REINING IN THE ADMINISTRATIVE STATE: REGULATORY AND ADMINISTRATIVE LAW REFORM

HEARING

BEFORE THE

SUBCOMMITTEE ON THE ADMINISTRATIVE STATE, REGULATORY REFORM, AND ANTITRUST

COMMITTEE ON THE JUDICIARY

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C O N T E N T S

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REINING IN THE ADMINISTRATIVE STATE: REGULATORY AND ADMINISTRATIVE LAW REFORM

Tuesday, February 11, 2025

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON THE ADMINISTRATIVE STATE, REGULATORY REFORM, AND ANTITRUST

COMMITTEE ON THE JUDICIARY

Washington, DC

The Subcommittee met, pursuant to notice, at 10:03 a.m., in Room 2141, Rayburn House Office Building, the Hon. Scott Fitzgerald [Chair of the Subcommittee] presiding.

Present: Representatives Fitzgerald, Jordan, Issa, Cline, Hageman, Harris, Schmidt, Baumgartner, Nadler, Raskin, Correa, Garcia, Lofgren, and Johnson.

Mr. FITZGERALD. The Subcommittee will come to order.

Without objection, the Chair is authorized to declare a recess at any time.

We welcome everyone to today's hearing on the Administrative State and opportunities for reform. I will now recognize myself for an opening statement.

Today's hearing will explore the Administrative State and look for ways that we can reform the regulatory and administrative law to work better for everyday Americans. It's no secret that regulatory burdens have reached an all-time high. Regulatory agencies create rules with the force and effect of law. The number of rules that agencies create is overwhelming.

In the final year of the Biden–Harris Administration, unelected bureaucrats finalized over 3,000 rules. That's an average of eight regulations per day. By contrast, during the same period, Congress passed almost 150 laws. In other words, the Executive Branch issued mandates with the force of law over 20 times more often than the Legislative Branch.

According to the Competitive Enterprise Institute, these regulations impose a total estimated annual cost of two billion—excuse me, 2.1 trillion or more than $15,000 per American household. Some of my colleagues on the other side may claim that because Congress cannot pass laws, agencies feel empowered to take over. Congress was designed to require lawmakers to think deeply about

these decisions. Congress was also designed to be accountable to the voters. If our constituents do not like our decisions, then we are voted out of office.

Unelected bureaucrats, by contrast, are not politically accountable. This lack of accountability shows. When agencies make these rules, they not only act as a legislator for the country but often as prosecutors and judges through the administrative process.

Agencies often bring enforcement actions into their in-house administrative courts. The same agency that makes the rules also decides to sue if a person broke them. Then, to prove that a person broke the rule, the agency tries the case before its own in-house judge in so-called, quote, "independent agencies." Commissioners who directly prosecute the case also act as judges on appeal.

The whole system defies logic at this point. The administrative system is set up to regulate the American people into submission, which is entirely at odds with the principles that this country was founded on. Our Founders deliberately split the making of laws, enforcement of laws, and judgment of laws into three coequal branches of government. Our Founders were convinced and concerned about exactly the same centralized power we now see in the Administrative State.

It does not have to be this way. Last Congress, the Judiciary Committee marked up numerous bills aimed at reforming the Administrative State, the REINS Act, the Midnight Rules Relief Act, the Prove It Act, the Separation of Powers Restoration Act, and the One Agency Act, just to name a few. All these bills were aimed squarely at the topic we are here to talk about today, Reining in the Administrative State.

I'm proud of the work this Committee undertook last Congress, and I hope for the sake of the American people that we turn these proposals into law this Congress. My colleagues on the other side of the aisle routinely oppose all attempts by Congress to rein in the Administrative State. They also criticize President Trump for taking steps to control the Administrative State. They ignore that the Constitution makes the President the leader of the Executive Branch.

They will do everything in their power to protect the unelected bureaucrats in the Administrative State. Why? Because these unaccountable bureaucrats do the bidding among colleagues in the minority. This is true even though Americans rejected their views in the most recent election.

Today we have an opportunity to hear from witnesses who have deep experience in the regulatory reform area.

Ms. Wade and Mr. Smith are entrepreneurs and deal with the crushing weight of regulations every day. Mr. Smith has even faced the administrative court system and was forced to pursue a case all the way to the Supreme Court to vindicate his Constitutional rights. Dr. McLaughlin is an expert in regulatory and economic analysis and has written extensively on how damaging regulatory burdens are on the economy.

These witnesses are perfectly prepared to supply the Members of the Committee with the required information to better inform us as we work on possible solutions and consider the proposals that have already been introduced. I want to thank the witnesses for

appearing before us today and look forward to hearing what each of you has to say on the topic.

I now recognize the Ranking Member, Mr. Nadler, for his opening statement.

Mr. NADLER. Thank you, Mr. Chair.

Mr. Chair, holding a hearing today on, quote, "Reining in the Administrative State," is a bit like rearranging the deck chairs on the Titanic. As we speak, Elon Musk and his band of near-teenaged accomplices are systematically working their way through the Executive Branch knocking down agency after agency while undermining the rule of law and shredding the Constitution along the way.

Musk and his team have unprecedented access to our most sensitive and personal data. They have gained access to extremely sensitive tax information at the IRS, highly restricted government records on millions of Federal employees and their families from the Office of Personnel Management, and personal data related to health insurance plans, workplace safety, and health investigations, child labor, and more from the Department of Labor. This is just what we've learned through news articles, because all these actions have been taken without any transparency to the American people.

Musk and his team have access to at least 18 agencies and untold amounts of sensitive data that are attracted to bad actors here and abroad. Musk and his assistants are not just accessing this data. They are feeding it into AI models, downloading it on to commercial servers, and possibly taking it off premises. Because Musk and his team can also change our government systems, not only is the personal information of millions of Americans at risk, but also the systems that ensure our safety and core government functions.

For example, Musk and his team have accessed four systems at the Federal Aviation Administration. Experts have warned that, quote, "even a small system disruption could cost mass grounding of flights, a halt in global shipping, or worse, downed planes." Officials at the FAA warn that going into these systems without an in-depth understanding could result in death and an economic harm to our Nation.

Nevertheless, Musk indicated that the DOGE team will aim to make, quote, "rapid safety upgrades to the air traffic control system." Just in the past few weeks, we have seen what happens when mistakes are made in our air traffic control system when a Black Hawk helicopter ran into a commercial flight, resulting in dozens of deaths. Musk and his team are opening us up to more deaths and critical economic harm.

Elon Musk is not content just to cause massive disruption and expose us to greater risk. No. He's also using his unfettered access to our agencies and our data to benefit himself. For example, the Department of Labor was investigating workplace abuse allegations at three Musk-owned companies: The Boring Company, SpaceX, and Tesla. So, Musk and his team invaded the agency and gained access to their information on current and past investigations.

Just days before they got access to the Consumer Financial Protection Bureau, Musk finalized a deal with Visa to process peer-to-peer payments for a wallet feature on X. Because the CFEP poli-

cies—I'm sorry, because the CFBP polices such payment systems, the data Musk and his team accessed could give his new X wallet feature competitive advantage in the market.

As a kicker, the Trump Administration instructed the CFPB to halt its work, thus ensuring that there's no one to keep Musk's new payment system from exposing personal data or enabling fraud. Nevermind that the CFPB has produced almost $20 billion in consumer relief and has put millions back in the pockets of Americans. The agency had information Musk needed, so he got it. The agency would have enforced the law with a likely impact on his wallet, so the agency's work was halted instead.

Serious concerns have been raised about whether the people accessing this data, many of them barely past college, have the appropriate training and vetting necessary to handle such sensitive data. That is an active data breach on a scale we have never experienced before, but this time the threat is coming from inside the house. Imagine what domestic criminals or foreign adversaries could do if they got their hands on this information. This is a clear and present danger, and yet our Republican colleagues do nothing.

In addition to these structural attacks on the Executive Branch, the Trump Administration is also reclassifying civil servants as political employees who can be replaced with flunkies beholden to Donald Trump, imposing loyalty tests on national security officials, and encouraging tens of thousands of employees to resign with promises it has no authority to make. As a result, it is hollowing out the workforce and the decades of experience and technical expertise that comes with it.

Without any authorization from Congress, the Trump Administration has also taken several other actions that have thrown the Federal Government into chaos. It attempted to impose, quote, "a temporary funding freeze," across much of the Federal Government that a judge has already ruled unlawful. It fired duly appointed Democratic members of independent agencies to deprive these agencies of a working quorum and essentially prevent them from fulfilling their missions. To ensure that no one is able to hold the administration accountable from within the Executive Branch, the President fired more than a dozen inspector generals without following the statutory requirements for doing so. These actions are as unconstitutional as they are dangerous.

While we witness these incursions on the rule of law and the Constitution, my Republican colleagues do nothing. In fact, they cheer on Elon Musk as he usurps Constitutional authority and navigates unprecedented power to himself.

When Joe Biden was President, we heard stern speeches from our Republican friends about the need to assert our Article I authority. We were told that the Biden Administration was guilty of dangerous overreach when it attempted to help people drowning in student loans or protected our communities from gun violence or helped shield consumers from corporate abuse, but now that is ancient history. Now, they aid and abet shadow President Musk while he bulldozes his way through the Administrative State untenanted to any Constitutional statute or authorization.

There is no check and no balance from the Republican Congress, just feckless inaction because it serves their purposes. They know

that undermining the critical protection provided by our agencies would be deeply unpopular, so they are content to abdicate their responsibilities and let Elon Musk do their dirty work.

I urge my Republican colleagues to stand up for this institution and for the people they represent.

I yield back.

Mr. FITZGERALD. The gentleman yields back.

I now recognize the Chair of the Full Committee, Mr. Jordan, for his opening statement.

Chair JORDAN. Thank you, Mr. Chair.

Instead of stopping the stupid spending, Democrats attack the guy who's exposing it. I think the taxpayers in this country would just as soon we stop spending their money on dumb things. Like, what was the example from USAID, some transgender comic in Ireland, spending money on Bert and Ernie and Big Bird on Baghdad TV. I think they would prefer we not to do that.

Elon Musk is exposing in the Federal Government exactly what he exposed at Twitter when he purchased Twitter. What did we find out there? Big Government was pressuring Big Tech to censor Americans. You don't have to take my word for it. We had the Twitter Files. Oh, and we also had someone else in Big Tech send a letter to this Committee and tell us exactly what they were doing. Mark Zuckerberg said the Biden Administration was pressuring us to censor. We did it. We're sorry. We won't do it again. He told the whole world that in a letter to this Committee. So, Elon Musk is now doing that for the Federal Government. We think that's a good thing.

Understand the fundamental difference the Left has with us conservatives. Democrats believe it is the career-elected bureaucrats who are supposed to run the country. We don't think that's the way it's supposed to work. We actually think it's the people who put their name on a ballot who get elected by "We the People," who make the decisions. The guy who got 77 million votes on November 5th, says he wants Elon Musk working for him—the elected Member who heads the Executive Branch—working for him every bit as much as the Federal employees and people in Treasury who were supposed to have all the answers or in USAID who bid the career officials working for him to expose stupid things our government is spending money on. The Democrats are going to attack that guy? Go ahead. Go right ahead.

We know the real consequences of having this Administrative State, these bureaucrats run things. We have got two witnesses here who've lived it. Ms. Wade and Mr. Smith. They're here to talk about how that had impacted their business.

So, I appreciate the Chair having this hearing. This is exactly the kind of hearing we have to have. I appreciate the work the President and his team are doing to expose the stupid things bureaucrats spend the hard-earned money of the people we get the privilege of representing.

I yield back.

Mr. FITZGERALD. The gentleman yields back.

Now, recognize the Ranking Member of the Full Committee, Mr. Raskin, for his opening statement.

Mr. RASKIN. Thank you very much, Mr. Chair, and thank you to the Ranking Member of the Subcommittee, Mr. Nadler. Thank you to my colleague, Chair Jordan. Thanks to all our witnesses for being here with us today.

