

OCTOBER 17, 2017

RULES COMMITTEE PRINT 115-34
TEXT OF CONGRESSIONAL ARTICLE I POWERS
STRENGTHENING ACT

**[showing the text of H.R. 469 and H.R. 1096 as reported by
the Committee on the Judiciary; and H.R. 4070, as intro-
duced.]**

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Congressional Article I Powers Strengthening Act”.

4 (b) TABLE OF CONTENTS.—The table of contents of
5 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—SUNSHINE FOR REGULATIONS AND REGULATORY
DECREES AND SETTLEMENTS**

Sec. 101. Short title.

Sec. 102. Definitions.

Sec. 103. Consent decree and settlement reform.

Sec. 104. Motions to modify consent decrees.

Sec. 105. Effective date.

TITLE II—JUDGMENT FUND TRANSPARENCY

Sec. 201. Short title.

Sec. 202. Judgment fund transparency.

TITLE III—ARTICLE I AMICUS AND INTERVENTION

Sec. 301. Short title.

Sec. 302. Congressional intervention as of right.

Sec. 303. Intervention and amicus authority for house of representatives.

1 **TITLE I—SUNSHINE FOR REGU-**
2 **LATIONS AND REGULATORY**
3 **DECREEES AND SETTLEMENTS**

4 **SEC. 101. SHORT TITLE.**

5 This title may be cited as the “Sunshine for Regula-
6 tions and Regulatory Decrees and Settlements Act of
7 2017”.

8 **SEC. 102. DEFINITIONS.**

9 In this title—

10 (1) the terms “agency” and “agency action”
11 have the meanings given those terms under section
12 551 of title 5, United States Code;

13 (2) the term “covered civil action” means a civil
14 action—

15 (A) seeking to compel agency action;

16 (B) alleging that the agency is unlawfully
17 withholding or unreasonably delaying an agency
18 action relating to a regulatory action that would
19 affect the rights of—

20 (i) private persons other than the per-
21 son bringing the action; or

22 (ii) a State, local, or tribal govern-
23 ment; and

24 (C) brought under—

1 (i) chapter 7 of title 5, United States
2 Code; or

3 (ii) any other statute authorizing such
4 an action;

5 (3) the term “covered consent decree” means—

6 (A) a consent decree entered into in a cov-
7 ered civil action; and

8 (B) any other consent decree that requires
9 agency action relating to a regulatory action
10 that affects the rights of—

11 (i) private persons other than the per-
12 son bringing the action; or

13 (ii) a State, local, or tribal govern-
14 ment;

15 (4) the term “covered consent decree or settle-
16 ment agreement” means a covered consent decree
17 and a covered settlement agreement; and

18 (5) the term “covered settlement agreement”
19 means—

20 (A) a settlement agreement entered into in
21 a covered civil action; and

22 (B) any other settlement agreement that
23 requires agency action relating to a regulatory
24 action that affects the rights of—

- 1 (i) private persons other than the per-
2 son bringing the action; or
3 (ii) a State, local, or tribal govern-
4 ment.

5 **SEC. 103. CONSENT DECREE AND SETTLEMENT REFORM.**

6 (a) PLEADINGS AND PRELIMINARY MATTERS.—

7 (1) IN GENERAL.—In any covered civil action,
8 the agency against which the covered civil action is
9 brought shall publish the notice of intent to sue and
10 the complaint in a readily accessible manner, includ-
11 ing by making the notice of intent to sue and the
12 complaint available online not later than 15 days
13 after receiving service of the notice of intent to sue
14 or complaint, respectively.

15 (2) ENTRY OF A COVERED CONSENT DECREE
16 OR SETTLEMENT AGREEMENT.—A party may not
17 make a motion for entry of a covered consent decree
18 or to dismiss a civil action pursuant to a covered set-
19 tlement agreement until after the end of proceedings
20 in accordance with paragraph (1) and subpara-
21 graphs (A) and (B) of paragraph (2) of subsection
22 (d) or subsection (d)(3)(A), whichever is later.

23 (b) INTERVENTION.—

24 (1) REBUTTABLE PRESUMPTION.—In consid-
25 ering a motion to intervene in a covered civil action

1 or a civil action in which a covered consent decree
2 or settlement agreement has been proposed that is
3 filed by a person who alleges that the agency action
4 in dispute would affect the person, the court shall
5 presume, subject to rebuttal, that the interests of
6 the person would not be represented adequately by
7 the existing parties to the action.

