



NATURAL RESOURCES DEFENSE COUNCIL

February 11, 2014

The Honorable Spencer Bachus
Chairman
House of Representatives Subcommittee on Regulatory Reform, Commercial and
Antitrust Law
Washington, DC 20515

The Honorable Hank Johnson
Ranking Member
House of Representatives Subcommittee on Regulatory Reform, Commercial and
Antitrust Law
Washington, DC 20515

Dear Member:

On behalf of the Natural Resources Defense Council and its 1.4 million members and activists, I am writing to express our strong opposition to the draft bill, the “Searching for and Cutting Regulations that are Unnecessarily Burdensome (SCRUB) Act of 2014.” Since there was so little time available to review the bill prior to today’s hearing, we will submit more thorough comments later, but this bill is so radical and outrageous – really almost a parody of anti-regulatory efforts – that we wanted to make sure to provide some response today.

The bill would create a nine-member commission and then give five – or in some cases, just four – of its members the almost unlimited power to override, repeal or amend existing regulations (and, in effect, the statutes that authorize or require them). This amounts to nothing less than a self-inflicted coup d’etat. Under the bill, Congress would be able to slow this juggernaut of its own creation only if a majority in both houses of Congress – an exceptionally high hurdle, especially these days – voted to block this cabal. And under the bill, even such an extraordinary vote would only delay, not block the commission from undoing public protections. To actually block a commission rollback of a regulation, both houses of Congress would have to vote against the commission a second time – and that could be done only in the context of disapproving a new rule. (Perhaps the commission could be named HAL, after the unstoppable computer in “2001: A Space Odyssey.”) It is especially ironic that this idea would be put forward by conservatives who still sometimes object to the constrained delegation of Congressional authority that the New Deal provided to federal agencies.

And what is the rationale for this extraordinary perversion of Constitutional process? It's that regulation has supposedly entirely run amok, despite repeated studies showing that the benefits of regulation significantly outweigh its costs, and public support for safeguards remains high. The panic reflected in this bill also ignores all the existing Congressional and judicial oversight of the regulatory system. Indeed, events continue to highlight areas where regulation is insufficient – the West Virginia chemical spill being one recent example – but the bill does not even contemplate that prospect. But one hardly needs to be a fan of the regulatory system to blanch at the notion that the SCRUB Act amounts to anything like reasonable reform.

The bill goes on to require the elimination or amendment of regulations of the commission's choosing each time a new regulation – no matter how minor or routine – is added. This calculus, faulty in many regards, entirely ignores the benefits of regulations, growth in the economy or really any thought at all in its single-minded effort to eliminate safeguards.

The SCRUB Act is, in short, a model of bad law. It should be scrubbed from the Committee's agenda.

Sincerely,
David Goldston
Director of Government Affairs
Natural Resources Defense Council