RECOGNIZING PAUL BOOTH ON A LIFETIME OF PROGRESSIVE ACHIEVEMENT

HON. JANICE D. SCHAKOWSKY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 11, 2017

Ms. SCHAKOWSKY. Mr. Speaker, today I rise to recognize my friend Paul Booth for his lifetime of contributions to the progressive movement as an activist, organizer, mentor and leader. Throughout a remarkable career spanning more than half a century, his commitment to giving voice to the voiceless has been tenacious and unflagging.

Born in 1943, Paul was raised in Washington, D.C. where he was imbued by his parents—a psychiatric social worker and a Social Security architect in the Roosevelt administration—with a public service ethic. While attending Swarthmore College, Paul also became an early leader, and eventually National Secretary, of Students for a Democratic Society, one of the most influential youth activism organizations in the nation's history. He was instrumental in crafting the Port Huron Statement, the clarion call of the student movement. In 1965, he organized the first march on Washington protesting the Vietnam War and the first sit-in at the Chase Manhattan Bank, bringing to light the bank's affiliation with the pro-apartheid regime in South Africa.

As a young man, Paul brought his dogged activism to the labor movement, serving as a researcher at the Adlai Stevenson Institute and, beginning in 1966, as Research Director for the United Packinghouse Workers of America. Through Citizens Action Program, a major progressive organizing force in Chicago where I first got to know him, Paul co-chaired the first Metropolitan Alinsky Organization.

It was in 1974 that Paul began his more than 40-year association with the American Federation of State, County and Municipal Employees (AFSCME). His innumerable contributions over the years—his strong leadership, organizing skills and strategic acumen—have made AFSCME a union powerhouse and fundamentally improved the lives of millions of working people.

Paul helped organize and found AFSCME Council 31 in Illinois. As its Assistant Director, Paul's many accomplishments included securing the first union contract for 40,000 state workers and 7,000 city of Chicago employees. He also negotiated historic pay-equity provisions for city workers. And as an ally of Mayor Harold Washington, Paul helped defeat the old patronage machine and build a diverse, multiracial union.

In 1988, Paul brought his experience and expertise to AFSCME headquarters in Washington. There, as Director of Field Services, he laid the groundwork for the formation of AFSCME—United Nurses of America and AFSCME—Corrections United. As Assistant to President Gerald McEntee and Executive Assistant to President Lee Saunders, Paul helped shape the strategic goals of the union, as well as the labor movement as a whole. As he retires from AFSCME effective February 28, he leaves behind a rich legacy and a lasting record of achievement.

Paul met his partner in life and work, Heather, 50 years ago at a University of Chicago anti-war sit-in that she helped organize. Always ardent in his pursuit of a goal, he proposed to her three days later. Together, they've channeled their shared interests into The Midwest Academy, a training institute committed to advancing the struggle for social, economic and racial justice. Paul continues to mentor the next generation of activists and fight for workers' rights through his leadership in numerous projects and organizations, including Jobs with Justice and Restaurant Opportunities Centers United.

Paul has passed along his passion for social justice to his sons, Gene and Dan. They, along with his daughters-in-law and five grandchildren, are a source of unending happiness and pride. For Paul, I know that more time with all of them will be the best part of retirement.

On a personal note, I want to express my gratitude to Paul for being an inspiration, teacher and, above all, a dear friend to me over the last many decades.

For his devotion to family, progressive leadership and ceaseless advocacy for the dignity of all, I'm pleased to recognize Paul Booth and wish him the very best in life's next chapter.

ANALYSIS OF H.R. 5 FROM THE 112TH CONGRESS

HON. BOB GOODLATTE

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 11, 2017

Mr. GOODLATTE. Mr. Speaker, I include in the RECORD an analysis of a previous version of H.R. 5 from the 112th Congress:

NOVEMBER 2, 2011.

Re H.R. 3010, the Regulatory Accountability Act of 2011

Hon. LAMAR SMITH, *Chairman*,
Hon. JOHN CONYERS, Jr., *Ranking Member*,
Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN AND RANKING MEMBER CONYERS: The undersigned practitioners and scholars in the field of administrative law, and former regulatory officials in the White House, OMB and federal agencies, have reviewed the provisions of H.R. 3010, the Regulatory Accountability Act of 2011. H.R. 3010 would reform the Administrative Procedure Act's rulemaking provisions to enhance the quality of federal regulation, enhance democratic accountability and oversight for administrative policymaking, and improve policy outcomes for the American people. We strongly support the Committee's effort to enhance the analysis, justification, transparency of, and participation in, federal rulemaking, and we respectfully request that the Committee include this letter in the record.