I'm surprised to hear my friend from Ohio talking about the transgender comic book from, I can't remember which country, but if there's a form of government expenditure taking place that we have a problem with, isn't that why the Constitutional oversight function exists? Don't we have a whole Oversight Committee, which you serve on, which I served on, which can do that? Do we really need to hire a fourth Branch of Government called Elon Musk to go out and do it for us? We're about to enter into a budget process right now. We can deal with it ourselves.

Mr. Chair, in the last 22 days, Donald Trump's billionaire government has taken a wrecking ball to public institutions and the rule of law in America. The agent of chaos is Elon Musk, quote, "a Special Government Employee purportedly working on technological reform." More crucially, he's a big businessman whose floundering Tesla sales in Europe create huge financial pressures for him, according to *The Business Press*.

Even more crucially, he's a government contractor who collects billions of Federal taxpayer dollars every single year and yet has not filed a single employee ethics disclosure form as required by law. He has accessed not only the computers controlling his own billion-dollar payments from us, the people, but to computers containing his contractor rivals' contract bids, their contracts, their invoices, and their payment systems. Yet, he has not shown us a single conflict of interest waiver form for these multiple egregious apparent conflicts of interest.

He and his mutant teenage racist computer hackers have taken possession of financial payment systems at the United States Department of Treasury, meaning data access to the private financial records of every American citizen, every Member of Congress, every Federal prosecutor, every regulator who's supposed to be looking at what his business does, every private lawyer, and every Federal judge who they're now calling for the impeachment of because they dare to speak up for the rule of law. What could go wrong with this situation?

Fortunately, we do still have an Article III, a working Federal judiciary, which has issued no fewer than 12 injunctions in three weeks, 12 temporary restraining orders or preliminary injunctions in three weeks against the illegality of this arrangement, including an injunction against any further unlawful seizure, possession, and corruption of Americans' private financial data.

Now, the Elon Musk cyber raid against our data and privacy infrastructure has set the stage for the administration's outrageous and unprecedented violation of Constitutional lawmaking and spending power. That's what the first hearing of this Subcommittee should be about, Mr. Chair, the blatantly illegal and quickly reversed freeze on billions of dollars in Federal grants already appropriated by the U.S. Congress, programmed by the agencies, contracted for by government lawyers, and in the proper pipeline for payment. The flagrantly illegal efforts to not pay Federal workers and honor our contracts for work already rendered to condition

Federal funds on totally made-up restrictions never voted on, much less approved by Congress, and the scandalous effort to dismantle and neutralize entire Federal agencies, like NOAA, USAID, and the CFPB, spitting in the face of Constitutional power enactments and appropriations.

An appropriations act is a Federal law like any other law. Like the law, for example, against violently assaulting Federal police officers. An appropriations act is not a recommendation or a bargaining maneuver with the Executive Branch. It is a law. It must be enforced. This administration needs a Constitutional refresher course, Mr. Chair.

The Preamble to the Constitution says,

> We the people, in Order to form a more perfect Union, establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and preserve to ourselves and our posterity the blessings of liberty, do hereby ordain and establish the Constitution of these United States.

The very next sentence of the Constitution establishes in Article I the Congress of the United States possessing all the legislative power.

Some of my colleagues have taken to saying we're three coequal branches. I beg to differ. We're not three coequal branches. Not at all. First, coequal's not even a word, right? That's like extremely unique. It doesn't mean anything. They're saying three equal branches. I don't think so.

Read James Madison, "The Federalist Papers." Congress is the predominant branch. Congress is the lawmaking branch. It's Congress. Check out Article I, section 8, "All of the powers we have to regulate commerce domestically and internationally, to pass the budget, to appropriate money." Congress does that. Then in Article I, section 8, clause 18, and "all other powers necessary and proper to the execution of the foregoing powers." After all that, you get to four short paragraphs in Article II.

My friend Mr. Jordan has been quoting the first sentence all over TV. He thinks that he somehow has a knockout argument. He says the executive power shall be vested in a President of the United States of America. Yes, indeed, Mr. Jordan, that's where the executive power is vested. What is the executive power? The core responsibility of the President of the United States is to take care that the laws are faithfully executed. Right? Not defied, not violated, not trashed, and not rewritten. To take care that the laws are faithfully executed, which is precisely what's not happening today.

As they say, oh, well, Elon Musk, he's got all the power of the President. Donald Trump himself could not be doing what Elon Musk is doing in Washington today. He can't evaporate AID. He can't nullify the CFPB. He can't destroy an agency set up by us on a bipartisan basis in Congress. Nobody in the Executive Branch has that.

Yes, the President is on top of the Executive Branch, but we're the lawmaking power. Who sorts out the conflict if there's a conflict? The courts do. What have the courts been saying? They've said a dozen times in three weeks that they're violating the Constitution of the United States and the laws passed by Congress.

That's what's going on in America today. That's what we should be having a hearing about. Not some eerie academic conversation about the Administrative State, whatever they mean by that.

I yield back, Mr. Chair.

Mr. FITZGERALD. The gentleman yields back.

Without objection, all the opening statements will be included in the record.

We'll now introduce today's witnesses.

Dr. Patrick McLaughlin. Dr. McLaughlin is a Research Fellow at the Hoover Institution at Stanford University and a visiting Research Fellow at the Pacific Legal Foundation. He authored more than 30 peer reviewed studies on a variety of topics, including regulatory economics, administrative law, and international trade.

Mr. Patrick Smith. Mr. Smith is the Chief Executive Officer and founder of Axon Enterprise. Axon offers a variety of products and services, mostly law enforcement and public safety entities. These products and services include TASER devices, body cameras, de-escalation training, and evidence management and reporting software.

Ms. Magatte Wade. Ms. Wade is the Cofounder of Prospera Africa, a governance platform for special economic zones, and a Senior Fellow at the Atlas Network, an organization of African free market think tanks. She was named by *Forbes* as being one of the 20 youngest power women in Africa. I get that right? A young global leader by the World Economic Forum and is a TED global Africa fellow.

Professor Steven Vladeck. Mr. Vladeck is the Agnes Williams Sesquicentennial Professor of Federal courts at the Georgetown University Law Center. Professor Vladeck focuses on Federal courts, the Supreme Court, national security law, and military justice.

We welcome our witnesses and thank them for appearing today.

We will begin by swearing you in. Would you please rise and raise your right hand?

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

Let the record reflect that the witnesses have answered in the affirmative.

Thank you. Please be seated.

Please know that your written testimony will be entered into the record in its entirety. Accordingly, we ask that you summarize your testimony in five minutes.

Dr. McLaughlin, you may begin.

STATEMENT OF DR. PATRICK A. McLAUGHLIN

Dr. MCLAUGHLIN. Thank you. Chair Fitzgerald, Ranking Member Nadler—

Mr. FITZGERALD. Microphone, sir.

Dr. MCLAUGHLIN. Thank you. Chair Fitzgerald, Ranking Member Nadler, and the Members of the Committee, thank you for the opportunity to testify today. My name is Patrick McLaughlin, and I am a Research Fellow with the Hoover Institution and a visiting Research Fellow with the Pacific Legal Foundation. I appreciate

the chance to discuss how regulatory reform can promote economic growth, encourage innovation, and reduce unnecessary burdens on businesses and consumers.

Let's begin by acknowledging that regulations can play an essential role in achieving policy objectives, such as protecting public health and the environment. When regulations pile up over time, without systematic review, this regulatory accumulation has costly consequences. Compliance becomes more complex, businesses face mounting overhead costs, and entrepreneurs struggle to navigate the maze of over one million regulatory restrictions that are currently on the books.

Projects like the RegData project, which uses AI to quantify various aspects of regulation and make the data publicly available, have permitted economists to study the effects of regulatory accumulation and its counterpart deregulation. I'd like to review some of those findings today.

First, I want to emphasize the magnitude of the economic effects of regulatory accumulation or the other side of the same coin, deregulation. In my written testimony, I cited a study that I coauthored published in 2020 in the economics journal *Review of Economic Dynamics*, that this study found that regulatory accumulation, the buildup of rules over time, distorts business investments, expenditures on things like research and development, new machinery, and new buildings. These are the same activities that, in the long run, tend to increase productivity and drive economic growth.

We found that, on average, Federal regulatory accumulation slowed overall GDP growth by eight-tenths of a percentage point. Considering GDP growth is, in the U.S., typically 2–3 percent annually, losing nearly one percentage point represents a massive loss. Other studies have found even larger effects.

Second, I want to highlight the regressive effects of regulatory accumulation. Higher levels of regulation are associated with increased levels of poverty and income inequality. Specifically, a 10 percent increase in Federal regulations is associated with a 2.5 percent increase in the poverty rate and a four-percent increase in income inequality.

When you dig a little deeper, it's easier to understand why. Regulations affect households directly in many ways, even when those regulations are targeted at businesses. For example, regulations typically increase the production cost of goods, and some of those costs are, of course, passed on to the consumer in the form of higher prices.

One study found that a 10 percent increase in total regulation leads to a nearly one percent increase in consumer prices. Furthermore, the study found that the effects of those price increases are regressive; that is, the poorest income groups experience the highest proportional increases in the prices they pay.

Regulations also affect households by diminishing their economic opportunities. Multiple studies have found that higher levels of regulation are associated with fewer total firms and lower levels of employment.

Finally, despite the fact that I'm an economist, I want to offer a positive message. We have seen these negative effects caused by

regulatory accumulation can be reversed. Several States and provinces of Canada have already begun the hard work of reassessing existing regulations to see which ones truly benefit the public versus which ones are outdated, redundant, or impose costs that can't be justified by the benefits. By identifying and removing regulations that no longer serve their intended purpose, we can free up resources for more productive uses.

Deregulatory efforts seem particularly effective when coupled with tools like regulatory budgeting or sunsetting. The Province of British Columbia, along with several other States, have experimented with tools like this. In British Columbia, they are one of the first jurisdictions to use regulatory budgeting to deregulate, and they cut 40 percent of regulations in a three-year period. Then they capped future regulatory growth with a one in, one out type regulatory budget. The result was a sustained boost to economic growth. A recent study found that the province's growth rate increased by just over 1 percentage point because of the deregulatory efforts.

In closing, deregulation has the potential to invigorate the economy, spur innovation, and lessen the disproportionate burdens placed on smaller firms and vulnerable populations.

Thank you, and I look forward to answering any questions you may have.

[The prepared statement of Dr. McLaughlin follows:]

The Economics of Deregulation

Dr. Patrick A. McLaughlin
Research Fellow, Hoover Institution, Stanford University
Visiting Research Fellow, Pacific Legal Foundation

Testimony Before the House Judiciary Subcommittee on Subcommittee on the Administrative State, Regulatory Reform, and Antitrust
February 11, 2025

Regulations play a vital role in modern society, and with good design and management, regulations deliver important public benefits. Poor design of individual regulations, however, can lead to rules that create only costs and no public benefits. More importantly, poor regulatory management of accumulated regulations stifles innovation and hinders economic growth. A unique challenge for policymakers today is to find a way to trim unnecessary regulations while preserving necessary public protections.

While there are many regulatory reforms that would improve the regulatory process overall, the primary failure points are twofold: first, should we create a new regulation? And second, should regulations that we have created be preserved, modified, or removed?

While I would be happy to discuss whether regulations should be created in the first place and how that decision should be reached, my testimony today will focus primarily on the part of the regulatory process that exerts the greater economic force: how the accumulated stock of regulations is managed, if at all, and what that does to an economy.

