENT, THE HERITAGE FOUNDATION; TODD F. GAZIANO, ESQ., EXECUTIVE DIRECTOR, PACIFIC LEGAL FOUNDATION'S DC CENTER; JASON H. CARTER, EXECUTIVE DIRECTOR, VIRGINIA CATTLEMENS ASSOCIATION; AND PROFESSOR RENA STEINZOR, ESQ., EDWARD M. ROBERTSON PROFESSOR OF LAW, UNIVERSITY OF MARYLAND FRANCIS KING CAREY SCHOOL OF LAW

TESTIMONY OF PAUL J. LARKIN JR., ESQ.

Mr. LARKIN. Mr. Chairman, Ranking Member, members of the Subcommittee, I want to thank you for the opportunity to appear and testify today.

I do appear only in my own behalf, not on behalf of the Heritage Foundation. I had a few brief points I wanted to make, just discussing the breadth of the Act, but I think I will make just one, and then respond directly to the questions that the Chair and the Ranking Member have—or at least the concerns they had.

The basic point is that Congress wrote the CRA as a substitute, as close as possible, for the old practice of the legislative veto. Congress found that that was one of the valuable ways of gaining oversight and restraining administrative agencies. They are necessary.

Congress could not decide all of the issues that agencies have to decide, whether a particular drug should be approved, or a par-

ticular substance is hazardous waste and the like. But whenever you delegate power to someone else there is a risk they will go too far, or they will make mistakes or abuse it, whatever. So the legislative veto was a chance to rein that in. And then when the Supreme Court held that unconstitutional, Congress passed the Congressional Review Act to make it as close as possible to the legislative veto. But there were hundreds of legislative vetoes, and there is only one Congressional Review Act.

So to make sure that the Act could substitute adequately, it had to be written in extremely broad language. For example, the term rule covers virtually anything that an agency says about the law or policy, because otherwise you would have only a narrow range of issues before the Congress to consider. So that is an extremely broad term, and the statute itself works in an extremely broad and sometimes strict manner to make sure that Congress can review these points.

Now, I know the Chair asked about the judicial review provision. The judicial review provision makes it clear that certain types of actions and decisions are not subject to judicial review, but it doesn't make clear by whom those actions or decisions must be made.

Now, there are several parties that play tertiary roles in this process, the GAO, the Chairmen of Committees, individual chambers of Congress. But the three most important bodies are, Congress, the President, and the rule issuing agency. It is clear that Congress did not want its own actions to be subject to judicial review. They are not subject to judicial review under the Administrative Procedure Act, and they weren't added in back in the CRA.

The President is also not subject to judicial review under the Administrative Procedure Act, and Congress did not add him back in either. That leaves the rule issuing agency. And the oddity about excluding the rule issuing agency from compliance with the CRA, and immunizing them against judicial review, makes that an utterly reasonable interpretation. That was the focus of what Congress wanted to do. It wanted to be able to veto, if you will, the agencies' actions. And so it wanted to have that opportunity. But private parties should, too, and here is why.

An agency must act according to law. And not acting according to law, acting in a lawless manner, essentially raises a constitutional claim because it violates the due process clause. It is quite clear, the Supreme Court has very strictly interpreted statutes that purport to prevent people from raising constitutional claims, and nothing in the text of this statute indicates that it sought to prevent a private party from going to Federal Court and saying the agency's law is not in effect because they did not comply with the CRA, and therefore, for them to apply it against me would render what they are doing unconstitutional.

Now, I know the Ranking Member was concerned about the written submission requirement, and that is an easy fix. Just tell the agencies to send it by email. There is nothing in the statute that requires only transmission via hard documents. So you can send it by email. That can be done in a rather easy manner.

The Ranking Member questioned whether the Act was useful because it only had, prior to this Congress, been used once. But prior

to this Congress, there wasn't really an opportunity to use it. It is most valuable at the beginning of an administration when you have a President that succeeds a President from a different party, and when you have a majority of the incoming President's party in that office—in Congress, because then they have a chance to look back and decide whether old rules should be thrown out, or rules that were never even submitted should be thrown out.

So you had that in the beginning of the Bush administration, but given what happened in 9/11, everything got focused on terrorism. Plus, he wasn't committed in the same way the current President is to regulatory reform. President Obama was not either. So this really is the first chance for the CRA to be used effectively. And the fact that it hasn't before, therefore, shouldn't take away from any force that it may have.

I will save the rest of my points for whatever questions I am asked, and I am glad to answer any questions you may have. Thank you.

Mr. Larkin's written statement is available at the Committee or on the Committee Repository at: <http://docs.house.gov/meetings/JU/JU05/20170928/106432/HHRG-115-JU05-Wstate-LarkinP-20170928.pdf>

Mr. ISSA. Thank you. Mr. Gaziano.

TESTIMONY OF TODD F. GAZIANO, ESQ.

Mr. GAZIANO. Good morning distinguished members of the Subcommittee. And thank you for allowing me to testify as well.

Like my good and learned friend, Paul, I am just going to try to summarize a few of the most important points from my written testimony, and end with the same answer to the Chairman's question.

Point one. The number of rules that were wrongly not sent to Congress is very difficult to quantify exactly. But all the relevant evidence does suggest that it is a very significant problem that OMB and others should try to nail down. There were three government studies that all concluded that there were either hundreds or thousands of rules per year that were published in the Federal Register alone that weren't submitted to Congress.