In its current form, the Administrative Procedure Act (APA) does not adequately regulate the federal rulemaking process. It does not obligate agencies to rigorously define and characterize the need for regulation. It does not require agencies to identify the costs of regulations—including both compliance costs and impacts imposed on the economy and general welfare. It does not require agencies to carefully identify and assess the benefits to be achieved by new regulations, and does not compel agencies to choose the least burdensome, lowest-cost regulation that would achieve the statutory objectives. In short, the APA does not necessarily ensure that agencies justify their regulations in accordance with the highest standards the public deserves. H.R. 3010 would correct this.

H.R. 3010's critics argue that the bill would impose new burdens on agencies, by interposing additional analytic hurdles before agencies could adopt new regulations. First, it is important to understand that the bill's regulatory standards, and its analytic and justification requirements, are not fundamentally new—they have been previously developed and applied in Executive Orders issued by Presidents Reagan, Clinton and Obama. The bill would effectively codify existing principles and standards from these Executive Orders in law. Second, while agencies would surely take the codified legal standards and requirements very seriously, and thus experience somewhat greater compliance burdens, that is not necessarily unreasonable or unwarranted. We believe the American public would view such additional safeguards as appropriate.

To be clear, we do not oppose environmental, health, safety or economic regulation. Nor do we believe that only a regulation's costs should be carefully tabulated and weighed. We agree that the benefits of many well-designed regulations can obviously be highly valuable to society, and we recognize that sound regulations can certainly reflect benefits that include intangible, non-quantifiable values (such as environmental, moral, ethical, aesthetic, social, human dignity, stewardship and other non-pecuniary or practical factors).

Taken together, we believe that all such costs and all such benefits must be rigorously analyzed, assessed, justified and scrutinized before significant new rules are imposed on the public, the economy, affected parties and regulated entities. Quite simply, that is ''accountability.''

The heads of regulatory agencies exercise extensive delegated policymaking authority, but are not directly accountable to the public through the democratic process. Accordingly, it is entirely reasonable, appropriate and, indeed, essential, for Congress to (i) specify in law more stringent criteria for rulemaking, (ii) facilitate substantial Presidential oversight of agency regulations (including those promulgated by ''independent'' agencies), (iii) enable more robust public participation in the rulemaking process, (iv) require regulations to be based on more reliable data and other relevant inputs, and (v) provide for more effective judicial scrutiny of the final regulations.

Of course, Congress often delegates its policymaking power to agencies, and it is incontrovertible that agencies' rulemaking can often be as highly consequential and important to the public as the congressionally enacted laws themselves. But for that very reason, regulation must not be undertaken without very careful consideration and observation of the most stringent procedures and analysis. The fact that the bill's requirements would embody existing regulatory review duties and obligations (based on numerous Executive Orders) in the APA itself is not objectionable. Before regulatory agencies impose new burdens on the public and the economy, the agencies should spend the time and make the effort to make sure they get the balance right for the overall benefit of society.

Accordingly, we view the Regulatory Accountability Act as serving the public well by mandating in statutory text that new regulations be thoroughly and meaningfully justified. Indeed, to the extent feasible, we would recommend that Congress avail itself of the same cost-benefit analysis prior to enacting regulatory legislation so as to avoid imposing unjustified regulatory mandates that agencies cannot fully resolve in the rulemaking process.

As noted above, far from imposing partisan or ideologically divisive requirements, H.R.

3010 embodies and implements a long-standing, bipartisan consensus on the proper principles of regulatory review and reform: Presidents Reagan, George H.W. Bush, Clinton, George W. Bush and—most recently and emphatically—President Obama, have all issued or implemented Executive Orders calling for rigorous justification of the need for regulation, careful cost-benefit analysis before imposing new regulatory requirements, reliance on sound science, and selection of the least burdensome regulatory alternatives that meet the relevant statutory objectives.