Over past century, as the number of agencies created by Congress has grown, so has the stock of federal regulations on the books. The quantity of regulatory restrictions in the *Code of Federal Regulations*, or phrases within regulatory text that create obligations or prohibitions, such as the word, "shall," or the phrase, "may not," has grown from about 400,000 in 1970 to over 1.1 million today.[1]

Regulatory accumulation refers to the steady and perhaps unintentional growth of regulations over time. Without a systematic approach to reviewing and removing outdated or redundant regulations, the steady buildup of government interventions eventually shows up in economic outcomes ranging from business activities such as investment decisions, startup rates, and productivity growth to household outcomes such as household income and consumer expenditure.

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[1] These figures come from the RegData project, hosted at QuantGov.org. For methodology, see: Al-Ubaydli, Omar and Patrick A. McLaughlin, "RegData: A Numerical Database on Industry-specific Regulations for All US Industries and Federal Regulations, 1997 – 2012," *Regulation & Governance* 11 (2017): 109–123; and McLaughlin, Patrick A. and Oliver Sherouse "RegData 2.2: A Panel Dataset on US Federal Regulations." *Public Choice*. 180 (2019): 43–55.

1. **The Growth Effects of Regulatory Accumulation**

The downsides of regulatory accumulation are well documented. A study that I co-authored with Bentley Coffey and Pietro Peretto, published in the *Review of Economic Dynamics* in 2020, showed that regulatory accumulation slows economic growth by nearly one percentage point annually.[2] Specifically, the study found that the buildup of more and more federal regulations over time distorted business investment decisions, which, in the long run, are the drivers of innovation and productivity growth. As a consequence, the buildup of federal regulations creates a considerable drag on overall economic growth, amounting to an average reduction of 0.8 percentage point in the annual growth rate of the US GDP. This seemingly small annual reduction has large implications. The slower economic growth caused by regulatory accumulation resulted in an economy that was $4 trillion smaller in 2012 than it could have been without such regulatory accumulation. That amount equaled about a quarter of the US economy in 2012, and if it were a nation's GDP, it would have been the fourth largest in the world at that time.[3] This translates to a loss in real income of approximately $13,000 (in year 2012 dollars) for every American.[4] A similar study estimated the effect to be even larger, finding that regulatory accumulation slowed US economic growth by as much as 2 percentage points annually.[5]

This line of research is focused on the totality of regulations and their cumulative effect, rather than the direct compliance and paperwork costs that are typically included in regulatory impact analyses produced by regulatory agencies. This is not to dismiss those direct compliance and paperwork costs—they often are large and noteworthy. For example, the FTC's new Hart-Scott-Rodino rules would have added 68 paperwork hours to the average HSR filing, according to the FTC's own estimate.[6] Because these filings require highly skilled and specialized law firms, that burden can easily reach more than $50,000 in additional paperwork costs per filing.

But when we consider the opportunity cost of regulations—and how they distort business investments and the innovation that comes from them—the total cost of regulations is substantially greater than the sum of the projected compliance costs when each regulation is analyzed on its own. Indeed, forgone innovation eventually makes compliance and paperwork costs seem relatively trivial in comparison.

Not coincidentally, research shows that regulatory accumulation disproportionately burdens small businesses—including the startups that are often the fountainheads of innovation—and that

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[2] Bentley Coffey, Patrick A. McLaughlin, and Pietro Peretto, "The Cumulative Cost of Regulations," *Review of Economic Dynamics* 38 (2020): 1–21.
[3] Patrick A. McLaughlin, "What If the US Regulatory Burden Were Its Own Country?" (Mercatus Data Visualization, Mercatus Center at George Mason University, April 26, 2016).
[4] Coffey et al. e, "The Cumulative Cost of Regulations."
[5] John Dawson and John Seater, "Federal Regulation and Aggregate Economic Growth." *Journal of Economic Growth* 18 (2013): 131–177.
[6] https://www.federalregister.gov/documents/2024/11/12/2024-25024/premerger-notification-reporting-and-waiting-period-requirements

this burden grows at an increasing rate as regulation accumulates (i.e., the negative effect of each new regulation grows larger as the stock of regulation grows larger).[7]

There are other reasons to be concerned about regulatory accumulation. Scholarship from the fields of psychology, economics, and organizational science suggests that people are more likely to make mistakes and are less motivated and able to comply when they are required to follow too many rules simultaneously.[8] For example, one study found that the growth in regulation in the nuclear power industry actually reduced safety.[9] New regulations distracted workers from their most important duties. In such circumstances, it became harder for workers to focus on averting the greatest risks, as an increasing share of their attention was diverted to recalling all the rules they were supposed to follow.

2. Household Effects of Regulatory Accumulation

While regulation significantly affects business-related economic outcomes, regulation also has direct impact on American households, especially households with lower incomes. By creating barriers or hurdles that limit the ability of new individuals or companies to enter a market, regulatory accumulation can raise prices, slow wage growth, and diminish economic opportunities for low-income workers.

Regulation typically increases the production costs of goods, and these costs are passed on to the consumer in the form of higher prices. A study published in 2017 combined data from the Bureau of Labor Statistics, the Bureau of Economic Analysis, and the RegData database to study the relationship between prices and consumer choices.[10] It found that a 10 percent increase in total regulation leads to a nearly 1 percent increase in consumer prices. Furthermore, they found that the effects of these price increases are regressive: The poorest income groups experience the highest proportional increases in the prices they pay. This is consistent with spending patterns broken down by income level. Low-income households tend to spend a greater portion of their incomes on necessities such as utilities, food, and healthcare; unfortunately, these goods also tend to be more regulated than other consumer and household goods.

It is perhaps not surprising, then, that regulatory accumulation also has a positive statistical relationship with poverty rates; as regulation grows, poverty rates also tend to rise.[11] Regulatory accumulation can also contribute to income inequality as wage growth shifts from low-income

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[7] Dustin Chambers, Patrick A. McLaughlin, and Tyler Richards, "Regulation, Entrepreneurship, and Firm Size," *Journal of Regulatory Economics* 61 (2022): 108–134.
[8] Patrick A. McLaughlin, "How Regulatory Overload Can Make Americans Less Safe" (Mercatus Policy Brief, Mercatus Center at George Mason University, November 2018).
[9] Michael Lavérie and Roger Flandrin, "Relations Between the Safety Authority and the Nuclear Power Plant Operators," *Nuclear Engineering and Design* 127 (1991): 215–18.
[10] Dustin Chambers, Courtney A. Collins, and Alan Krause, "How Do Federal Regulations Affect Consumer Prices? An Analysis of the Regressive Effects of Regulation," *Public Choice* 180 (2017): 1–34.
[11] Dustin Chambers, Patrick A. McLaughlin, and Laura Stanley. "Regulation and Poverty: An Empirical Examination of the Relationship Between the Incidence of Federal Regulation and the Occurrence of Poverty Across the US States." *Public Choice* 180, no. 1–2 (2019): 131–144.

workers to compliance-related workers such as managers, lawyers, and accountants.[12] Indeed, a recent study in the *European Journal of Political Economy* found that a higher incidence of federal regulations on a state's economy *causes* greater income inequality.[13]

3. The Economic Effects of Deregulation

Several subnational jurisdictions have reversed or at least slowed regulatory accumulation over the past two decades. Considering the mounting evidence on the harms of regulatory accumulation, some states have implemented regulatory reform initiatives designed to identify and weed out red tape that had accumulated over the years. We can look to some of these subnational reforms to learn about the economic effects of deregulation.

The trend was arguably inspired by the Canadian province, British Columbia, which in 2001 recognized a need to cut some of the regulatory red tape that had built up over years.[14] British Columbia's groundbreaking red-tape reduction initiative succeeded in reducing the quantity of regulations on its books by about 40 percent within three years.[15] A recent study on the topic found that the red-tape reduction caused the province's economic growth rate to increase by over one percentage point, converting British Columbia from economic laggard to leader in just a few years.[16] And the new, higher growth rate was maintained for several years thereafter.

The states that have enacted successful regulatory reforms have primarily adopted two similar approaches: targeted red-tape reductions and regulatory budgets. The former—a targeted reduction—typically involves developing a quantitative measurement of accumulated regulation and then setting an explicit target for reduction, such as 25 percent or 30 percent relative to the initial baseline. The latter—regulatory budgeting—comes in a variety of forms, but it also typically requires first coming up with a quantitative metric of total regulatory burden and then tracking changes as new regulations are made or old regulations are modified or eliminated.

These approaches are effective, as the data in figure 1 show (using data from the State RegData project).[17] Those states that do not have a robust process in place for reviewing old regulations (Status Quo States) tend to accumulate more and more regulations over time, whereas those

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[12] James B. Bailey, Diana W. Thomas, and Joseph R. Anderson, "Regressive Effects of Regulation on Wages," *Public Choice* (2018): 1–13; Dustin Chambers, Patrick A. McLaughlin, and Laura Stanley, "Barriers to Prosperity: The Harmful Impact of Entry Regulations on Income Inequality, *Public Choice* 180, no. 1–2 (2019): 165–190; and Sean Mulholland, "Stratification by Regulation: Are Bootleggers and Baptists Skill-Biased?" *Public Choice* (2018): 1–26.

[13] Choudhury, Sanchari, "The Causal Effect of Regulation on Income Inequality Across the US States," *European Journal of Political Economy* 80 (2023)

[14] Laura Jones, "Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?" (Mercatus Research, Mercatus Center at George Mason University, November 11, 2015).

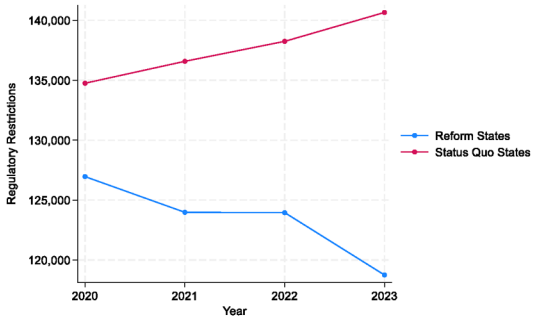
[15] Bentley Coffey and Patrick A. McLaughlin, "Regulation and Economic Growth: Evidence from British Columbia's Experiment in Regulatory Budgeting" (Mercatus Working Paper, Mercatus Center at George Mason University, May 2021).

[16] Coffey and McLaughlin, "Regulation and Economic Growth."

[17] State RegData is also part of the RegData project, available at Quantgov.org.

states that have a proactive review process in place (Reform States) have reversed that process. For this comparison, Reform States includes that have reduced regulatory restrictions by at least five percent since the first year the state was included in State RegData and had made some sort of policy announcement related to the red-tape reduction efforts. The states that qualified are, in alphabetical order: Idaho, Kentucky, Missouri, Nebraska, Ohio, and Oklahoma.[18] The remaining states are grouped into the non-reform category, Status Quo States.

Figure 1: States without review process (Status Quo States) v. states with review process (Reform States)



The state of Idaho offers an instructive example of successful regulatory reform in the United States. Idaho today is the least regulated state in the nation. However, when the State RegData project began in 2016, Idaho did not hold that title. It required deliberate reform of the regulatory process, which has been a hallmark of Idaho Governor Brad Little's time in office. Over the past several years, Idaho has implemented a bold regulatory reform agenda, resulting in a reduction of its regulatory restriction count by more than 50 percent. With one of his first executive orders, Governor Little implemented a one-in, two-out regulatory policy, requiring that for every new regulatory restriction introduced, two must be eliminated. This approach eventually evolved into a form of regulatory sunsetting called "zero-based regulation," modeled after zero-based budgeting. Under zero-based budgeting, all state agencies must review all their regulations once every five years. If an agency wants to keep a rule on the books, the burden of proof is on the agency to show that the regulation is necessary and that the least restrictive alternative has been chosen.[19] The results helped Idaho reduce its regulatory complexity and foster a more dynamic business environment, especially for small- and medium-size enterprises. Not coincidentally,

[18] Note that, as of this writing, State RegData runs through 2023. If we had more recent data, it is likely that a few more states' recent deregulatory efforts would put them in the reform category, including Iowa, Virginia, and perhaps one or two more.