Now, as the Chairman indicated, many of these are inconsequential, but the number of economically significant rules that weren't submitted is a surprising number, even if that is the tip of the iceberg. A Brookings Institution study this year concluded there were at least 348 economically significant rules that were published in the Federal Register, that were not—apparently not delivered to Congress.

But the Brookings study grossly underestimates the number, and here is why. There were many very important, crucial rules, life-changing rules that were published in the Federal Register that the Brookings study didn't try to quantify. Also, there are many economically significant and non-economically significant rules that are never published in the Federal Register. I have provided some powerful examples of these significant or important guidance documents that were never published in the Federal Register, and to my knowledge, no one has attempted to count them.

Point two. The significance of the noncompliance problem is grave, regardless of the exact numbers. As the Chairman indicated,

rules not submitted to Congress are not lawfully in effect, even if they have been published. And yet, regulatory agencies regularly invoke them and use them to open investigations, enforcement proceedings, and even criminal prosecutions.

Now, it isn't responsive to that injustice to say, "oh well, we don't need to worry about guidance documents," as some scholars have said, because this administration or some future administration can change them easily. Here is the truth: It was unjust and unlawful to apply them in the past, and it is even more unjust and unlawful to apply them currently to current enforcement proceedings.

Beyond that, the rules got no input from the general public, and the Congress has still been denied an opportunity to review them.

Point three. OMB is in the best position to direct an orderly review by the agencies to find their own rules that weren't delivered to Congress. OMB should provide better instruction than in the past as to what rules really are covered by the CRA. And OMB can also provide instruction on how that orderly review should be prioritized and take place. This will also help solve the compliance problem going forward.

Point number four. When agencies do find rules that were never submitted to Congress, they should consult their enforcement official and DOJ about whether ongoing enforcement actions can proceed, and that is because, even if these rules are belatedly sent to Congress, they weren't in effect during the conduct that is being investigated. Very few, if any, rules can be applied retroactively to past conduct.

Point Number five. And it may be my last. The agencies, when they discover rules that weren't submitted to Congress, should go back to OMB and get some advice. Now, with advice from OMB and direction, they essentially will have four options.

Option number one is to send a bunch of them to Congress to finally lawfully go into effect, if necessary, with an instruction that the President stands behind them.

Option two is to deliver at least some rules to Congress with the recommendation that Congress disapprove them, with a statement, hopefully, that the President will sign such a disapproval. There won't be very many in this category, and for good reasons I explain in my written testimony, but mostly because the administration should take care of most bad rules themselves rather than flooding Congress with them. But there are some reasons why they may want to send some that I have explained.

Option number three is that they post a notice that rules are being reconsidered that were never sent to Congress, but are not in effect until that review is finished, and unless and until they are delivered to Congress, because that is what the law requires.

And the final option is for them to post a notice, maybe after some review, that certain of the rules are being modified and terminated. Now, the process to do that will vary depending on the type of rule.

Those are my prepared points, but I want to second the statement of my colleague, because the legislative history also makes this distinction he talked about (the legislative history of the CRA): that Congress' determination and OMB and the White House's de-

termination are not subject to judicial review, but of course, the courts remain open to hear a due process constitutional challenge that rules that were invalid are being unlawfully enforced against them. And although I have always known that was true, it is the brilliant scholarship of my friend, Paul Larkin, that I think has explained in detail why that is so.

Mr. Gazino's written statement is available at the Committee or on the Committee Repository at: <http://docs.house.gov/meetings/JU/JU05/20170928/106432/HHRG-115-JU05-Wstate-GazianoT-20170928.pdf>

Mr. ISSA. Thank you. Mr. Carter.

TESTIMONY OF JASON H. CARTER

Mr. CARTER. Good morning. My name is Jason Carter, I am from a multigenerational cattle, row crop, and tobacco family in central Virginia, and I studied animal science at Virginia Tech. I am currently the Executive Director of Virginia Cattlemen's Association, and prior to joining VCA, I worked for Virginia Tech as an animal science extension agent.

Currently, I serve on advisory boards for the Virginia Department of Environmental Quality, and participate in the stakeholder group invested in the progress of the Chesapeake Bay program. Thank you Subcommittee Member Issa and Ranking Member Cicilline for allowing me to testify today.

American cattle producers own and manage more land than any other segment of agriculture or any other industry for that matter. Since our livelihood is made on the land, being good stewards not only makes good environmental sense, it is fundamental for our industry to remain strong. We strive to maintain environmentally friendly operations, and work closely with local and State regulators to implement practices that improve water quality for our farms and families.

The Congressional Review Act enacted to prevent agencies from overstepping their roles. It provides Congress the chance to consider whether an agency's actions align with Congressional intent. This is a vital tool in maintaining our democratic system of checks and balances, but it was not used in the EPA's 2010 Chesapeake Bay TMDL determination.

When the EPA assesses a water to be impaired, TMDLs are developed to determine the total amount of pollutant that can be released while improving overall water quality. TMDLs allow States to effectively monitor the status of the impaired water body and assess its condition, then develop and implement Best Management Practices to improve water quality over time.

The effectiveness of TMDL programs depends entirely on each States' ability to efficiently monitor and assess waterbodies, then develop and implement BMPs. The EPA's Chesapeake Bay TMDL program is the largest of its kind, and it is unique, in addition, to setting watershed limits for nitrogen, phosphorus, and sediment. The EPA established multiphased Watershed Implementation Plans, or WIPs. By requiring WIPs, EPA's position in the regulatory process, in many aspects, has supplanted the role of State government.