H.R. 3010 would take those Executive Branch principles and codify them, thereby preserving in federal statutes the very values set forth in President Obama's recent Orders:

Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.

It must be based on the best available science.

It must allow for public participation and an open exchange of ideas.

It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends.

It must take into account benefits and costs, both quantitative and qualitative.

Each agency must, among other things:

(1) propose or adopt a regulation only upon a reasoned determination' that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify);

(2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and

(5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

Regulations shall be adopted through a process that involves public participation.

Each agency, consistent with Executive Order 12866 and other applicable legal requirements, shall endeavor to provide the public with an opportunity to participate in the regulatory process.

Each agency shall also provide, for both proposed and final rules, timely online access to the rulemaking docket on regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded.

Before issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking.

Each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

Each agency shall ensure the objectivity of any scientific and technological information and processes used to support the agency's regulatory actions.

Wise regulatory decisions depend on public participation and on careful analysis of the likely consequences of regulation.

Such decisions are informed and improved by allowing interested members of the public to have a meaningful opportunity to participate in rulemaking.

To the extent permitted by law, such decisions should be made only after consideration of their costs and benefits (both quantitative and qualitative).

Executive Order 13563 of January 18, 2011, ''Improving Regulation and Regulatory Review,'' directed to executive agencies, was meant to produce a regulatory system that protects ''public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.''

Independent regulatory agencies, no less than executive agencies, should promote that goal.

Executive Order 13563 set out general requirements directed to executive agencies concerning public participation, integration and innovation, flexible approaches, and science. To the extent permitted by law, independent regulatory agencies should comply with these provisions as well.

Indeed, the Regulatory Accountability Act would implement President Obama's recent call for ''public participation and open exchange'' before a rule is proposed. Specifically, H.R. 3010 would create an Advance Notice of Proposed Rulemaking stage for major rules ($100M+). In this early notice, the agency would identify the problem it wishes to address through regulation and articulate the specific legal authority for doing so; disclose its preliminary views on the direction of the prospective regulation, and provide information concerning possible regulatory alternatives; and invite the public to submit written comments on these issues. While this adds a step in the regulatory process, it is one that allows interested parties a greater opportunity to help the agency reach a sound outcome.

The bill would also obligate agencies to rely on better scientific and technical data. While agencies must exercise their expert judgment, it is impossible to argue against the proposition that they should use the best data and other inputs available. Affected parties can invoke judicial and administrative remedies to ensure that agencies rely on scientific and technical evidence that meets the standards of the Information Quality Act. This is, of course, consistent with President Obama's call for regulating ''based on the best available science.'' This is unassailable. If agencies cannot disclose and defend the data they rely on as being the best available, they cannot possibly be confident enough in their regulatory analysis to impose new requirements on the basis of the data at their disposal.

The Committee may also wish to consider the possible application, or adaptation, of the Supreme Court's decision in Daubert v. Merrell Dow Pharmaceuticals, Inc., in the regulatory context. In Daubert, the Court empowered federal judges to reject irrelevant or unreliable scientific evidence, thus providing the judiciary a mandate to foster ''good science'' in the courtroom and to reject expert testimony not grounded in scientific methods and procedures. Some federal agencies have been criticized for lacking a commitment to sound science. Too often, federal courts have accorded great deference to uphold agency decisions that may have been based on faulty scientific evidence or unsupported assumptions and conclusions.

Daubert principles could be applied to the review of agency rulemaking under the APA because these principles are consistent with the APA requirement that agencies engage in reasoned decisionmaking, would assure better documentation of agencies' scientific decisions, and would enhance the rigor and predictability of judicial review of agency action based on scientific evidence. This approach would be entirely congruent with the Regulatory Accountability Act's requirement that regulations be based on the best available science. Applying the Daubert principles in judicial review of agency action would allow courts to evaluate the scientific methods and procedures employed by agencies, but must not allow judges to substitute their own policy preferences or conclusions for those chosen by the agencies. The courts' review need not be heavy-handed; it can be both deferential and probing, ensuring that agencies formulate and comply with procedures tailored to producing the best results, while not dictating what those results must be in any given case.