[19] For more details on Idaho's approach, as well as the more recent reforms implemented in the state of Virginia, see Alex Adams and Reeve Bull, "Regulatory Modernization That Works: Lessons from Idaho and Virginia," (Regulatory Transparency Project of the Federalist Society, May 10, 2024).

Idaho's economic growth outpaced national averages, and the state became a magnet for investment and entrepreneurship. Likewise, the other states that have successfully cut red tape have experienced a relatively higher growth rate when compared to the states that have not. Because these are relatively recent changes, more careful study will still be necessary to determine the degree to which deregulation caused this difference in growth rates across the two groups of states.

4. Concluding Remarks

Deregulation offers the potential for a win-win: a more dynamic economy and relief for those most burdened by the status quo. Regulatory accumulation has been a significant drag on U.S. economic growth for decades, slowing business investment, impeding the formation of new firms, and acting as a hidden tax on consumers and workers.

At the same time, the costs of heavy regulation are not borne equally – they fall hardest on small businesses and low-income households, contributing to higher poverty and income inequality. These findings make a compelling case that reforms to curtail excessive regulation are not just about efficiency and growth, but also about economic opportunity.

The experiences of British Columbia, Idaho, and other reforming subnational jurisdictions demonstrate that meaningful reduction in regulatory burdens is achievable. Clear goals, measurement, and high-level commitment are critical. When done right, deregulation can stimulate competition, lower consumer prices, and increase productivity and wages – all without sacrificing important health, safety, and environmental protections. Indeed, a leaner regulatory code can enhance focus on the truly important rules, as both regulators and regulated entities are able to focus on what matters most, rather than drowning in paperwork.

In conclusion, regulatory accumulation represents a significant, albeit often invisible, headwind of our own making. By recognizing it as such, and by pursuing deregulation and better regulatory management, policymakers can remove impediments to growth and ensure that the regulatory state serves the public without inadvertently holding it back. Several policy options are on the table, from one-in, two-(or more) out regulatory budgets to sunset reviews, and the evidence from subnational reforms offers a hopeful example that the tide of regulatory accumulation can be turned. A more efficient, competitive economy with rising household incomes and enhanced opportunities need not come at the expense of protections; rather, it can be achieved by making regulation smarter, not just more plentiful. The economics of deregulation makes a strong case that less can indeed be more.

Mr. FITZGERALD. Thank you, Dr. McLaughlin.
Mr. Smith, you may begin.

STATEMENT OF PATRICK "RICK" SMITH

Mr. SMITH. Thank you, Chair Fitzgerald, Ranking Member Nadler, and the entire Subcommittee for having me here today. It's an honor. My name is Rick Smith. I am the CEO and founder of a company called Axon. We're an American company in Arizona that employs over 4,000 people today.

I appreciate the opportunity to testify, because the unchecked power of the government led to serious consequences for my company, for my employees, and deeply for me personally. No bureaucracy can be allowed to act as prosecutor, judge, and jury without checks and balances and oversight.

Many fine Americans work at the FTC with the best of intentions. Yet, the agency wields unchecked power in ways that can crush innovation, stifle economic growth, and deny basic Constitutional rights. This overreach was not the intention of our Founders.

The work of this Committee is critical to ensuring that all Americans do receive the due process protections they deserve and are guaranteed under the Constitution.

I started Axon over 30 years ago in a garage with a dream to bring Captain Kirk's phaser to life, to provide a real alternative to deadly force. We can do better than bullets. When I first introduced TASER technology, people laughed at the idea. No one thought they would work, except my dad. He put in his life savings. I nearly wiped him out.

At the edge of losing everything, after seven long years, we finally turned the corner. Today, you see our yellow TASER devices on almost every police officer in America. They've been deployed millions of times, and together with the body-worn cameras, another technology that we invented, they're used across the globe, from the London Met to Sydney, Australia.

I've challenged my team to go further. We've published a public "moonshot goal" to cut gun deaths in policing 50 percent over a 10-year period. We believe we can do this through more effective, less lethal alternatives and changing police through more advanced VR training.

These aspirations in our mission were severely disrupted when we came up against the unfettered power of the FTC. In May 2018, we acquired a small, failing body camera competitor that was losing a million dollars a month. Competitor after competitor passed on this deal. For 18 months they tried to sell the company. We were the buyers of last resort.

We bought this money losing company because it saved critical public safety agencies, including the NYPD, from serious disruptions if their body camera programs were allowed to fail. The $13 million price we paid was well below the legal threshold for FTC review.

What followed were months of requests for information, mountains of legal filings, and a growing sense of disbelief that this money losing deal had drawn such a disproportionate government response. We offered to write off our entire investment. In fact, we offered to put in another $13 million in cash, effectively doubling

our losses. Shockingly, we were told this was not enough. The FTC demanded that we also hand over our most valuable assets.

First, license all our intellectual property creating a full-cloned competitor, then to hand over our most valuable customers to be chosen by the FTC. Most alarmingly, we were asked to write a blank check. This was such an outrageous request our lawyers said hold on, "did you say blank check?" The government said "yes, you heard us correctly, you will write a blank check. You will fund this new competitor until we tell you that you are done." I learned that over the previous 20 years the FTC had won 100 percent of cases in its in-house forum.

Over our dinner table at home, I shared this terrifying situation with my family, and my elementary school twins said,

> Hey, dad, we're learning about the Constitution and the Declaration of Independence. The colonists said the courts back then were beholden to the king, and so they set up a new country in the Constitution where the courts must be independent. This is unconstitutional. You should sue them.

From the mouths of babes.

I was like, wow, this is so clear and obvious that it is what we must do. So, we preemptively sued the FTC in Federal court challenging their Constitutionality and saying, hey, just sue us here where we've got a shot to tell our story. In April 2023, after four years of disruptions to our business, the Supreme Court ruled unanimously 9–0 in our favor, allowing our challenges to proceed in Federal court. In response, the FTC dismissed its complaint against us rather than defend its outrageous actions and demands against us in front of an impartial Federal judge.

As our 9–0 decision in the Supreme Court demonstrates, this is bigger than one company or one case. Every American, whether an individual, small or large corporation, should have the right to a fair trial before an independent judge before the government can strip them of their livelihood, their property, or their rights. It's a bedrock principle of justice.

Thank you for your time, and I look forward to answering your questions.

[The prepared statement of Mr. Smith follows:]

Testimony of Patrick "Rick" Smith
Chief Executive Officer and Founder of Axon Enterprise

"Reining in the Administrative State: Regulatory and Administrative Law Reform"
February 11, 2025, 10:00am

House Committee on the Judiciary
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

Thank you, Chairman Fitzgerald, Ranking Member Nadler, and the entire subcommittee for inviting me to testify today. My name is Rick Smith. I am the Chief Executive Officer and Founder of Axon. We are an American company headquartered in Scottsdale, Arizona with more than 4,500 employees.

I appreciate the opportunity to testify today because the unchecked power of the administrative state led to serious consequences for my company, my employees, and me personally. Our story is so important to share. No company, no entrepreneur, and no individual should ever have to fight the government just to get a fair day in court. No bureaucracy can be allowed to act as prosecutor, judge, and jury without any accountability.

The Federal Trade Commission (FTC) has many fine Americans that support the agency on a day-to-day basis with the best of intentions. Yet our litigation with the FTC exposed how the agency can wield unchecked power in ways that crush innovation, stifle economic growth, and deny basic constitutional rights. And the work of this committee is critical to ensure that American businesses and individuals have the due process protections they deserve.

This kind of overreach was not the intent of our founders.

AXON'S MISSION TO PROTECT LIFE

Before I explain the details of our experience with the FTC and our journey to the Supreme Court, I'd like to briefly explain our work at Axon. I'm proud to say that Axon's mission is grounded in public safety and the protection of life – for both law enforcement officers and the communities they serve.

Axon was founded over 30 years ago in a garage. It was funded by family and friends. There was no outside investment, no venture capital – just a belief that our innovative technologies could help build a safer world.

We manufacture TASER devices, body cameras, and cameras that are installed on vehicles. We also conduct de-escalation training, and offer a host of software services that, among other things, help manage evidence and streamline reporting processes in public safety.

All these products are built around a simple mission: to protect life.

When I first introduced TASER technology, people laughed at the idea that what is called "neuro muscular incapacitation electricity" could be used as a weapon that would be both effective and less lethal. No one thought they would work – not investors, not police chiefs, not industry experts.

But I was convinced that technology could provide a better way – and I was right. Over time, TASER devices were adopted by law enforcement agencies around the world, with millions of deployments saving lives and preventing countless tragedies. Support for our technology now comes from police unions, civil rights organizations, Republicans, and Democrats. By providing law enforcement officers with the most technologically advanced products, we are protecting the lives of both first responders and the populations they serve.

TASER devices have been deployed millions of times and body-worn cameras are used across the globe by law enforcement organizations. We now support over 17,000 domestic law enforcement agencies across the United States and in over 107 countries.

We want to go farther. Axon has a "moonshot goal": to help cut gun-related deaths between police and the public by 50 percent in 10 years. For perspective, 1,238 people lost their lives in gun-related law enforcement encounters in 2023 alone. That's way too high.

We believe Axon's "moonshot goal" can be achieved, thanks to our less-lethal technologies and ongoing innovation to find solutions that keep law enforcement and our communities safe.

But these aspirations, and the resources required to achieve them, were severely disrupted when we came up against the unfettered power of the FTC.

THE FTC CASE

In May of 2018, Axon acquired a small, failing body-worn camera competitor, Vievu. The purchase price was approximately $13 million – a small amount that reflected Vievu's dire financial situation. The company was losing a million dollars *per month* and, when the deal was closed, the company had only *three days* of operating cash.

Vievu's owner, Safariland, was unable to find a buyer for 18 months. Competitor after competitor passed on the deal. Axon was the last resort.

Axon's bailout – which was a money-losing contract – saved critical public safety agencies, including the New York Police Department, from serious disruptions to their body camera programs. And the price we paid was well below the legal threshold that automatically triggers FTC review.

Still, the FTC quickly launched an investigation. What followed was months of invasive requests for information, mountains of legal filings, and a growing sense of disbelief that a small, money-losing deal had drawn such a disproportionate government response.

The FTC wouldn't be moved. We were told to spin off Vievu and hand over our most valuable asset, our intellectual property – even unrelated technology. And stand up a cloned competitor, writing a "blank check" at the government's discretion.

Nothing about the process seemed right, especially how the FTC took us on in its own in-house court. As a result, our case was going to be adjudicated in a process overseen by employees of the very agency bringing the case. It's a forum where people simply cannot win.

Over the previous 20 years, the FTC had won 100 percent of its cases in its in-house forum. In contrast, the Department of Justice (DOJ), which also enforces antitrust laws but must litigate before an independent Article III judge, has a win rate around 50 percent—exactly what you would expect in fair litigation where both sides have an equal chance to argue their case.

Axon sued the FTC in federal court and challenged the constitutionality of the agency's structure and processes.

Our case centered around three main claims:

1. The FTC's structure combining investigator, prosecutor, and decision-making functions—where the same FTC commissioners who vote out a complaint ultimately decide the merits of the claim – is a process fraught with confirmation bias and futility.

2. The FTC's Administrative Law Judges have removal protections that violate the U.S. Constitution's separation of powers.

3. The unpublished "clearance" process whereby the FTC and DOJ privately decide whether an enforcement action will proceed in federal court or be relegated to the administrative morass—a violation of due process as demonstrated by the denial of Axon's discovery and FOIA requests for clearance information necessary to prove its claim.

Axon's federal district court case was initially dismissed on jurisdictional grounds. And our company was forced to spend $20 million defending itself in the FTC's administrative process – far more than Vievu's purchase price.

Eventually, on appeal, the 9th Circuit stayed the FTC proceedings pending Axon's petition to the Supreme Court.