While, in theory, the TMDL program should allow States autonomy to address impaired waterbodies, the EPA has created a federally mandated program that threatens State authority. Lack of certainty in the TMDL program keeps State regulators on edge because EPA can change compliance standards with little notice.

For example, the State of Virginia currently implements programs to comply with Phase II of the Chesapeake Bay WIP, which set goals for nitrogen, phosphorus, and sediment reduction. By EPA's own scorecard, the State has met or exceeded these expectations. However, despite our good scorecard, we don't know what is coming in the next phase of the Chesapeake Bay WIP, and this creates an uncertainty in our industry. Without a clear and achievable path to the finish line, producers are again put in a predicament. Additionally, without knowing Phase III goals, we could potentially lack the resources necessary to meet those demands.

Not only does the Chesapeake Bay TMDL, as currently implemented, present significant Federalism issues, but it does so in a wholly inefficient manner. The State-specific design TMDL programs allow State regulators to tailor BMPs so they are effective. Applying the same standards to the six-State Chesapeake Bay region does simply not achieve the goal efficiently.

For example, in Virginia, operations are encouraged to fence cattle out of streams through 100 percent cost share programs. This means that because the fences are our Best Management Practice, the costs have been fully reimbursed with taxpayer dollars. While there are many cases in which these fences contribute significantly to improving water quality, there is tremendous pressure on State and local regulatory agencies to fund projects with the most linear feet of stream exposure, regardless of a project's overall impact.

Among the worst examples of taxpayer waste that I have witnessed was a fencing project that cost over \$100,000 that was designed to keep less than 12 cows out of a stream. How does that make sense, especially in a time when our Nation is trillions of dollars in debt and looking for ways to reduce cost? I am confident that had Congress had the chance to review this action, it would have determined that the EPA's Chesapeake Bay TMDL, along with its watershed implementation plan, placed an undue burden on all stakeholders.

Putting States in the driver's seat for the Chesapeake Bay improvement is vital to ensure long-term program success. An one-size fits all approach that accompanies top-down regulation simply does not work in the agricultural industry.

I appreciate the opportunity to visit with you today, and thank you for your time.

Mr. Carter's written statement is available at the Committee or on the Committee Repository at: <http://docs.house.gov/meetings/JU/JU05/20170928/106432/HHRG-115-JU05-Wstate-CarterJ-20170928.pdf>

Mr. ISSA. Thank you. Ms. Steinzor.

TESTIMONY OF RENA STEINZOR, ESQ.

Ms. STEINZOR. Thank you for inviting me. My fellow panelists are all great fans of the Congressional Review Act, I am cast in the role of the skunk at the picnic. In fact, I urge you to consider re-

pealing the law. That option represents a golden opportunity for Congress to demonstrate a renewed commitment to its authority and responsibility for overseeing the regulatory state.

Wait just a minute, my fellow panelists are thinking, the woman has everything backward. The whole point of the CRA is for Congress to demonstrate its oversight chops. Didn't the House and Senate just finish choke-chaining the wanton over-regulation committed by the Obama administration? I agree that the 115th Congress demonstrated rapid decision-making by killing 14 rules in a period of just a few weeks. But that rapid fire state of activity attracted more negative publicity than regulatory issues have achieved in many years.

The story line of the coverage most media outlets was that, at the behest of special interest lobbyists, Congress killed rules that seem to make a lot of sense. The impression left was that Congress is controlled by money, not rational well-researched debate on the issue. That impression has an extraordinarily negative effect on our democracy. According to real clear politics, 14.3 percent of Americans approve of the Congress, and 73.8 percent disapprove.

The repeal rules included prohibitions on very bad conduct. That conduct makes no sense to the average American, but it will now be perfectly legal because the rules were repealed. It includes—the conduct includes bribing foreign governments in the developing world to win drilling rights for offshore oil; allowing severely disturbed people, disabled by their mental illness, to buy guns; shearing the tops off mountains and dumping the debris in streams that serve as the drinking water source for numerous Appalachian communities; giving employers with egregious labor violations unfettered access to government contracts; depriving Internet users of privacy online, as Ranking Member Cicilline mentioned; sanctioning the continued use of inhumane hunting practices for predators that inhabit public lands in Alaska.

Judging from American history and the first-among-equals placed the Framers assigned Congress in Article One of the Constitution, measures and enhance our great national legislature's ability to make the laws cannot be easily dismissed, especially at a time when the public frustration with Congress is disturbingly low. But as many knowledgeable commentators, most recently, Senator John McCain, have pointed out on a bipartisan basis, Congress was, has been, and will be great again only when it returns to the regular order, a phrase connoting the use of all the tried and true mechanisms created over two centuries, including public oversight, where Members take the time to discuss the issues at hearings in committee and on the floor.

My fellow panelists will probably spend most of their time, they just did, excoriating agencies for failing to file reports as required by this CRA. A very small cottage industry has emerged that extolls the possibility that Congress could claw back rules and guidance documents that have been in effect for years. The business community has greeted these suggestions with a deafening silence.

Although, companies may appreciate the opportunity to wipe rules off the books before they have started to comply with such requirements, those same dynamics do not apply to rules and guidance that everyone has learned to live with. Advocates of the claw

back have very few examples to offer of rules that were not sent to Congress, and yet were important enough to trigger enforcement action. The only reliable study of the number done by Curtis Copeland, a long time expert in regulatory affairs, who used to work for you in the Congressional Research Service, found a very small number of rules that were not noticed correctly.