Incorporating, or adapting, Daubert principles into administrative law would improve agency decisionmaking and enhance accountability. Agencies would be compelled to identify the most reliable and relevant scientific evidence for the issue at hand and disclose the default assumptions, policy choices, and factual uncertainties therein. Applying Daubert in the administrative context would refine judicial review of agency science, resulting in greater consistency and rigor.

We also believe that it is reasonable that H.R. 3010 would expose more agency pronouncements, such as agency guidance documents, to more rigorous standards. Specifically, the bill would adopt the good-guidance practices issued by OMB in 2007 (under then-Director, and now Senator, Portman). Such agency guidance would be clearly noted as ''non-binding,'' and would not be entitled to substantial judicial deference.

The heart of the bill is to build cost-benefit analysis principles into each step of the rulemaking process—proposed rule, final rule, and judicial review. As noted earlier, these principles are drawn from Executive Orders issued by Presidents Reagan and Clinton and emphatically reaffirmed by President Obama. The bill would make those principles permanent, enforceable and applicable to independent agencies. Compliance with these codified requirements would be subject to judicial review.

Significantly, the bill would require agencies to adopt the ''least costly alternative that will achieve the objectives of the statute authorizing the rule.'' It permits agencies to adopt a more costly approach only if the agency demonstrates that the added costs justify the benefits and that the more costly rule is needed to address interests of public health, safety, and welfare that are clearly within the scope of the statute. This is consistent with the White House's recent instruction to federal agencies to ''minimize regulatory costs'' and the President's directive to ''tailor regulations to impose the least burden on society.'' (Exec. Order 13,563)

For high impact, billion-dollar rules, additional procedures would apply—which seems entirely reasonable given the resulting consequences for the public and the economy. Most importantly, affected parties will have access to a fair and open forum to question the accuracy of the views, evidence, and assumptions underlying the agency's proposal. The hearing would focus on (1) whether there is a lower-cost alternative that would achieve the policy goals set out by Congress (or a need that justifies an higher cost than otherwise necessary); (2) whether the agency's evidence is backed by sound scientific, technical and economic data, consistent with the Information Quality Act; (3) any issues that the agency believes would advance the process. Parties affected by major rules ($100M+) would also have access to hearings, unless the agency concludes that the hearing would not advance the process or would unreasonably delay the rulemaking.

Following the hearing prescribed in the bill, high-impact rules would be reviewed under a slightly higher standard in court—so-called ''substantial evidence'' review. While this standard is still highly deferential to the agency's judgments, it allows a court reviewing major rules to ensure that an agency's justifications are supported by ''evidence that a reasonable mind could accept as adequate to support a conclusion based on the record as a whole.''

We understand that these additional review and analysis requirements are not perfunctory and may not be easy for agencies to accomplish. However, we believe that because of the extensive delegation of essentially legislative authority from Congress and policymaking discretion that agencies exercise, and the substantial deference that agencies enjoy from the courts, the public deserves more analysis and justification before agencies acts. Moreover, we believe that the public also expects the President to influence and control rulemaking by all federal agencies, and thus we support greater centralized White House review of agency regulations—including independent agencies—on behalf of the President by the Office of Information and Regulatory Affairs at OMB (in the Executive Office of the President). We believe the bill, which clearly applies its regulatory standards to independent agencies, should also make clear that the President is responsible for, and entitled to review, the rules issued by independent agencies such as the SEC, CFTC, FCC, FTC, CPSC, CFPB, etc.

The need for such Presidential authority is manifest. For example, in a recent case before the U.S. Court of Appeals for the D.C. Circuit, In re Aiken County, the presidentially controlled Department of Energy and the independent Nuclear Regulatory Commission did not actually agree on the merits of how to handle nuclear waste at Yucca Mountain. This prompted Circuit Judge Brett Kavanaugh to explain why the lack of presidential authority and control is constitutionally and politically dubious. Quoting both Alexander Hamilton in the Federalist Papers and the Supreme Court in PCAOB, he wrote that ''the issue created by Humphrey's Executor is that the President's decision on the Yucca Mountain issue is not the final word in the Executive Branch. In other cases, the issue created by Humphrey's Executor is that it allows Presidents to avoid making important decisions or to avoid taking responsibility for decisions made by independent agencies. When independent agencies make such important decisions, no elected official can be held accountable and the people ''cannot 'determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures ought really to fall.' ''