In April 2023, after four years of disruptions and distractions to our business, the Supreme Court ruled unanimously 9-0 in Axon's favor. The ruling allowed Axon's constitutional challenges to proceed in federal court – a major jurisdictional win now benefiting businesses nationwide. In response, the FTC chose to dismiss its administrative complaint against Axon. While this was a win for our company, the agency's dismissal rendered moot our federal court challenge and left critical constitutional issues unresolved, at least for now.

THE PATH FORWARD

As our 9-to-0 decision in the Supreme Court demonstrates, this is bigger than one company, one CEO, or one case. This is about a system that has been allowed to deviate from the constitutional principles upon which this nation was founded. Every American – whether an individual, a small business, or a large corporation – should have the right to a fair trial before an independent judge

before the government can strip them of their livelihood, property, or rights. That is a bedrock principle of justice.

We hope that our case with the FTC shines a spotlight on necessary regulatory and administrative reforms. As others have proposed – and we endorse – antitrust enforcement should be consolidated in the DOJ and ALL antitrust enforcement actions should be brought and tried in an impartial Article III court. While constitutional claims may now be raised in federal court, the antitrust merits are still relegated to the FTC's administrative process with its restrictive appeal provisions that only allow judicial review after completion of the full FTC process and decision. But appellate courts generally only review the record for errors in applying the law. Thus, the current system denies people the right to have the facts of their case heard by a neutral and fair arbiter. It hands the FTC the ability to decide the facts in its favor and to author the final decisions to fit its biased point of view as both party to the dispute as well as its judge and jury.

That's all Axon ever wanted: a fair shot on a neutral playing field.

I look forward to continuing to work with Congress on behalf of American businesses, innovators, and job creators to help remove unnecessary administrative and regulatory barriers.

Thank you all for your time. I look forward to answering any questions that you may have.

Mr. FITZGERALD. Thank you, Mr. Smith.
Ms. Wade, you can begin now.

STATEMENT OF MAGATTE WADE

Ms. WADE. Good morning. Thank you, Mr. Chair, for having me. Distinguished Members of the—sorry. Can you hear me now? All right.

Thank you again, Mr. Chair, for having me here, and for the distinguished Members of the Committee, for this opportunity to testify today. This matter is a personal matter to me, and I want to explain why.

My name is Magatte Wade. I'm a Senegalese-American entrepreneur. I've been living in the U.S. since 1998, and I became a U.S. citizen in 2018. I'm also an author of "The Heart of a Cheetah," a book that talks about African entrepreneurship and prosperity. It has been addressed—it has been endorsed by Nobel laureate like Vernon Smith, development economist as Bill Easterly, and Whole Foods founder John Mackey.

I am a cofounder of Prospera Africa, an initiative that is out there to create something similar to what you guys would call here for freedom cities in America. I have been doing business, obviously, both in Africa as in the U.S. In the U.S. in the States of California, Texas, and New York.

Mr. Raskin, your words earlier really, really worried me, and I will tell you why. When you say we are here and we should be here to talk about Mr. Elon Musk and all the unconstitutional things that he's doing, and you said we shouldn't be here to talk about regulation or anything like that, first, I want to say then why did you have me here? As an entrepreneur, my time is valuable. I came here because I thought we were going to talk about the regulatory State and why it matters. So, you need to make up your mind on that. I'm deeply offended by what you said there.

Furthermore, I will tell you why I came when I was invited to speak on this. Because right now, everybody in this country, these issues of regulation, overregulation, have been made into a matter of partisanship. Are you from the Left or are you from the Right? I don't care, because where I come from, the overregulation causes us to be where we are.

My continent, Africa, is the poorest region in the world today because it happens to be the most overregulated region in the world. So, if you don't see the value of overregulation, if you need and want to wait until this country becomes like most African countries—I don't know. I love this country and I don't want to see it go down there.

So, also, just so you know, what does overregulation mean for regular people? It means death. Death, literally. People are packing themselves into little fishermen's boats trying to leave nations that are overregulated, therefore no jobs, and then they have to leave and go seek jobs someplace else.

By the way, English is only my fourth language, so when I trip on words, please excuse me, you all.

So, as a consequence of this perspective of mine, I'm aware of the fact that even in the U.S. it is difficult for a businessperson to be fully compliant with all the laws. In Senegal, I usually have to pay

lawyers to make sure that I'm compliant all the way. It costs a lot of money and a lot of time and makes me very noncompetitive.

Everything I do is for the sake of African prosperity. There is no sense in which anyone can call me a greedy business person. Yet, most of us are subject to the potential of punitive power of the public officials. As an African immigrant, I am very familiar with the many informal small businesses that are run by other Africans in the U.S. Of course, the biggest one of them for me at least is occupational license. You see this hair of mine, the lady who braids it most of the time is an immigrant lady who got here. She's not doing anything criminal or anything like that, but her business is going to be illegal because of all the laws and the licenses she has to get to do this, something that she learned to do since she was 12 back home. Here she's sustaining herself, not touching the welfare or anything like that. This is paying her bills, the bills of her children, and the people that she had left home.

Are we people that should those people be penalized? I don't think so.

To take a different issue. Austin where I live right now. The housing prices were rapidly rising due to excessive land use regulations until recently. Last year, I testified for the Texans for Reasonable Solutions to deregulate land use regulations, and they made really great progress in reducing the growth in housing cost. We estimate that there is between 30–40 percent of the housing costs that are due to excessive regulations in some areas.

When I moved to the U.S., I lived in San Francisco. I loved that city, yet I can't live in that city anymore for what that city has become, and it primarily has to do with the high cost of housing due to the regulations.

Take another example. My husband is an immigration entrepreneur who was a leader in the microschool space before it became a thing. If you want a new renaissance in education, you need to minimize your regulations pertaining to new school creation so smaller education entrepreneurs can also get in the game and challenge your status quo. I ask again, do we really want to be penalizing these entrepreneur educators?

Mr. FITZGERALD. Ms. Wade, your time has expired. We're going to have some followup questions, obviously, though, but thank you very much.

Ms. WADE. Thank you.

[The prepared statement of Ms. Wade follows:]

Written statement of proposed testimony
Magatte Wade
02/12/205

Thank you, Mr. Chairman, and distinguished members of the committee, for the opportunity to testify.

My name is Magatte Wade. I'm a Senegalese-American entrepreneur who has lived in the US since 1998 and have been a citizen since 2018. I have done business extensively in the US and Africa for 26 years from California, New York, and Texas. I have serve with the Atlas Network as a Senior Fellow on Africa. I have written a book, The Heart of a Cheetah, which addresses issues related to entrepreneurship and prosperity, which has been endorsed by Nobel laureate Vernon Smith, development economist Bill Easterly, and Whole Foods founder John Mackey. Finally, I'm co-founder of Prospera Africa, an initiative to create something similar to Freedom Cities in Africa.

I'm here to provide a sense of urgency regarding the need for streamlined regulatory and administrative rules for business. This topic has become so mired in partisanship and ideology for most Americans that my sense is that no one can even think clearly about the issues anymore. So let me start by saying in no uncertain terms, in much of Africa this is a life or death issue. We are the poorest region in the world. We are also the most over regulated region in the world. My country, Senegal, makes it even harder to hire and fire employees than in California, one of the worst US states. The result is that my people die at sea trying to escape to Europe to get jobs. When the state chokes businesses so much that people are dying, one feels greater urgency over these issues than do most Americans.

As a consequence of my perspective, I'm aware of the fact that even in the U.S., it is difficult for a business person to be fully compliant with all laws. In Senegal I constantly have to pay lawyers to make sure I'm compliant with laws so that bureaucrats don't shake me down (corruption is caused by over-regulation). In the U.S., given the fact that I'm involved with four for profit entities and several non-profit entities, I could easily be committing "Three Felonies per Day" if I'm not keeping all the paperwork on all of my companies up to date. Large, powerful firms can afford armies of lawyers and attorneys to stay compliant. Smaller entities do their best and try not to slip up.

Everything I do is for the sake of African prosperity. There is no sense in which I am a "greedy business person." And yet most of us engaged in business are subject to the potential of punitive public officials.

As an African-American immigrant, I'm familiar with many informal small businesses run by other Africans in the U.S. Of course the most common example of occupational

licensing run amok are hair braiders - I expect that most of the African women who braid my hair are breaking the laws. But my tribe from Senegal, the Mourides, are known globally for their entrepreneurial initiative. We are some of the hardest working people you'll ever know - and many of the less educated among us are sending money home every month while running our businesses. We are the last people you should want to be penalizing.

To take a different issue, Austin housing prices were rising rapidly due to excessive land use regulation until recently. Last year I testified for Texans for Reasonable Solutions to deregulate land use regulations. They've made progress in reducing the growth in housing costs. There are estimates that 30-40% of housing costs are due to excessive regulations in some areas. When I moved to the US, I lived in San Francisco, which was the most beautiful city in the world before it became filled with the excrement from homeless people. SF has arguably the worst housing regulation in the US, and therefore one of the worst homelessness problems in the U.S. Are you getting a pattern yet?

My husband is an educational entrepreneur who was a leader in the microschool space before it became a thing. If you want a new renaissance in education, you need to minimize the regulations pertaining to new school creation. Do you really want to be penalizing entrepreneurial educators?

What to do? In my role as co-founder of Prospera Africa, we are seeking to pass a "General Repealer" for our equivalent of Freedom Cities. That is, we legislatively pass a law that repeals all existing commercial law within a zone so that we can get a fresh start. There are so many millions of laws, both in the U.S. and Africa, that no one knows when and how a law might be used against us. If we truly want "permissionless innovation," then we need to start with a clean slate and begin afresh. If it is just in a limited zone, then the risks are contained to those who voluntarily choose to relocate to the zone. Everyone else can stay under the regulatory environment they prefer.

Just as Californians are free to stay there if they prefer, as we create new, freer jurisdictions for business in Africa and the U.S., I predict that those jurisdictions will attract the most motivated, talented, and entrepreneurial people. As one of the many emigres from San Francisco to Austin, I see it with my own eyes every day. Once we have full on Freedom Cities, growth miracles like Austin will have to compete with a new generation of super star growth miracles. Can you empower anywhere in the US to have a general repealer so new Freedom Cities can be created across the US?

As an immigrant, I love the U.S. more than anywhere in the world. It is critically important to me that the U.S. remain a prosperous global leader in innovation. As I work to transform Africa into a region of prosperity and innovation by means of creating the best business environment in the world, I demand that my adopted country keep up!

Mr. FITZGERALD. Professor Vladeck, you're recognized.

STATEMENT OF STEPHEN I. VLADECK

Mr. VLADECK. Thank you, Mr. Chair. Thank you for the opportunity to testify this morning. I must confess to at least a modicum of surprise that of all the topics for this Subcommittee to investigate at this moment in American history, it has picked this one.

Certainly, we can all agree that one of Congress' and this Committee's most important Constitutional functions is holding the Executive Branch to account. I would thus happily celebrate, if not affirmatively endorse, well-conceived efforts to rein in the Executive Branch, especially in response to specific abuses of existing statutory and Constitutional arrangements, perhaps like the ones summarized by my fellow witnesses.

Given what has transpired over the first three weeks of the new administration, a hearing focused on the proposed legislation being discussed this morning and not on what is happening across this city and across this country as we sit here today strikes me as far more than just a missed opportunity. Indeed, if this Committee was genuinely interested in reining in abuses by the Executive Branch, it strikes me that there are at least four distinct and far more pressing areas to which it should focus its attention.

First, the first three weeks of the second Trump Administration has witnessed a more systemic and sustained assault on Congress' Constitutional primacy with respect to appropriations and spending than anything we've seen before. It would take more time than I have this morning to list all the examples, but we're seeing the Executive Branch repeatedly violate clear statutory spending requirements and prohibitions, whether under the Impoundment Control Act, various statutes setting up and funding the USAID, NIH appropriations riders, or otherwise.