Thank you, again, for the opportunity to testify today. I would be pleased to answer any questions.

Ms. Steinzor's written statement is available at the Committee or on the Committee Repository at: <http://docs.house.gov/meetings/JU/JU05/20170928/106432/HHRG-115-JU05-Wstate-SteinzorR-20170928.pdf>

Mr. ISSA. Thank you. I recognize myself. And I will go in reverse order. Professor, you are not the skunk at the picnic. It is important to have those who would not agree with us represented, and I commend the Chairman for making sure that we always have that.

Ms. STEINZOR. Thank you.

Mr. ISSA. You mentioned regular order. Now, in 200 years, 230 years of creating it, but in fact, when our founding fathers began, they didn't use rulemaking per se, they would consider things from the executive branch, and they would in fact pass laws, they would create regulations.

So, in a purist sense, it is Congress' obligation, which perhaps our low approval rating is that we don't do that, but rather we send it over to the executive branch so that so many problems, perceived or real, are solved by the executive branch because we have not done so.

Is that a fair statement?

Ms. STEINZOR. Yes.

Mr. ISSA. So if that is the case and we determine that a rule is inconsistent by a majority of the House, majority of the Senate, and the signature of the President, from a historic standpoint, that is completely regular order to wipe it away. And a hearing to wipe away a law is different than a hearing to create a law.

Wouldn't you agree that the founding fathers believed that to limit somebody's liberty, which regulations inherently do, is not a difficult question—or is a difficult question, while not to inhibit is a fairly easy question. Isn't that sort of a principle of history and law?

Ms. STEINZOR. What troubles me about the Congressional Review Act is that the rules are brought to you by K Street lobbyists.

Mr. ISSA. Okay. And I am going to cut you off. And I apologize, but I didn't see any rules that I was brought to by K Street lobbyist. But I will mention that K Street lobbyist work for companies who are affected by rules or individuals. And we have two organization which are not K Street lobbyists, but they are think tanks that often bring to us what they think are bad rules.

Mr. Carter, I guess, you don't live on K Street, but I guess you are a K Street lobbyist in that sense. But they are brought to us by people, or their representatives, that find a rule objectionable. And we are talking about CRA, but we are really not talking about CRA. We are talking about rules that were never presented.

Mr. Carter is talking about implementation of things under guidance, which means they have never gone through the process of regular order to create a law, because a rule is just a law. And the process of creating a law by the executive branch was set by Congress when we passed the underlying law and gave the agency authority.

And so I think, Mr. Larkin, since you were the senior person here for a second. When we give the authority to make a law to the executive branch, and we describe regular order, which the professor was very good to say she wanted regular order, and they don't comply with every aspect of that set of rules we set up, then it is they who have not complied with regular order. Wouldn't that be the case?

Mr. LARKIN. Yes. Absolutely true.

Mr. ISSA. Okay. We are dealing with guidance—I want to ask one quick question. There has been a lot to-do about the 14 overturned regulations. Weren't all 14 of those midnight rules, rules that in an 8-year term were passed in the last 60 days of the last administration?

Mr. LARKIN. Not entirely. There were some that went back to June. So—

Mr. ISSA. But that was 60 legislative days. That is the law.

Mr. LARKIN. Oh, yes. Yeah. Not calendar days.

Mr. ISSA. They weren't calendar days, but they were pursuant to this procedure under the CRA for midnight rules.

So none of the work of the first seven and a half years of the Obama administration was second-guessed, only the ones that waited effectively until, for the most part, after the Presidential election, certainly after his last midterm. Correct.

Mr. LARKIN. Correct. But to clarify and make sure you understand. If a rule was not submitted, you can go back beyond that period.

Mr. ISSA. No, I understand that. Let me just ask you a question for each of you on the panel.

If, in fact, the executive branch has not complied with the law and has what they would call a rule in which the law does not recognize as a rule because they have not complied with the right requirement, is it reasonable for this body to insist the Department of Justice not use those in any pleadings or in any other way in order to bring enforcement.

In other words, if Congress is thinking about a law and thinks it passed it, but it never actually had the vote, we couldn't—they couldn't enforce that law, they can't enforce what we are thinking about. Is it fair to say that this Department of Justice should in fact stop using any regulation or guidance which in fact has not gone through the process to make it a law under the laws that we gave to the executive branch?

Mr. GAZIANO. Yes. I have explained in my written testimony in more detail, but you are absolutely right. It is unjust even if they then belatedly submit that to you, because there are ongoing investigations and any proceedings that are looking at conduct that happened in the past. And it is also a violation of due process to try to retroactively apply an invalid law.

Mr. ISSA. Yours is a yes, and they can't correct it.

Mr. GAZIANO. Well, they can correct it prospectively, going forward, and give you a chance to change behavior, but not retrospectively.

Mr. ISSA. Mr. Carter.

Mr. CARTER. I would agree that looking at the context of the implementation of the rule now would need to be weighed heavily in the process, but yes.

Mr. ISSA. Professor?

Ms. STEINZOR. I am not aware of any final significant rules that have been brought as the basis—used as the basis of an enforcement action that were not noticed.

Mr. ISSA. Okay. So—wait a minute. Not noticed. You mean not noticed to Congress?

Ms. STEINZOR. Yes.