President Obama has acknowledged the importance of Presidential review of independent agency rulemaking in recent, July 11, Executive Order. (Executive Order, 13,579) His Order requests (but does not command) that the independent agencies to submit the regulations they issue to the same principles applicable throughout the parts of the Executive Branch for which he is directly accountable. Specifically, independent agencies are now asked to scrutinize existing and future regulations in accordance with cost-benefit analysis. He also asks them to assure that regulatory policy is cost-effective and protective of innovation and job creation. Perhaps most importantly, independent agencies should also make sure that there is a real problem that needs to be solved before regulating, and then choose the least burdensome regulatory alternative that prevents or abates that harm. The bill currently before Congress should thus make clear—not only that independent agencies are subject to the salutary standards of cost-benefit analysis and rigorous policy justification—but also, that the President has the power and responsibility to review and control all such Executive Branch rulemaking.

While we endorse the bill's proposed codification of regulatory standards, analytic criteria, and accountability principles, we would also recommend that Congress consider incorporating the prospectively duplicative provisions of the Regulatory Flexibility Act (with regard to cost-benefit analysis for small business) and the Unfunded Mandates Reform Act (with regard to cost-benefit analysis and minimization of burdens on states, tribes and private sector; though UMRA does not currently apply to independent agencies). Moreover, as previously noted, we also believe the bill should specifically authorize the President to oversee rulemaking by independent agencies. The President's responsibility to oversee independent regulatory agencies, like the Consumer Financial Protection Board, for example, would ensure that the regulations adopted by such agencies are in the overall best interest of the American people.

Thank you for considering our views.

Respectfully submitted,

Alan Charles Raul, Former Vice Chairman, White House Privacy and Civil Liberties Oversight Board, Former General Counsel, U.S. Department of Agriculture, Former General Counsel, Office of Management and Budget, Former Associate Counsel to the President.

C. Boyden Gray, Boyden Gray & Associates, Former Ambassador to the European Union, Former Counsel to the President, Former Counsel to the Vice President.

James C. Miller III, Former Director of the Office of Management and Budget, Former Chairman of the Federal Trade Commission, Former Administrator of the Office of Information And Regulatory Affairs, OMB.

David L. Bernhardt, Former Solicitor, Department of the Interior.

Adam J. White, Boyden Gray & Associates.

Eileen J. O'Connor, Former Assistant Attorney General, Tax Division, U.S. Department of Justice.

Daren Bakst, Director of Legal and Regulatory Studies, John Locke Foundation.

Jeffrey R. Holmstead, Former Assistant Administrator of the Environmental Protection Agency for Air and Radiation, Former Associate Counsel to the President.

Jeffrey Bossert Clark, Former Deputy Assistant Attorney General, Environment & Natural Resources Division, United States Department of Justice.

David R. Hill, Former General Counsel, U.S. Department of Energy.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate of February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place and purpose of the meetings, when scheduled and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, January 12, 2017 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

JANUARY 17

10 a.m.

Committee on Energy and Natural Resources

To hold hearings to examine the nomination of Ryan Zinke, of Montana, to be Secretary of the Interior.

SD–366

5 p.m.

Committee on Health, Education, Labor, and Pensions

To hold hearings to examine the nomination of Betsy DeVos, of Michigan, to be Secretary of Education.

SD–430

JANUARY 18

10 a.m.

Committee on Commerce, Science, and Transportation

To hold hearings to examine the nomination of Wilbur L. Ross, Jr., to be Secretary of Commerce.

SD–G50

Committee on Environment and Public Works

To hold hearings to examine the nomination of Scott Pruitt, of Oklahoma, to be Administrator of the Environmental Protection Agency.

SD–406

Committee on Foreign Relations

To hold hearings to examine the nomination of Nikki R. Haley, of South Carolina, to be the Representative of the United States of America to the United Nations, with the rank and status of Ambassador, and the Representative of the United States of America in the Security Council of the United Nations, and to be Representative of the United States of America to the Sessions of the General Assembly of the United Nations during her tenure of service as Representative to the United Nations.

SD–419

Committee on Health, Education, Labor, and Pensions

To hold hearings to examine the nomination of Tom Price, of Georgia, to be Secretary of Health and Human Services.

SD–430