8 (2) STATE, LOCAL, AND TRIBAL GOVERN-
9 MENTS.—In considering a motion to intervene in a
10 covered civil action or a civil action in which a cov-
11 ered consent decree or settlement agreement has
12 been proposed that is filed by a State, local, or tribal
13 government, the court shall take due account of
14 whether the movant—

15 (A) administers jointly with an agency that
16 is a defendant in the action the statutory provi-
17 sions that give rise to the regulatory action to
18 which the action relates; or

19 (B) administers an authority under State,
20 local, or tribal law that would be preempted by
21 the regulatory action to which the action re-
22 lates.

23 (c) SETTLEMENT NEGOTIATIONS.—Efforts to settle
24 a covered civil action or otherwise reach an agreement on
25 a covered consent decree or settlement agreement shall—

1 (1) be conducted pursuant to the mediation or
2 alternative dispute resolution program of the court
3 or by a district judge other than the presiding judge,
4 magistrate judge, or special master, as determined
5 appropriate by the presiding judge; and

6 (2) include any party that intervenes in the ac-
7 tion.

8 (d) PUBLICATION OF AND COMMENT ON COVERED
9 CONSENT DECREES OR SETTLEMENT AGREEMENTS.—

10 (1) IN GENERAL.—Not later than 60 days be-
11 fore the date on which a covered consent decree or
12 settlement agreement is filed with a court, the agen-
13 cy seeking to enter the covered consent decree or
14 settlement agreement shall publish in the Federal
15 Register and online—

16 (A) the proposed covered consent decree or
17 settlement agreement; and

18 (B) a statement providing—

19 (i) the statutory basis for the covered
20 consent decree or settlement agreement;
21 and

22 (ii) a description of the terms of the
23 covered consent decree or settlement agree-
24 ment, including whether it provides for the

1 award of attorneys' fees or costs and, if so,
2 the basis for including the award.

3 (2) PUBLIC COMMENT.—

4 (A) IN GENERAL.—An agency seeking to
5 enter a covered consent decree or settlement
6 agreement shall accept public comment during
7 the period described in paragraph (1) on any
8 issue relating to the matters alleged in the com-
9 plaint in the applicable civil action or addressed
10 or affected by the proposed covered consent de-
11 cree or settlement agreement.

12 (B) RESPONSE TO COMMENTS.—An agency
13 shall respond to any comment received under
14 subparagraph (A).

15 (C) SUBMISSIONS TO COURT.—When mov-
16 ing that the court enter a proposed covered con-
17 sent decree or settlement agreement or for dis-
18 missal pursuant to a proposed covered consent
19 decree or settlement agreement, an agency
20 shall—

21 (i) inform the court of the statutory
22 basis for the proposed covered consent de-
23 cree or settlement agreement and its
24 terms;

1 (ii) submit to the court a summary of
2 the comments received under subparagraph
3 (A) and the response of the agency to the
4 comments;

5 (iii) submit to the court a certified
6 index of the administrative record of the
7 notice and comment proceeding; and

8 (iv) make the administrative record
9 described in clause (iii) fully accessible to
10 the court.

11 (D) INCLUSION IN RECORD.—The court
12 shall include in the court record for a civil ac-
13 tion the certified index of the administrative
14 record submitted by an agency under subpara-
15 graph (C)(iii) and any documents listed in the
16 index which any party or amicus curiae appear-
17 ing before the court in the action submits to the
18 court.

19 (3) PUBLIC HEARINGS PERMITTED.—

20 (A) IN GENERAL.—After providing notice
21 in the Federal Register and online, an agency
22 may hold a public hearing regarding whether to
23 enter into a proposed covered consent decree or
24 settlement agreement.

1 (B) RECORD.—If an agency holds a public
2 hearing under subparagraph (A)—

3 (i) the agency shall—

4 (I) submit to the court a sum-
5 mary of the proceedings;

6 (II) submit to the court a cer-
7 tified index of the hearing record; and

8 (III) provide access to the hear-
9 ing record to the court; and

10 (ii) the full hearing record shall be in-
11 cluded in the court record.