Mr. ISSA. Okay. So it is your view that the answer to my question could be yes, but you don't know of any examples, is that correct? Because my question was, should they stop using them? And you are saying they have never used them.

Ms. STEINZOR. I believe that this is a solution in search of a problem, and that what we are mostly talking about here is guidance documents. Guidance documents can be changed with a stroke of a pen.

Mr. ISSA. No, I understand.

Ms. STEINZOR. The Justice Department can change prosecutorial policy.

Mr. ISSA. No, no, no, actually, the Justice Department is bound to enforce the law. My question, and I want to be narrow about it, Professor, so that you can answer it, which I think you tried to, is, if in fact something is not the law because they have not in fact complied with the requirements to make a regulation law, which would include all guidance. Should, for example, guidance be allowed to be part of a prosecution?

I think you answered that it never has.

Ms. STEINZOR. Right.

Mr. ISSA. So if it never has, the question still remains, should it ever?

Ms. STEINZOR. I do not think that guidance documents alone would justify a prosecution.

Mr. ISSA. Okay.

Ms. STEINZOR. You would have to have a statutory authority or a regulatory authority, not a guidance document.

Mr. ISSA. Okay. So I am going to summarize quickly. Only statutory authority or regulations which have been submitted to Congress pursuant to the law should ever be used as part of a prosecution, thus Mr. Carter and his cohorts that actually try to feed us, would in fact be limited in their defenses to that which they have been properly noticed, either by Congress' action or by a rule-making process pursuant to Congress?

Ms. STEINZOR. I certainly agree that Mr. Carter should receive notice through a rule-making process.

Mr. ISSA. Thank you both. Mr. Cicilline.

Mr. CICILLINE. Thank you. Mr. Gaziano, you said in your written testimony that the CRA requires physical submission of every rule, and without this requirement, "that CRA would be unworkable."

Why is the physical reporting of rules necessary, and why does the omission of that make the CRA unworkable? Isn't that requirement a complete waste of taxpayer money?

I don't want to spend time a lot of time on this. A reporting requirement—let me just finish. I am going to spend very little time on this reporting requirement because I actually think there is a much more fundamental challenge at this hearing—presents the idea that we are focused on this, what I consider to be an arcane reporting requirement is mystifying me.

But you say without it, it is unworkable. On what basis would it be unworkable without a physical reporting requirement?

Mr. GAZIANO. I appreciate the question, but you are wrong about my testimony. I never said that a physical delivery is required. The word "physical" will not appear in my testimony. What I say is that delivery is required, but not physical. I agree with Mr. Larkin, the physical delivery requirement is not in the statute.

You can search for the statute; it is not there. It has been an administrative process between the House and the White House. When you receive a treaties and when you receive nominations, you receive them in a certain way. That can be changed, but I have actually looked at the current procedures. They actually allow a facsimile delivery. That was the electronic delivery of 1996. You could have your computer and your printer receive a fax delivery. And so, it is in effect, in certain circumstances, but that could be expanded. And I agree with Paul that it would be an easy administrative fix. They should expand that electronic delivery requirement.

And I am so glad that you have given me an opportunity to correct the record that physical delivery is not required in the statute. And in my view, it should not be. The delivery itself—

Mr. CICILLINE. Thank you. I have limited time. Thank you. In 2008 and in 2009, we in fact passed a bipartisan bill, the Congressional Review Act—Improvement Act by voice vote under suspension of the rules that would have repealed the CRA's physical submission requirement and designated the GAO as the recipient of the rule. So I think there is an—I not asking you a question, I am making a statement I think there is an easy fix to this. What I like to spend the balance of my time on is what Professor Steinzor really referenced, is the very damaging impact of the current use of the CRA. And so, Professor, I would ask you if you could begin. This has been something which has not been used—was used a single time up until the Trump administration, the Republicans took over the House and the Senate in this most recent period.

Why do you think it has become so prevalent that this is being used? What do you think are the long term consequences of that? And do you think it undermines, not only confidence in the Congress, but undermines a process that values transparency, and thoughtfulness, and deliberation, that we hold up as hallmarks of the legislative process?

Ms. STEINZOR. Thank you for asking that question, which is a very good one.

I think that the rules that were repealed, vetoed, had all be years in the making. I am absolutely confident that Mr. Carter, who I agree is an American businessman and entitled to respect,

had representation in all the rules that affect him and that concern him.

So the solution for Congress, if it doesn't want to trust the agencies anymore, is to take back all that work and spend as many hours and years of careful research, deliberation, proposal, comment, revision, negotiation, more comments, and finally, issuance of a final rule and litigation of that rule, all of that work that is now being done by the civil service, by experts, is being done that way because Congress asked them to do it.

And the opportunity for the public to comment, for any stakeholder who is affected is quite extensive. The problem with the CRA is that with the snap of a finger, without even any discussion on the floor, the rule hits the trash can. And there are people that have invested a lot of time in figuring out how to comply with the rule. There are competitors who may have already started to comply with the rule.

And what the CRA upends that entire process. And the reason it is happening during the Trump administration is that this President is more hostile to the idea of regulations than any President I have watched in 45 years in Washington. He is just—he is exceptional.

Mr. CICILLINE. Thank you. And I thank you for the example that you provided, which I think, sadly, shows this direct sort of response to corporate powerful, well-financed special interests, who are sort of being rewarded for their participation in the Senate electoral activities. And I think the other thing that is worth noting is those things—those rules that were undone, were specifically to protect the health, safety, privacy, and well-being of the American people.

