

# Reject the REINS Act: H.R. 10/S. 299

The Regulations from the Executive in Need of Scrutiny (“REINS”) Act (H.R. 10/S. 299), introduced by Rep. Davis (R-KY) and Sen. Paul (R-KY), would fundamentally change the U.S. process for putting public safeguards into effect, upending a system that has protected the public for more than 100 years. The bill is designed to make it extraordinarily difficult to protect the public and to make the decision-making process far more political. *The REINS Act would make the public less safe.*

Specifically, the bill would require Congressional approval of any rule that would impose compliance costs of more than \$100 million a year. Unless both houses of Congress approved a rule within 70 legislative days of its promulgation, it would be void. As a result, this bill would cripple the ability of agencies to protect the public as required by law, burden an already overwhelmed Congress with even more work, radically alter the nature of the regulatory process, and substitute political calculation for technical expertise.

Congress, through law, already sets the agenda for regulatory agencies and lays out the limits of what regulatory agencies can do. Congress also retains the authority, under current law, to review, alter, or reject any rule. But REINS would require Congress to weigh in on each and every major regulatory question and technical issue. Congress decided more than 100 years ago that the legislative process was ill suited to make such judgments. That is only truer today as the science has become more complex, and Congress more polarized. Should Congress determine, for example, whether a particular chemical threatens health, or at what concentration a chemical becomes toxic?

## THE REINS ACT WOULD:

### Endanger the Public

REINS would place high hurdles in the path of any public protection. A special interest would simply need to use its political clout in one house of Congress to sideline such vital public protections as limiting the amount of lead in children’s products, preventing salmonella contamination in eggs, or reducing emissions of toxic air pollutants. REINS Act supporters know the public would not stand for changing the underlying protective laws, so instead they are trying to cripple the system used to enforce them.


### Make Regulatory Decision-Making Less Open and Less Fact-Based

Agencies must keep a record of their interactions with industry and other entities interested in the regulatory process and provide a clear record of their decision-making (which often must be able to hold up in court). Agencies often take years to review the scientific and technical evidence relevant to a decision. Throwing every final decision to Congress would undermine this entire process. Congress would have to make relatively rapid decisions, often behind closed doors, and it would not be legally held to any standard of technical review. Industry would no longer have an incentive to cooperate with agencies and provide arguments and evidence because they could just take their chances with the political process, which they would no doubt try to influence with campaign contributions. This would not only adversely affect the

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public interest, but it could also distort regulatory decisions that require balancing a range of competing industrial interests. The REINS Act would make the regulatory system less predictable for industry and would disadvantage any industry that did not have a large political presence. Ultimately, decisions on regulations would be determined by political horse-trading among Members of Congress.

### **Burden Congress with More Work Than It Could Handle**

Agencies issue 50 to 100 major rules a year, dealing with everything from Medicare reimbursement to railroad safety to environmental protection. As noted above, some of these measures are years in the making. Under the REINS Act, Congress would have 70 legislative days to second-guess each and every decision covered by the Act. Because failure to take action would kill any safeguard, Congress would be forced to hold hearings in a short time on technical issues—or worse, forgo hearings and race the 70-day clock with even less information and debate, since floor debate is strictly limited under the bill. Congress is unable to handle its current docket, and REINS would require that as many as 100 additional measures come to the floor.

### **Undermine Our System of Law**

Through law, Congress directs agencies to carry out responsibilities, and the courts ensure that agencies are doing their jobs. But REINS could make that impossible because of inherent problems with the logic of the bill. For example, if a court ordered an agency to issue a rule under a law, and Congress rejected the measure, what would happen? Under the Constitution, a court presumably can't require Congress to act, so the statute could not be enforced. But it also would not have actually been repealed. (Congress could always change the underlying law, but REINS is an effort to short-circuit that Constitutional process.) To stack the regulatory process further in industry's favor, the REINS Act lets industry challenge a rule in court even *after* Congress has approved it. The courts would then be tasked with determining if a rule is in line with the intent of the original statute—a question that Congress would have already answered.

The REINS Act would endanger the public, distort decision-making, and imbalance the law, all to solve a problem that doesn't exist. Congress already holds ultimate control over the regulatory process by writing the underlying statutes, and through its normal legislative powers, including the Congressional Review Act. The REINS Act is not a proposal to improve the regulatory system, but rather to destroy it.