The Constitution is unusually clear about appropriations, Mr. Chair. Contrary to the comments made by Chair Cole last week, these statutes are all laws that have binding teeth for purposes of the Supremacy Clause. Indeed, uniquely with respect to appropriations, the Constitution expressly requires that Congress play the primary role in Federal policymaking. In each of these areas, then, the Executive Branch is not just breaking the law; it is usurping this body's single most important policymaking power.

Second, we've also seen unprecedented efforts by the President to assert control over the entire bureaucracy and quite overtly to do so in the name of loyalty to the President rather than fidelity to the Constitution.

Third, and speaking of unprecedented, we've seen the President use the guise of an office located within the Executive Branch to take unitary control over virtually all of the Federal Government spending and personnel management functions, again, apparently in violation of an array of statutes limiting who may have access to those systems and for which purposes.

Finally, I'd be remiss in not also noting the various actions this administration's undertaken against private persons that flatly contravene existing statutory and Constitutional protections, such as the attempt to narrow the scope of birthright citizenship, a right

protected not only by the 14th Amendment but by a statute Congress enacted in 1940.

Other examples abound, but I suspect the point has been made. In three weeks, we have seen a more sustained assault by the President on this institution's Constitutional prerogatives than we've seen in the first 250 years of our Republic.

To be sure, we've also seen the Federal courts pushing back against these abuses, in many cases aggressively, but the courts can't and shouldn't be expected to go it alone. Some have tried to defend this rash of unlawful behavior on the grounds that the Executive Branch is rooting out fraud and other abuses. Of course, if that were actually the goal, we should have expected some discussion by the Department of Defense.

At a more basic level, this Committee and Congress as a whole has spent much of the last 160 years setting up sophisticated accountable inner branch mechanisms for holding the Executive Branch to account in precisely these spaces. It's not like fraud, waste, and abuse have became problems only over the last four years. That includes inspector generals. It includes DOJ offices designed to root out corruption and others.

Rather than lean into those checks, the President's response has been to fire most of the inspector generals, including those he appointed, and the head of the government agency that protects whistleblowers. Maybe there's an argument that this is a good policy. I'm skeptical. That's an argument that should be made to this body in its consideration of new legislation, not through repeated assertions of executive fiat.

The result of the Executive's assertion of authority and Congress' abdication of responsibility has been not just an unprecedented breakdown in the separation of powers, but a growing and seemingly unending list of negative real-world impacts on everyday people who may no longer have access to experimental medication, who may no longer receive timely storm warnings, who may no longer be able to receive the government-subsidized healthcare Congress has provided for more than 60 years, and so on.

Even farmers who signed contracts with the USDA to be reimbursed for modernizing their infrastructure with guarantees that the Federal Government would cover part of their costs are now on the hook for expenses they can't afford and projects they can't complete.

Everywhere you look there are stories like this one. This is not just an administrative law crisis, Mr. Chair; it is a government credibility and credit crisis.

Against that backdrop, it strikes me as more than a little ironic that this Committee believes the most important thing it can and should be discussing today is whether to enact the legislation being proposed. It seems to me instead that these topics deserve more of our attention, and I would look forward to participating in those discussions. Having this hearing sends exactly the wrong message about the institutional autonomy, Constitutional authority, and democratic responsibility of the legislature, the branch of the government that the Constitution quite deliberately put first.

[The prepared statement of Mr. Vladeck follows:]

"Reining in the Administrative State:
Regulatory and Administrative Law Reform"
Hearing Before the House Judiciary Committee
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust
Tuesday, February 11, 2025

Testimony of Stephen I. Vladeck
Agnes Williams Sesquicentennial Professor of Federal Courts
Georgetown University Law Center

Chairman Fitzgerald, ranking member Nadler, and distinguished members of the subcommittee,

Thank you for the opportunity to testify this morning. I must confess to at least a modicum of surprise that, of all of the topics for this subcommittee to investigate at this moment in American history, it has picked this one. Certainly, we can all agree that one of Congress's—and this committee's—most important constitutional functions is holding the executive branch to account. I would thus happily celebrate, if not affirmatively endorse, well-conceived efforts to "rein in" the executive branch—especially in response to specific abuses of existing statutory and constitutional arrangements.

But given what has transpired over the first three weeks of the new administration, a hearing focused on the proposed legislation that my fellow witnesses have discussed this morning, and *not* on what is actually happening across this city and across this nation as we sit here today, strikes me as far more than just a missed opportunity. Indeed, if this committee were genuinely interested in "reining in" abuses by the executive branch, it seems to me that there are at least four distinct, and far more pressing, areas to which it should focus its attention.

First, the first three weeks of the second Trump administration has witnessed a more systemic and sustained assault on Congress's constitutional primacy with respect to appropriations and spending than anything we have ever seen before.

It would take more time than I have to list all of the examples, but from the government-wide freeze of federal grants by the Office of Management and Budget; to the 15% ceiling for "indirect costs" for NIH-funded grants; to the continuing disruption of various *mandatory* spending in the foreign aid context, we're seeing the executive branch repeatedly violate clear statutory spending requirements and prohibitions—whether under the Impoundment Control Act of 1974, the various statutes setting up and funding the U.S. Agency for International Development, annual NIH appropriations riders that Congress has carefully negotiated, or other laws. Perhaps members of this committee are taken by novel arguments that some (or all) of those statutes are unconstitutional. But even *that* claim, which has been categorically rejected even by the Justice Department's own lawyers for generations, would be a more profitable subject of conversation than our focus so far this morning.

We're also seeing novel assertions of power by the executive branch to impose conditions on the receipt of federal funds that find no support in the relevant appropriations statutes—such as the Secretary of Transportation's requirement that local and state governments assist with the enforcement of federal immigration law in order to receive their annual highway funding, the very kind of coercive spending condition that led the Supreme Court to invalidate the Affordable Care Act's Medicaid expansion in 2012.

The Constitution is unusually clear about appropriations, Mr. Chairman. Contrary to the comments made by Chairman Cole last week, these statutes are all laws that have binding teeth for purposes of the Constitution's Supremacy Clause. And *uniquely* with respect to appropriations, the Constitution expressly *requires* that Congress play the primary role in federal policymaking. In each of these areas, then, the executive branch is not just breaking the law; it is usurping *this* body's single-most-important policymaking power.

Second, we have also seen unprecedented efforts by the President to assert control over the entire bureaucracy—and, quite overtly, to do so in the name of loyalty to the President rather than fidelity to the Constitution.

From the termination of lawyers and law enforcement officers who were even loosely associated with the criminal investigations and prosecutions of those who attempted to overturn the 2020 election results; to the firing of more than a dozen inspectors general—including many who had been appointed *by* this President; to the reinstitution of "Schedule F," an attempt to convert much of the non-partisan federal civil service into partisan political positions; to the misbegotten "fork in the road" program to seemingly dupe federal employees into taking unlawful buyouts; to the seizure of control of, of all things, the board of the Kennedy Center, this is a President who is running roughshod over an array of statutory restrictions and deeply entrenched norms regulating bureaucratic control of the administrative state.

Historically, one of the principal checks on the President's ability to take this kind of control has been the Constitution's Appointments Clause—which requires the Senate's advice and consent for the confirmation of all principal executive officers. But we've seen the Senate refuse, in case after case, to assert its institutional prerogative against President Trump's nominees—even when, as Senator Collins suggested, she was confident that courts would rightly block a policy that a nominee she voted for said he would pursue.

Third, and speaking of unprecedented, we have seen the President use the guise of an office located within the executive branch to take unitary control over virtually all of the federal government's spending and personnel management functions—again, apparently in violation of an array of statutes limiting who may have access to those information systems and for which purposes. As if that wasn't troubling enough, all of this is coming while the "Special Government Employee" who is leading those efforts appears to have *massive* conflicts of interest that ought to preclude him from having any role in the administration of government contracts that create billions of dollars in obligations to his *own* companies.

Finally, I would be remiss in not also noting the various actions this administration has undertaken against private persons that flatly contravene existing statutory and constitutional protections—such as the attempt to narrow the scope of birthright citizenship (a right that is protected not only by the Fourteenth Amendment, but by a statute Congress enacted in 1940). Other examples abound, but I suspect that the point has been made. In three weeks, we've seen a more sustained assault by the President on *this institution's* constitutional prerogatives than we've seen in the first 250 years of our Republic.

To be sure, we've also seen the federal courts pushing back against these abuses, in many cases, aggressively. But the courts can't—and shouldn't be expected to—go it alone. Just this weekend, Vice President Vance and Elon Musk both took to social media to question the legitimacy of judicial rulings purporting to hold the executive branch to account. Of course, the historical (and correct) remedy for trial court rulings that wrongly go against the executive branch is for the government to appeal. But here, again, the new administration seems less interested in *abiding* by the separation of powers than seeking to *undermine* them.

Some have tried to defend this rash of unlawful behavior on the ground that the executive branch is rooting out fraud and other abuses. If that were actually the goal, we should've expected the focus of that effort to include the Department of Defense. But at a more basic level, this committee—and Congress as a whole—has spent much of the last 160 years setting up sophisticated, accountable interbranch mechanisms for holding the executive branch to account in precisely these spaces; it's not like fraud, waste, and abuse only became problems over the last four years. That includes inspectors general *within* the executive branch to monitor for fraud and other

abuses; Justice Department offices designed to root out corruption; and civil suits from outside the executive branch. Rather than lean into those checks, the President's response has been to fire most of the inspectors general and the head of the government agency that protects whistleblowers; to shut down anti-corruption efforts within the Department of Justice; and to otherwise turn over the entire, government-wide anti-fraud enterprise to a handful of young computer programmers with no relevant prior governmental experience. Maybe there's an argument that this is good policy (I'm more than a tad skeptical), but that's an argument that should be made to this body in its consideration of new legislation—not through repeated assertions of executive fiat.

Finally, lest anyone try to respond with the superficial argument that new administrations are "entitled" to set their own agenda, it's one thing to *have* an agenda; it's quite another to impose it unilaterally, especially when it flies in the face of so many existing constitutional and statutory arrangements. Indeed, what is especially striking about all of the moves the new administration is undertaking is that they are coming not in the face of a hostile Congress, but without any attempt to even *obtain* statutory authorization—even though the President's party also controls both legislative chambers, including this committee. Instead of making the case for why Congress should loosen or repeal the various statutory mandates that the executive branch is violating, this administration is effectively thumbing its nose at our elected representatives in the House and the Senate—*i.e.*, at you. And in response, this committee chose to hold … this hearing.

The result of the executive's assertion of authority and Congress's abdication of responsibility has been not just an unprecedented breakdown in the separation of powers; but a growing and seemingly unending list of negative, real-world impacts on everyday people—who may no longer have access to experimental medication being funded by NIH; who may no longer receive timely severe storm warnings from NOAA; who may no longer be able to receive the government-subsidized healthcare that Congress has provided for more than 60 years; and so on. Even farmers who signed contracts with the USDA to be reimbursed for modernizing their infrastructure with guarantees that the federal government would cover at least part of their costs are now on the hook for expenses they can't afford and projects they can't complete.

Everywhere you look, there are stories like that one. This is not just an administrative law crisis; it is a government credibility (and credit) crisis.

These moves are also necessarily coming at the expense of our national security—not only because our friends abroad will become increasingly reticent to trust us, but because the very government agencies tasked with defending all Americans from threats foreign and domestic are being turned into vehicles for carrying out nothing more than the President's personal policy priorities of the day.

Against that backdrop, it strikes me as more than a little ironic that this committee believes the most important thing that it can and should be discussing today is whether to enact the legislation discussed by my colleagues. It seems to me, instead, that this committee should be focused on (1) rigorous oversight hearings to find out exactly what the executive branch is and isn't doing, and pursuant to which legal authorities; (2) ways in which this committee specifically, and Congress as a whole, can reassert legislative primacy in the area of spending and appropriations—even if that means *approving* the current administration's actions through new statutes and amending or repealing existing statutes; (3) standing up for the importance of an independent judiciary in our system of checks and balances—something that has been a central feature of this committee's work for generations; and (4) more generally, underscoring the importance of the moment we find ourselves in—and the dangerous precedents we risk setting for the future, including, perhaps, when Congress and the White House are controlled by a different party than the one currently in power.