And I will take issue with my good friend, the Chairman of this Committee, who said regulations inhibit your liberty, inherently. That is exactly reversed. Regulations protect you. They protect your freedom to enjoy safe clean drinking water. They protect your freedom to be protected from dangerous products.

So this notion that regulations inhibit your freedom, which seem to form the basis of this use of this CRA, it is just the reverse.

Regulations, when done properly, protect the health, safety, and well-being of the American people. And I think we saw in the coverage, as you indicated, the coverage of those 14 CRA actions where you can draw a direct line between the hugely powerful corporate special interests on one side and the well-being of the American people on the other, and sadly, in the dark of night, on an expedited calendar with no hearings, no debate, or a teeny bit of debate, I should say, 5 minutes, I think, those actions were reversed that were very often the result of months and months and sometimes years of thoughtful deliberations, receipt of evidence and testimony. That does not, it seems to me—it seems to me, that does not speak well of the Congress of the United States.

And I thank you for your testimony. I yield back.

Mr. ISSA. And if my gentleman Ranking Member would engage in a colloquy quickly, I do not disagree for a moment that regulations provide for safety, attempts to cure inequities, and they are important.

What I attempted to say, and hopefully we can come to a common ground, is that we in Congress are always weighing safety, security, through government action, versus the basic freedom of a complete laissez-faire. And that we, as government, have to balance these two, people's liberties, which are inherent, and then Government's role to protect the people from damages that those liberties to an extreme might cause.

So I was not attempting to say that somehow that all regulations are bad. But, hopefully, we all look at that balancing act. May not always agree on where the balance is, but that is truly the balancing act that we are asked to do. Wouldn't you agree?

Mr. CICILLINE. I would agree, Mr. Chairman. And that is why I think the best forum to do that very difficult balancing is in the context of a full deliberative legislative process, that includes hearings and testimony and evidence, and not using the CRA to summarily reverse months and sometimes years of exactly that.

You are right, we do have to strike the right balance. So let's do it in a forum where that is likely to happen successfully and properly, and the CRA does just the opposite.

Mr. ISSA. I thank the gentleman for the colloquy. With that, we go to the gentlelady from Georgia, Mrs. Handel.

Mrs. HANDEL. Thank you, Mr. Chairman. You know, in Georgia we were one of the States—the State with the highest bank closures during that crisis. And what I observed was an extraordinarily punitive perspective from the regulators, with no desire, no willingness, to work with banks that had been long time community banks. Individuals lost everything. They not only lost their livelihood, their lives were destroyed.

I agree with my esteemed colleagues that we need to find the balance, when it comes to the regulatory climate, but I would submit that there was an overreach on that over the past 8 years.

A couple of questions. So, Professor Steinzor, your central criticism of the CRA is that it—that its time limits force a rush Congressional action. Yet, you also, in your testimony, bemoaned the gridlock and how long it takes Congress to do anything. So I find a little contradiction there.

So I wonder would you support extending this CRA's 60-day period for introducing disapproval resolutions to something longer, perhaps 120 days, to allow for that greater deliberation, without continuing the state of gridlock that you so eloquently focused on in your testimony?

Ms. STEINZOR. I would not support that. I think that the CRA is an invitation to repeal rules without considering what the problem is that they are intended to address, and the best way to do that would be to look at the statutes that authorizes the rule. And there are many solutions to Congressional gridlock. I don't think the CRA is one of them.

Mrs. HANDEL. Thank you. Mr. Gaziano, you testified about the vast number of rules that went without proper notice and proper review or submittal to Congress that had vast and significant economic consequence, yet, Professor Steinzor expressed a decidedly different point of view.

Could you give us a couple of additional examples of that?

Mr. GAZIANO. Yes. Thank you very much, Your Honor, for the question. And in my testimony I talk about certain of the guidance documents and other rules that weren't submitted that are probably decisive in the cases that Pacific Legal Foundation is bringing. One of them that I described in my written testimony is the Alaska Supplement to the 1987 EPA and Army Corps Wetlands Manual. And that supplement declared Alaskan permafrost to be a navigable water of the United States, that is likely to be subject to its jurisdiction. And it requires our client, the tin cup company, to go to them hat in hand with hundreds of thousands of dollars and either seek a permit or go through years of evaluation over whether frozen earth is a navigable water of the United States, under threat of criminal penalties and civil penalties.

And that particular guidance is going to be the decisive weight, because the Clean Water Act language would not allow—our client would have no notice that frozen ground is potentially navigable water because it is ridiculous. It is not. But we still are litigating. And we just got a District Court judgment. We are going to have to go up to the Court of Appeals, but that is just one of the three or four other ridiculous examples.

So we had another case that had to do with a Rapanos guidance that misinterpreted a case Pacific Legal Foundation won in the Supreme Court, but it was also never delivered to Congress. So in a trial that we finally settled last summer, we filed a motion with the judge to not consider the Rapanos guidance, because our client would have won without that. And the DOJ opposed that motion. Do you know why? They said, well, that guidance wasn't a rule enough to send to Congress, but that our client and the judge had to defer to it. That is an example of what is going on.

Mrs. HANDEL. Thank you for that. One last question, and quickly, for Mr. Larkin. There has been some talk today about the fact that the CRA has only been used one other time previously. I guess I was raised that just because something was never done or it was only done once, that didn't completely make it irrelevant.