12 (4) MANDATORY DEADLINES.—If a proposed
13 covered consent decree or settlement agreement re-
14 quires an agency action by a date certain, the agen-
15 cy shall, when moving for entry of the covered con-
16 sent decree or settlement agreement or dismissal
17 based on the covered consent decree or settlement
18 agreement, inform the court of—

19 (A) any required regulatory action the
20 agency has not taken that the covered consent
21 decree or settlement agreement does not ad-
22 dress;

23 (B) how the covered consent decree or set-
24 tlement agreement, if approved, would affect

1 the discharge of the duties described in sub-
2 paragraph (A); and

3 (C) why the effects of the covered consent
4 decree or settlement agreement on the manner
5 in which the agency discharges its duties is in
6 the public interest.

7 (e) SUBMISSION BY THE GOVERNMENT.—

8 (1) IN GENERAL.—For any proposed covered
9 consent decree or settlement agreement that con-
10 tains a term described in paragraph (2), the Attor-
11 ney General or, if the matter is being litigated inde-
12 pendently by an agency, the head of the agency shall
13 submit to the court a certification that the Attorney
14 General or head of the agency approves the proposed
15 covered consent decree or settlement agreement. The
16 Attorney General or head of the agency shall person-
17 ally sign any certification submitted under this para-
18 graph.

19 (2) TERMS.—A term described in this para-
20 graph is—

21 (A) in the case of a covered consent decree,
22 a term that—

23 (i) converts into a nondiscretionary
24 duty a discretionary authority of an agency

1 to propose, promulgate, revise, or amend
2 regulations;

3 (ii) commits an agency to expend
4 funds that have not been appropriated and
5 that have not been budgeted for the regu-
6 latory action in question;

7 (iii) commits an agency to seek a par-
8 ticular appropriation or budget authoriza-
9 tion;

10 (iv) divests an agency of discretion
11 committed to the agency by statute or the
12 Constitution of the United States, without
13 regard to whether the discretion was
14 granted to respond to changing cir-
15 cumstances, to make policy or managerial
16 choices, or to protect the rights of third
17 parties; or

18 (v) otherwise affords relief that the
19 court could not enter under its own au-
20 thority upon a final judgment in the civil
21 action; or

22 (B) in the case of a covered settlement
23 agreement, a term—

24 (i) that provides a remedy for a fail-
25 ure by the agency to comply with the

1 terms of the covered settlement agreement
2 other than the revival of the civil action re-
3 solved by the covered settlement agree-
4 ment; and

5 (ii) that—

6 (I) interferes with the authority
7 of an agency to revise, amend, or
8 issue rules under the procedures set
9 forth in chapter 5 of title 5, United
10 States Code, or any other statute or
11 Executive order prescribing rule-
12 making procedures for a rulemaking
13 that is the subject of the covered set-
14 tlement agreement;

15 (II) commits the agency to ex-
16 pend funds that have not been appro-
17 priated and that have not been budg-
18 eted for the regulatory action in ques-
19 tion; or

20 (III) for such a covered settle-
21 ment agreement that commits the
22 agency to exercise in a particular way
23 discretion which was committed to the
24 agency by statute or the Constitution
25 of the United States to respond to

1 changing circumstances, to make pol-
2 icy or managerial choices, or to pro-
3 tect the rights of third parties.

4 (f) REVIEW BY COURT.—

5 (1) AMICUS.—A court considering a proposed
6 covered consent decree or settlement agreement shall
7 presume, subject to rebuttal, that it is proper to
8 allow amicus participation relating to the covered
9 consent decree or settlement agreement by any per-
10 son who filed public comments or participated in a
11 public hearing on the covered consent decree or set-
12 tlement agreement under paragraph (2) or (3) of
13 subsection (d).

14 (2) REVIEW OF DEADLINES.—

15 (A) PROPOSED COVERED CONSENT DE-
16 CREES.—For a proposed covered consent de-
17 cree, a court shall not approve the covered con-
18 sent decree unless the proposed covered consent
19 decree allows sufficient time and incorporates
20 adequate procedures for the agency to comply
21 with chapter 5 of title 5, United States Code,
22 and other applicable statutes that govern rule-
23 making and, unless contrary to the public inter-
24 est, the provisions of any Executive order that
25 governs rulemaking.

1 (B) PROPOSED COVERED SETTLEMENT
2 AGREEMENTS.—For a proposed covered settle-
3 ment agreement, a court shall ensure that the
4 covered settlement agreement allows sufficient
5 time and incorporates adequate procedures for
6 the agency to comply with chapter 5 of title 5,
7 United States Code, and other applicable stat-
8 utes that govern rulemaking and, unless con-
9 trary to the public interest, the provisions of
10 any Executive order that governs rulemaking.