I would look forward to participating in those discussions, Mr. Chairman. As for the nominal topic of today's hearing, it seems to me that it is sending exactly the *wrong* message at this moment in our history about the institutional autonomy, constitutional authority, and democratic responsibility of the legislature—the branch of the federal government that the Constitution, quite deliberately, put first.

Thank you again for inviting me to testify today; I look forward to your questions.

Mr. FITZGERALD. Thank you, Mr. Vladeck—Professor Vladeck.

We'll proceed now under the five-minute rule with some questions. I'm going to recognize myself for five minutes.

Mr. Smith, according to what you just told us in your testimony, Axon spent approximately $20 million defending its acquisition of VIEVU against the FTC, which was more than the acquisition price itself, I guess, is the way you described it. You were willing to spend that money because you believe that every American has the right to due process.

Why is due process so important to you as a business owner having lived through it and experienced it the way you have?

Mr. SMITH. This may seem cliche, but it's more important to me as an American, and I hear the passion in people's voices. There are many things we can disagree on, but I think progress can happen when we can find bedrock principles that we all agree on. The systems of checks and balances, for example, is so critical to a functioning democracy. What I came to understand with the FTC was, in fact, there was a system that has gotten out of balance where there is no check and balance; where there is no independent judiciary; where that agency can act as judge, jury, and prosecutor, and they presented me with a situation where they either threatened me to go into court, where there is a zero percent chance over 20 years of having a fair trial where I could win, or to effectively seize my company's most valuable assets, give us an unlimited liability, and place all my 4,000 employees and all our customers at risk.

So, that's why I'm here today is I'm now very passionate about this. I was disappointed when the FTC dropped their case against us, because I felt the system was so unfair, I wanted to see it make its way back up to the Supreme Court. When they dismissed their case, I jumped at the chance to come and testify before Congress today, because together we have an opportunity to fix the checks and balance by just simply having independent judges review every case when the government is going after an American.

Mr. FITZGERALD. Very good.

Dr. McLaughlin, in a lawsuit challenging the FTC's premerger notification rule, business groups claim that the FTC's rule will cost over seven times the amount that the FTC estimated in its final rule. This is kind of a consistent problem that we see. The FTC estimates that it will cost billions.

The FTC has not articulated how it will use the information to better enforce the antitrust laws, and the FTC has never articulated past examples of missed enforcement that would justify the rule.

Is this type of potentially burdensome regulation that Congress—we should sit down and analyze this and potentially act on it?

Dr. MCLAUGHLIN. Thank you. You're referring to the new HSR rules, of course, and I did take a look at those as a reference point. The paperwork burden estimate from the FTC may indeed be low compared to what other people estimate it to be. It's worth pointing out that those estimates, similar to what Mr. Smith is pointing out, are produced by the same people who want to produce the rule. So, maybe there's a conflict of interest there.

I would also point out that, even though that paperwork burden may be what the FTC estimated or may be seven times larger, it

still is very small compared to the overall burden of regulation, and that's my main point here. The big burden here is the totality of regulation much more than any individual rule's consequence.

Mr. FITZGERALD. Right. Let me just follow that up. So, the Separation of Powers Restoration Act, or SOPRA, would enshrine the Court's rejection, the Chevron deference, and clarify other deference's that have allowed agencies to act as informal legislative bodies. The key point is probably that SOPRA would require judges to conduct de novo review of agency statutes, the regs, the guidance documents.

Can you talk about how enshrining judicial review in law may slow the pace of regulations for administrative agencies?

Dr. MCLAUGHLIN. I think it would end up at least leaving some percentage of rules aside, and it would work like this. Agencies are going to now be aware that there's no deference anymore, no judicial deference of any sort that they can rely on to push a rule forward. Some percentage of rules will probably just not get pushed forward at all. They will choose not to take that risk of pushing something forward that previously could have stood up because of the different deference documents. What percentage that will be, I don't know.

Mr. FITZGERALD. Yes. The delaying factor is built in to the system which could actually assist Congress in having the time to examine and take a deeper look on some of these things before they simply become law is the problem, right?

Dr. MCLAUGHLIN. Yes. There's going to be plenty of room, hopefully, in different reforms for Congress to play a more active role, and I think that my research in the area has shown it's necessary for another set of minds to be looking at the different analyses and regulations coming out of the agencies.

Mr. FITZGERALD. Thank you.

I'll now recognize the Ranking Member for five minutes.

Mr. NADLER. Thank you, Mr. Chair.

Professor Vladeck, while the Republican majorities in the House and Senate stand aside and do nothing to stop the Trump Administration's incursions on Constitutional authority, the courts have begun to step in and block some of these unlawful actions. Not content merely to undermine Constitutional authority in the face of these, quote, "decisions, senior administration officials have now tried to question the legitimacy of the courts themselves."

For example, in response to a court order blocking Elon Musk from accessing sensitive Treasury Department data, Musk said that the judge who made the ruling, quote, "needs to be impeached now." Vice President JD Vance stated that, quote, "judges aren't allowed to control the Executive's legitimate power." President Trump said, quote, "no judge should, frankly, be allowed to make that kind of decision. It's a disgrace." The White House called the judgment absurd and judicial overreach.

Now these vague threats to judicial independence have seemingly crossed the line into actual defiance of a court order. Yesterday, a Federal judge in Rhode Island ruled that the White House had defied his order to unfreeze billions of dollars in Federal grants.

Can you describe the Constitutional crisis we would face if the Trump Administration continues to ignore valid court orders?

Mr. VLADECK. Sure. Congressman, we've never seen a crisis quite of that scope. The famous quote about Andrew Jackson and John Marshall is apocryphal. Andrew Jackson actually did not frustrate the Supreme Court's decision in *Worcester* v. *Georgia*.

The only example we have of a President ever openly defying a decision by a justice was Lincoln at the outset of the Civil War refusing to comply with the writ of habeas corpus issued by Chief Justice Taney by himself, not by the full Supreme Court. We've never seen a President who said, OK, the Supreme Court has told me I have to stop doing something, I'm going to keep doing it.

The critical point at that point is we would have a breakdown, Congressman, not just in the rule of law and the separation of powers. We'd have a breakdown in the courts, because the Executive Branch depends on the courts when it's the plaintiff to prosecute crimes, to bring civil enforcement action.

So, the point of no return would be a point when the courts are no longer willing to even do the Executive Branch's regular business because the Executive Branch won't abide by the court's judgments.

Mr. NADLER. In your testimony, you briefly described four areas that this Committee should be focusing on right now to address the unprecedented power grab by President Trump and Elon Musk, or maybe I should put that in reverse order. Can you please elaborate on these suggestions?

Mr. SMITH. Sure. It seems to me that this Committee, both historically and currently, has both the power and the mandate to engage in rigorous oversight of what the Department of Justice specifically is doing; how the Executive Branch is complying or not complying with the various statutes; of the firings of inspector generals; of the firing of the Special Counsel Hampton Dellinger, who is the head of the whistleblowing agency within the Federal Government.

This Committee has the power, of course, to consider whether legislation should be proposed to rein in some of these claims, to backstop existing statutes, or perhaps even if the majority is so inclined, to authorize what the President is doing. The point, Congressman, is that what we have seen over the first three weeks is the President suggesting that this Committee and all of Congress is completely unnecessary for him to do what he wants to do.

Whether it's through oversight hearings, whether it's through withholding legislation, whether it's through passing legislation, whether it's through the bully pulpit that Members of this Committee on both sides are so skilled at using, it seems like there is a much more important story to tell about what is happening right now to the separation of powers in this country than the admittedly important stories of my fellow witnesses. Those are all problems, but what we're seeing is a structural attempt to reallocate power the likes of which we've never seen before, and that's where this Committee has a responsibility.

Mr. NADLER. Mr. Smith has argued for an independent judiciary. If we allow the Trump Administration to skirt court orders, does the independent judiciary really function?

Mr. VLADECK. I guess I am one, Congressman, who still thinks that the line is holding. We have more examples historically of

what I would call slow walking compliance with court orders by the Executive Branch, the likes of which seems to be happening right now. I would not put it past the possibility, Congressman, that part of the lack of compliance we're seeing is because of incompetence, not malice. It seems to me that we are not at the point yet where the Executive Branch is affirmatively refusing to comply with Federal court orders.

Mr. NADLER. If we get to that point?

Mr. VLADECK. Then, it would be incumbent on this Committee to pursue Articles of Impeachment, and I would hope that there would be a sufficient Members of the Majority who would think that this was part of their Constitutional responsibility, that the politics of the moment would give way to the politics of our Constitutional order.

Mr. NADLER. Thank you, Mr. Chair. I yield back.

Mr. FITZGERALD. The gentleman's time is expired.

Mr. NADLER. Thank you, Professor.

Mr. Chair, I yield back.

Mr. FITZGERALD. The gentleman's time is expired.

Now, I'll recognize the gentlewoman from Wyoming for five minutes.

Ms. HAGEMAN. Thank you.

I guess I would take your testimony a bit more seriously, Mr. Vladeck, if you actually had ever complained or brought—shown any light on the Biden Administration's efforts to forgive the student loans in violation of the law and court order.

Ms. Wade, I appreciate your passion for this issue. It is something that is incredibly significant, and I think the caterwauling that you hear on the other side is what happens when you shine a light on the scurry little things that live under most rocks that most of us find rather disgusting.

The 2024 version of CEI's 10,000 commandments found that Federal regulations, total compliance costs, and economic facts are at least $2.117 trillion annually. U.S. households pay an average of $15,788 annually in a hidden tax, which consumes 17 percent of income and 22 percent of household expenses. The Biden–Harris Administration imposed over $1.7 trillion in cumulative regulatory costs on the economy, surpassing all predecessors.

The issue of overregulation in this country is absolutely real, and it is people like you that are affected, regardless of whether Mr. Vladeck feels that you should have a voice in these proceedings.

Mr. Smith, I want to turn to you, because I think people need to understand what ALJs, administrative law judges, and administrative law courts actually do in the system. If you want to talk about unconstitutionality, Article III establishes an independent judiciary to protect citizens from loss of life, liberty, and property without due process of law. Over the last 50 years or so, a variety of Federal agencies have created their own court systems led by administrative law judges. It would come as no surprise to anyone that agencies enjoy outsized success in proceedings before these ALJs. After all, they're wearing the same jerseys. They're on the same team.

In Article III courts as provided by the Constitution, the SEC only wins about 58 percent of its cases. Between Fiscal Year 2011–

2014, the SEC, however, won an average of 90 percent of its cases in front of ALJs. The FTC, who you went up against, wins over 90 percent of its cases before its own ALJs. Yet, Lina Khan, who was the head of the FTC under the last administration, lost almost every single case she ever brought before an Article III case—or an Article III court.

When Axon was forced into the FTC administrative law court or ALC proceedings, were you provided with the same protection and rights you would expect in an Article III court, such as due process, the right to a trial by jury, that sort of thing?

Mr. SMITH. Absolutely not. It was a foregone conclusion. Frankly, it was described to me by my attorneys as hopeless. There was a zero percent chance over the previous 20 years of getting a fair trial. Even once we came out, if it went to appeal, the appellate process would be only reviewing the FTC's version of events. They get to write the entire record, and you never get a day in court. Maybe you get an appellate review to see if they made an error in the law, but we would never have gotten a chance for an independent arbiter to hear our claims.

Ms. HAGEMAN. I would think that the people on the other side and Mr. Vladeck would be concerned about the violation in Constitutional rights that you just described, but apparently they're more concerned about protecting the unelected bureaucrats and their ability to send millions of dollars to things that we don't want to pay for, such as trans comic books for people in Peru.