So I would like to hear your perspective on whether or not the fact that it has only been used once is relevant or not.

Mr. LARKIN. It is not.

Mrs. HANDEL. Perfect. Thank you. Because my time is up.

Mr. Chairman, I yield back.

Mr. ISSA. You shocked me. The answer was so succinct, I wasn't ready to be given back time. I thank the gentlelady. With that, we go to the Ranking Member of the full Committee, the distinguished leader from Detroit, Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Issa. And I welcome the gentlemen on the panel. And I am going to ask unanimous consent to put into the record the article authored by myself, our ranking colleague, Mr. Cicilline, and Hank Johnson.

Mr. ISSA. Such a distinguished document would always be placed without objection.

This material is available at the Committee or on the Committee Repository at:

<http://docs.house.gov/meetings/JU/JU05/20170928/106432/HHRG-115-JU05-20170928-SD001.pdf>

Mr. CONYERS. Thank you. The title is Serious Risks Presented by the Anti-Regulatory Agenda of the 115th Congress and the Trump administration. Just to give you a little clue as to where it is going. I thank you.

Mr. ISSA. Just for the record, this was published in the Harvard Journal?

Mr. CONYERS. Yeah. The Harvard Journal on Legislation.

Mr. ISSA. I don't know if that impresses you, but it impresses me.

Mr. CONYERS. I don't remember how many articles I have had in the Harvard anything. But this was a very important one, and it is very much related to the subject matter that brings us here today.

Professor Steinzor, I would like to raise this with you. Mr. Larkin and Mr. Gaziano argue that if a rule was not properly submitted to Congress, even as far back as 1996, Congress may still use the Congressional Review Administration—still use the CRA's expedited procedures to repeal it.

What is your take on that position?

Ms. STEINZOR. I disagree with it. I think it is a very bad idea. I have heard from virtually every industry person that I have ever discussed these issues with that certainty and stability of the regulatory system is critical. So if you now have a situation where, through some administrative oversight, in a very small number of cases, you can take a rule and kill it, even though everybody has spent all the effort and the money to comply. I think it would be the antithesis of the certainty and stability that business interests tell us they need.

I also want to say that, again, Curtis Copeland, who is a renowned student of and expert in the regulatory process, found that, of 1,000 rules, at most 50 had been omitted from notice. Significant rules. And in many cases, notice had been provided, and someone had lost it in the agencies that received it.

So I think the Brookings' study is problematic. It is now being peer-reviewed by people at Harvard, of all places. So I think that this idea that there are a lot of these rules sort of lurking around, persecuting people, that Congress never had an opportunity to veto is drastically overstated. And I appreciate—

Mr. CONYERS. So what would this kind of sweeping interpretation have on businesses that have already complied with rules that have been in effect for years?

Ms. STEINZOR. It would be very unfair to the people that behave the best, the businesses that made the effort to comply. It would reward, in essence, scofflaws, if there were significant rules that I have not heard about.

I mean, the example that Mr. Gaziano gave about the so-called WOTUS rule, that rule is being reevaluated as we speak by Administrator Pruitt at EPA. I don't agree with what he is doing, but I don't challenge his authority to go through the process and change that document.

Mr. CONYERS. Now, some have suggested that as many as 800 rules have not been received by either the House of Congress or the GAO. Do you think this is an overstatement, or what do you make of that assessment?

Ms. STEINZOR. It is not what Curtis Copeland's carefully done reliable study shows, and I attached that study to my testimony and hope it will be included in the record. He really is a very thoughtful and diligent and careful researcher, and he did a much more reliable job than Brookings did, which is why we are having the Harvard peer review.

Mr. CONYERS. Thank you. This year, Congress disapproved of 14 separate rules on party line votes in both chambers. No more than five House Democrats voted in favor of any resolution of disapproval. In the Senate, 11 of the 14 passed resolutions were opposed by at least 47 Senators.

Now, how did the Congressional Review Act become such a—let's call it a partisan instrument?

Ms. STEINZOR. Well, I think that people were quite shocked at the very aggressive use of it. I know I was. We expected perhaps a handful of rules might be challenged. We also know that President Trump was about to take over the government and would have enormous power to change rules through the normal notice and comment process. So this kind of—it was a blitzkrieg is really what it was.

Mr. CONYERS. Yeah.

Ms. STEINZOR. And people were very surprised. And the rules were idiosyncratic, and some of them seemed so sensible. Like Mr. Cicilline mentioned, internet privacy. That is something that consumers really support as an idea.

Mr. CONYERS. Now, currently, virtually all rules, including ministerial rules issued by the Coast Guard to open or close bridges, must be physically submitted to the House, Senate, and Government Accountability Office, the GAO. Are you concerned at all that the scope of this requirement may be overbroad?

Ms. STEINZOR. Yes. I think agencies are very confused about what is and isn't covered. Literally, thousands and thousands of guidance documents are issued every year. They can be speeches, they can be letters, they can be guidance in the form of memos, and any of those documents can be changed by an agency if it just says, we discovered new information. We changed our mind. We want to go in a different direction. But having to sort through all that paperwork and decide how much to send up here, it is literally everything the government does that it writes down, almost.

Mr. CONYERS. Should the Congressional Review Act apply only to major rules that have big economic effect, maybe exceeding \$100 million or so?

Ms. STEINZOR. Well, I am urging you to repeal the Congressional Review Act.

Mr. CONYERS. Okay.