11 (g) ANNUAL REPORTS.—Each agency shall submit to
12 Congress an annual report that, for the year covered by
13 the report, includes—

14 (1) the number, identity, and content of covered
15 civil actions brought against and covered consent de-
16 crees or settlement agreements entered against or
17 into by the agency; and

18 (2) a description of the statutory basis for—

19 (A) each covered consent decree or settle-
20 ment agreement entered against or into by the
21 agency; and

22 (B) any award of attorneys fees or costs in
23 a civil action resolved by a covered consent de-
24 cree or settlement agreement entered against or
25 into by the agency.

1 **SEC. 104. MOTIONS TO MODIFY CONSENT DECREES.**

2 If an agency moves a court to modify a covered con-
3 sent decree or settlement agreement and the basis of the
4 motion is that the terms of the covered consent decree or
5 settlement agreement are no longer fully in the public in-
6 terest due to the obligations of the agency to fulfill other
7 duties or due to changed facts and circumstances, the
8 court shall review the motion and the covered consent de-
9 cree or settlement agreement de novo.

10 **SEC. 105. EFFECTIVE DATE.**

11 This title shall apply to—

- 12 (1) any covered civil action filed on or after the
13 date of enactment of this title; and
14 (2) any covered consent decree or settlement
15 agreement proposed to a court on or after the date
16 of enactment of this title.

17 **TITLE II—JUDGMENT FUND**
18 **TRANSPARENCY**

19 **SEC. 201. SHORT TITLE.**

20 This title may be cited as the “Judgment Fund
21 Transparency Act of 2017”.

22 **SEC. 202. JUDGMENT FUND TRANSPARENCY.**

23 (a) **TRANSPARENCY REQUIREMENT.**—Section 1304
24 of title 31, United States Code, is amended by adding at
25 the end the following:

1 “(d)(1) Unless the disclosure of such information is
2 otherwise prohibited by law or court order, the Secretary
3 of the Treasury shall make available to the public on a
4 website, as soon as practicable, but not later than 30 days
5 after the date on which a payment under this section is
6 tendered on or after January 1, 2016, the following infor-
7 mation with regard to that payment:

8 “(A) The name of the specific agency or entity
9 whose actions gave rise to the claim or judgment.

10 “(B) The name of the plaintiff or claimant.

11 “(C) The name of counsel for the plaintiff or
12 claimant.

13 “(D) The amount paid representing principal li-
14 ability, and any amounts paid representing any an-
15 cillary liability, including attorney fees, costs, and
16 interest.

17 “(E) A brief description of the facts that gave
18 rise to the claim.

19 “(F) The name of the agency that submitted
20 the claim.

21 “(G) Any information available on reports gen-
22 erated by the Judgment Fund Payment Search ad-
23 ministered by the Treasury Department.

24 “(2) In addition to the information described in para-
25 graph (1), if a payment under this section is made to a

1 foreign state on or after January 1, 2016, the Secretary
2 of the Treasury shall make available to the public in ac-
3 cordance with paragraph (1), the following information
4 with regard to that payment:

5 “(A) A description of the method of payment.

6 “(B) A description of the currency denomina-
7 tions used for the payment.

8 “(C) The name and location of each financial
9 institution owned or controlled, directly or indirectly,
10 by a foreign state or an agent of a foreign state
11 through which the payment passed or from which
12 the payment was withdrawn, including any financial
13 institution owned or controlled, directly or indirectly,
14 by a foreign state or an agent of a foreign state that
15 is holding the payment as of the date on which the
16 information is made available.

17 “(3) Not later than January 1, 2018, and annually
18 thereafter, the Secretary of the Treasury shall make avail-
19 able to the public on the website described in paragraph
20 (1)—

21 “(A) the total amount paid under this section
22 during the year preceding the date of the report; and

23 “(B) the amount paid under this section during
24 the year preceding the date of the report—

25 “(i) for attorney fees;

1 “(ii) for interest; and

2 “(iii) for all other payments.

3 “(4) In this subsection, the term ‘foreign state’ has
4 the meaning given the term in section 1603 of title 28.

5 “(e) Except with regard to children under eighteen,
6 the disclosure of information required in this section shall
7 not be considered a ‘clearly unwarranted invasion of per-
8 sonal privacy’ for purposes of title 5, United States Code.