Ms. STEINZOR. If it were to continue, which I think would be a mistake, I think targeting significant rules defined as you did would make some sense. Those rules are already scrutinized within an inch of their lives by the White House and economists and all the stakeholders, as I mentioned.

Mr. CONYERS. I thank you very much—

Ms. STEINZOR. Thank you very much.

Mr. CONYERS [continuing]. For your testimony.

Thank you, Mr. Chairman.

Mr. Issa. Thank you.

Mr. Buck.

Mr. BUCK. Thank you, Mr. Chairman.

Professor Steinzor, I was just wondering if you were shocked by the Obama administration's seizure of $\frac{1}{7}$ of our economy in the Affordable Care Act or whether you were shocked by the regulations—the crippling regulations in the—or the crippling law in the Dodd-Frank, that that absolutely decimated community banks in this country, and whether you were shocked that the American people reacted by putting Republicans in charge of the United States House in 2010 elections, the United States Senate in 2014, and elected President Trump in 2016. Were you shocked by those things?

You said you were shocked by the use of the CRA in this Congress.

Ms. STEINZOR. I was shocked by President Trump's election.

Mr. BUCK. I am going to yield the rest of my time to the Chairman, Mr. Issa.

Mr. ISSA. Thank you, Mr. Buck. I will be brief.

First of all, since we are on the professor, you do not like the CRA. But if we were to be constitutional in the strictest form and require full debate, would you then believe that the REINS Act would, by definition, be the answer since, under the REINS, R-E-I-N-S, it requires that these kinds of major rules—and it is limited to those—be submitted to Congress; that Congress, in fact, hold hearings and then give an up or down? In other words, that Congress do its job after agencies have determined what they would like to have.

Ms. STEINZOR. Mr. Chairman, the REINS Act would say no rule goes into effect until you approve it. And with all due respect, I think you have so much work to do that I would really worry about you.

Mr. ISSA. Okay.

Ms. STEINZOR. Because you have appropriations, you have disaster relief, you have tax reform. I think we wouldn't have any rules, because you wouldn't have time to look at them.

Mr. ISSA. Well, you know, what is interesting is that everyone has this theory that Congress is too busy to look at what affects Mr. Carter's life.

You said something that I thought was pretty profound in answering Mr. Buck and other questions, which was that you talked about thousands of guidance and how—and you said how they can be changed. You didn't say as a whim, but you implied as a whim, that they get changed, we make mistakes. In other words, every time a speech is made, Mr. Carter's people have to figure out whether that affects their lives, and they have to make changes.

And so, Mr. Gaziano, you talk about a specific case that I think the professor alluded didn't occur or couldn't occur. You talk about a case in which very clearly at the court—at the High Court, you had to argue that it was, in fact, a non-regulation regulation that was what tipped the scale for your very much being there, something that undoubtedly was millions of dollars in cost to your—let me phrase it—huge amounts of hours and would have been millions of dollars to your client.

Mr. GAZIANO. The Federal Government was asking for \$45 million from our client for engaging in farming, plowing his field. But if I misspoke, the regulation—the non-regulation, the one the Justice Department said it didn't have to give you but that the judges had to defer to and our clients had to defer to, was based on a Supreme Court case we won. But it was just in the trial—the Federal District Court that we were proceeding.

Mr. ISSA. Okay. So it wasn't precedent. But, in fact, a justice department during your tenure of practicing law told you——

Mr. GAZIANO. It was a couple months ago.

Mr. ISSA. Okay.

Mr. GAZIANO. A couple months ago.

Mr. ISSA. A couple of months before or after January 20 of this year.

Mr. GAZIANO. We filed a motion in limine to ask the judge not to rely on this guidance that was never delivered to Congress and isn't in effect, and the DOJ opposed the motion.

Mr. ISSA. Okay. So under the Trump administration, as we speak, under this Attorney General, today, or at least weeks ago, we are still seeing the position of the Department of Justice that they will enforce things which have not complied with the rule-making laws and that, in fact, they will stick by those, and they will not allow those to be taken away.

So what you are saying is, under Attorney General Sessions and his Department of Justice and President Trump's administration, they are still, in fact, using non-regulations, regulations that do not comply with the law, to win cases that can cost clients a lot of money.

Mr. GAZIANO. Thank you for allowing me to clarify that too. That is happening, but I have to confess that I don't think it has reached the highest level yet. And your hearing will help. Trial attorneys—you know how aggressive trial attorneys are. And until they get the message from on high—and I don't think it is——

Mr. ISSA. Well, this is an administration that has no U.S. attorneys that have been politically appointed. This is an administration in which the bureaucracy is in place. These are nonpolitical people. They are, by definition, neither Obama's people nor Trump's people. But the Department of Justice is abusing clients like yours today, as we speak, by enforcing things which have not complied with the law, calling them sufficient, even though they are only guidance or unpublished to the Congress regulations. That is your sworn testimony here today.

Mr. GAZIANO. It is absolutely the case they are relying on them and in cases where I think it will make the difference.

Mr. ISSA. Well, I am out of time to get to a vote. I want to thank all of you for your testimony, and particularly for your testimony, which I will personally make sure gets to the Attorney General so it not just be at the prosecutor level who, in his zealous desire to get a win, is using that which is pretty clearly here not something that is law. Even the professor, who believed it wasn't being used, I believe was supportive that it shouldn't be used alone.

I want to thank you. And we stand adjourned.

[Whereupon, at 10:44 a.m., the Subcommittee was adjourned.]