9 “(f) No payment may be made under this section to
10 a state sponsor of terrorism, as defined in section
11 1605A(h) of title 28, or to an organization that has been
12 designated as a foreign terrorist organization under sec-
13 tion 219 of the Immigration and Nationality Act (8 U.S.C.
14 1189).”.

15 (b) IMPLEMENTATION.—The Secretary of the Treas-
16 ury shall carry out the amendment made by this section
17 by not later than 60 days after the date of enactment of
18 this title.

19 **TITLE III—ARTICLE I AMICUS** 20 **AND INTERVENTION**

21 **SEC. 301. SHORT TITLE.**

22 This title may be cited as the “Article I Amicus and
23 Intervention Act of 2017”.

1 **SEC. 302. CONGRESSIONAL INTERVENTION AS OF RIGHT.**

2 (a) DEADLINE FOR REPORT ON LIMITATION ON EN-
3 FORCEMENT OF LAWS.—Paragraph (2) of section
4 530D(b) of title 28, United States Code, is amended to
5 read as follows:

6 “(2) under subsection (a)(1)(B), within such
7 time as will reasonably enable the House of Rep-
8 resentatives and the Senate to take action, sepa-
9 rately or jointly, to intervene in a timely fashion in
10 the proceeding, but in no event—

11 “(A) later than 30 days after the making
12 of each determination; and

13 “(B) later than 21 days before any appli-
14 cable deadline for filing any pleading nec-
15 essary—

16 “(i) to defend or assert the constitu-
17 tionality of the provision at issue; or

18 “(ii) to request review of any judicial,
19 administrative, or other determination ad-
20 versely affecting the constitutionality of
21 such provision;”.

22 (b) INTERVENTION AS OF RIGHT.—Section 530D of
23 title 28, United States Code, is amended by adding at the
24 end the following:

25 “(f) INTERVENTION AS OF RIGHT.—The Senate or
26 House of Representatives may intervene as of right in any

1 proceeding referenced in subsection (a)(1)(B) in order to
2 defend or assert the constitutionality of any provision of
3 any Federal statute, rule, regulation, program, policy, or
4 other law, or to appeal or request review of any judicial,
5 administrative, or other determination adversely affecting
6 the constitutionality of any such provision. Notwith-
7 standing any otherwise applicable time limits or other pro-
8 visions of law to the contrary, if such intervention is filed
9 not later than 21 days after receipt of the notice required
10 by this section the intervention shall be deemed timely and
11 shall preserve the right of the Senate or House of Rep-
12 resentatives to advance any applicable legal arguments in
13 favor of the constitutionality of any such provision.”.

14 **SEC. 303. INTERVENTION AND AMICUS AUTHORITY FOR**
15 **HOUSE OF REPRESENTATIVES.**

16 Section 101 of the Legislative Branch Appropriations
17 Act, 2000 (2 U.S.C. 5571), is amended—

18 (1) by striking subsection (d); and

19 (2) by inserting after subsection (b) the fol-
20 lowing (and redesignating succeeding subsections ac-
21 cordingly):

22 “(c) HOUSE OF REPRESENTATIVES INTERVENTION
23 AND AMICUS AUTHORITY.—

24 “(1) ACTIONS OR PROCEEDINGS.—When di-
25 rected to do so in accordance with the Rules of the

1 House of Representatives, the General Counsel of
2 the House of Representatives shall intervene or ap-
3 pear as amicus curiae in the name of the House, or
4 in the name of an officer, committee, subcommittee,
5 or chair of a committee or subcommittee of the
6 House, or other entity of the House, in any legal ac-
7 tion or proceeding pending in any court of the
8 United States or of a State or political subdivision
9 thereof.

10 “(2) INTERVENTION OR APPEARANCE AS OF
11 RIGHT.—Intervention as a party or appearance as
12 amicus curiae shall be of right and may be denied
13 by a court only upon an express finding that such
14 intervention or appearance is untimely and would
15 significantly delay the pending action or, in the case
16 of intervention, that standing to intervene is re-
17 quired and has not been established under section 2
18 of article III of the Constitution of the United
19 States.

20 “(3) RULE OF CONSTRUCTION.—Nothing in
21 this section shall be construed to confer standing on
22 any party seeking to bring, or jurisdiction on any
23 court with respect to, any civil or criminal action
24 against Congress, either House of Congress, a Mem-
25 ber of Congress, a committee or subcommittee of a

1 House of Congress, any office or agency of Con-
2 gress, or any officer or employee of a House of Con-
3 gress or any office or agency of Congress.”.