The FTC enjoys over 90 percent success rate in proceedings before the ALJs, as we just talked about. What I understand is that you were forced to spend $20 million defending yourself in these FTC proceedings. Having been an administrative law attorney for many years, I describe this as the process is the punishment. Would you agree?

Mr. SMITH. The process was a heck of a lot of punishment. However, it was nowhere near what was being threatened. I mean, for a $13 million acquisition, the government was basically looking to seize a billion dollars' worth of intellectual property, as well as half our customers and an unlimited liability.

The process was terrible, but we had to go through it because the alternative was even worse.

Ms. HAGEMAN. As you likely know, in this Congress I have introduced the Seventh Amendment Restoration Act, which provides Americans with the right to remove their cases before an ALJ to an Article III district court.

Do you think that this is something that would have helped you in pushing back and fighting back against the FTC in these horrific proceedings?

Mr. SMITH. I have to say that this proposal is beautiful in its simplicity. It actually would fit what we've all talked about, the system of checks and balances functioning properly, that an American should be able to say, my goodness, if I have the government coming after me, may I please have an independent judge where I can plead my case and have a chance of prevailing.

Ms. HAGEMAN. Thank you, Mr. Smith; thank you, Ms. Wade; thank you, Dr. McLaughlin for being willing to come here and ex-

pose this horrific situation, this horrific administrative situation that we're dealing with.

I yield back.

Mr. FITZGERALD. The gentlewoman yields back.

We now recognize the gentleman from Maryland, the Ranking Member of the Full Committee, Mr. Raskin.

Mr. RASKIN. Thank you, Mr. Chair.

In just the last 22 days, it seems at this point like 22 months, they've sacked 17 inspector generals, the major corruption fighters in Federal agencies. They've illegally tried to freeze government spending that has been appropriated by the Congress of the United States. They've fired heads of four independent agencies, and they've shut down work completely, at least four agencies, paying thousands and thousands of Federal workers to do nothing because they want to try to bring the work of the Federal Government that doesn't directly profit from them to a screeching halt.

Meanwhile, Musk and his completely unvetted and untrained night crew of assistants have gained access to at least 18 Federal agencies, stolen reams of the American people's data from the agencies, and fired thousands of workers in violation of civil service due process, trampling all the checks and balances and rights to individual adjudication that Mr. Smith just referred to.

All these actions are profoundly disturbing, but it's the data grab that is rocking the American people right now. The capture of this data represents an unprecedented hack into our most sensitive information and the profound risk it is for all Americans.

Professor Vladeck, Musk and his team say that they accessed these sensitive and confidential data sets—some of them might include classified information for all we know to root out fraud. How do we actually root out fraud in the government?

Mr. VLADECK. So, historically, Congressman, as you know, the way that we root out fraud is through a series of overlapping and interlocking mechanisms. The inspector generals are the first line of defense within the agencies. The idea is that their job is to provide regular audits of what the agency is doing.

There are various statutes that allow private citizens to seek to investigate fraud and to make claims against the government when they think there is fraud; the False Claims Act at the top of that list.

Then, Congressman, there's this Committee, and there's its companion Committee in the Senate that uses oversight functions to ensure that the government is complying with its statutory obligations, its obligations, Congressman, to investigate fraud in all its spaces.

Mr. RASKIN. Well, to illegally wipe out all these inspector generals—and it was in direct and admitted violation of the Federal statute which says that the President has to come to Congress first and set forth the rationale for why they're being fired 30 days before it happens. In doing that, what will the effect be on actually trying to root out waste, corruption, fraud, and self-dealing in the agencies?

Mr. VLADECK. So, the reality is that you're going to have a split between fraud, waste, and corruption that has no coordination, that has no involvement from senior officials in the agency—which I

suspect the agencies might still have some interest in going after fraud, waste, corruption, and abuse that the senior officials in the agency are aware of because now they're the only people in a position to do anything about it.

The reason why Congress historically separated the function of the heads of agencies from the inspector general is that the inspector general would be in a position to review even the senior leadership of agencies when it came to these concerns. That's the biggest thing we lose when you fire—

Mr. RASKIN. All right. So, if they're undermining the infrastructure that's set up to actually try to target fraud and waste and abuse, why are they accessing all the data of the American people?

Mr. VLADECK. That's a question this Committee ought to ask them, Congressman. I'll just say—and I think this is an important point—we can all surely agree that rooting out fraud, waste, and abuse in the Executive Branch is actually a noble goal and it's a goal that we should all be invested in. The way to do it is to either (1) use existing mechanisms or (2) come to this body, Congress, this Committee, and suggest why the existing mechanisms need to be reformed as opposed to starting from scratch.

Mr. RASKIN. Well, Elon Musk is the wealthiest person on Earth, or at least he was before the collapse of Tesla in Europe recently, but he's a very wealthy man. Could he benefit financially from accessing all the data in the United States Department of Treasury computers?

Mr. VLADECK. I would think anyone who has contracts with the United States and with other governments would benefit from having access to that information.

Mr. RASKIN. A Federal judge in New York just ordered Musk to destroy the data they had illegally obtained from the Treasury Department. This is the judge they're all now talking about impeaching.

Who can ensure that Musk has followed the order of the court and destroyed this data?

Mr. VLADECK. It seems to me that there are two possibilities, Congressman. The courts are first, and I think Congress, and this Committee in particular, are second.

Mr. RASKIN. We're reading reports that Musk has fed Americans data, private data into AI models. He's also making a bid for another company in artificial intelligence, just going ahead and doing his business while he's purporting to do the business of the American people.

What dangers are posed by the feeding of our data into an AI system if that were to happen?

Mr. VLADECK. There are multiple levels of danger, and I know that the time has expired. I'll just say that I think the most obvious dangers are the possibility that this data will become accessible, not just to our government operations, but to our enemies overseas, and they'll use that for malicious persons.

Mr. FITZGERALD. The gentleman's time has expired.

I now recognize the gentleman from North Carolina, Mr. Harris, for five minutes.

Mr. HARRIS. Thank you, Mr. Chair, and thank all you on the panel for sharing today.

I want to speak to Ms. Wade for just a moment. In your testimony, you explain how the regulations in New York and California made it difficult for your businesses to flourish, so you moved to Austin, Texas. I just want to give you an opportunity, and appreciate you coming and sharing today. Was there a specific moment when you realized you needed to move your business to a more business-friendly State?

Ms. WADE. Thank you for the opportunity.

Yes. It started when I was in California—because first I was in California, then New York, and then Austin. It started when I was in California. When the cost of—and you see, this is when people ask, was it some special thing? It was not a special thing. It's one of those things. It's death by a thousand cuts, literally.

What people don't realize is we've got millions and millions and millions of lines of code. Each law, each regulation is a line of code. To be compliant, it's almost impossible. I know that every day I'm probably violating the three violations a day thing that people talk about. I know.

If I had some opponents, they could look easily into my four businesses or the nonprofits that I have and they will find something. Not because I was being facetious, not because I wanted to be against the law, but because the law is so darn complicated that you're bound to make mistakes, even if you have lawyers and attorneys. It happens all the time.

So, at some point going to California, I eventually went to New York. New York was no better. Actually, I would argue—yes, it was definitely no better. I had to look around and really now take it seriously, the ranking of the freest States in the country. Eventually, that's how I landed in Austin, Texas, literally.

Mr. HARRIS. Well, although you have 50 State regulatory environments to choose from, you're still subject to the Federal regulations wherever you go in the United States. Despite the improvements in your business since the move to Austin, what challenges would you share with us still persist even at the Federal level?

Ms. WADE. Again, I get that question even about Africa, what would you address? I say to people, by now things have gotten so bad, Representative, but if you want to hear the truth from me, I believe that the best thing for me; it's no longer about talking about what the Fed has done wrong. It's talking about what they could do right going forward.

Going forward, I would argue that the House is so—the foundation of the House is so rotten. The Founding Fathers really were going for competitive jurisdictions, and we've been eating away at that, eating away at that.

Now there's cumbersomeness everywhere, so much that the easiest and best thing to do for Congress would be these zones that we call them, in my case, Prospera zones, that is what I'm doing in Africa. Because in Africa we have a worst-case situation than even the U.S. The best way to do this is to basically, at the Federal level, can we find zones where we apply a general repealer. Basically, repeal all the commercial laws and have a chance to start fresh.

That's really what I'm advocating for at the Federal level in the United States today. Let us create these zones where we can actu-

ally start fresh and create areas where we have new miracles of growth that can happen. Now, let Texas compete with these zones. I think it's going to be the fastest way to clean things up because, otherwise, we're just going to be sitting here in these circles complaining all day long about this law here, that law here, which I would argue, that's nothing.

At this point we've got to be radical, we've got to be bold. Because if something is not done quickly, radically, I'm afraid, Mr. Raskin, soon you're not going to have a United States of America to speak of. The only reason why we speak of the United States of America anywhere is because of the power of the U.S., power of the U.S., because of economic power of the U.S. If U.S. keep going down this path of overregulation, this country will be poor, and poor Nations have no say.

That would be what I recommend. If we continue down this path, if we don't do anything, this country might not be spoken about in a few years.

Mr. HARRIS. I agreed. Unfortunately, our government today is a far cry from what our Founders intended. Today, unelected bureaucrats are some of the biggest spenders in Washington, and Congress has got to take back the power of the purse through commonsense regulatory reforms. The REINS Act requires Constitutional approval of any Federal agency rule with an impact of $100 million or more before they take effect.

Dr. McLaughlin, I want to ask you, in your view, would implementing the REINS Act bring Congress more in line with what the drafters of the Constitution intended?

Dr. MCLAUGHLIN. Yes, it would. Ultimately, regulations stem from Constitutional authority, and the REINS Act lines up with that line of thinking.

Mr. HARRIS. In your research and a lot of things you've spoken about the economic impact of Federal regulations, let me just ask, what effects on the economy would the REINS Act bring if it were to become law?

Dr. MCLAUGHLIN. I think it'd be subtle. Some of the threats of using the REINS Act would be more effective than actually using it. When agencies are aware that the REINS Act can be used, I think they'll act differently.

Mr. HARRIS. Thank you very much.

Mr. FITZGERALD. The gentleman's time has expired.

The gentleman from California, Mr. Correa, is—

Mr. CORREA. I want to thank you, Mr. Chair.

I especially want to thank our witnesses for being here today. I appreciate your testimony today. I only have five minutes, so I'll try to be quick.

I'll start out with Mr. Smith. I want to ask you a yes or no question, sir. The FTC started its investigation into your acquisition of VIEVU in 2018. Was that case started by the FTC under the Trump Administration?

Mr. SMITH. I'm—

Mr. CORREA. The answer would be yes.

Mr. SMITH. Embarrassingly, yes.

Mr. CORREA. Yes.

Mr. SMITH. Sorry. I was trying to do the math there.

Mr. CORREA. Thank you. It's a yes/no. Thank you.

Ms. Wade, I'm going to agree with you. Back home, my neighbors in Orange County, they don't really care about the details of regulation. All they want to know is, is our water safe to drink, our cars safe to drive, our medication safe to take, and our children safe at school. Of course, is the air they breathe, is it clean and safe.

This is a picture of Los Angeles back in the sixties and seventies. Regulations made this air in Los Angeles, Orange County, much cleaner. I was a kid then. I can tell you, trying to play out on the playground in those times was painful. Literally, you had to stop playing because your chest would hurt, all of us.

Regulations, some are good, some are really good.

Ms. WADE. May I say something to that, please?

Mr. CORREA. No, ma'am. It's my time.

Ms. WADE. OK. I wanted it to be noted—but I wanted to say something and say no.

Mr. CORREA. The Supreme Court—ma'am? Ma'am? Ma'am?

Ms. WADE. Thank you.

Mr. CORREA. You've got other people that may ask you a question.

Mr. FITZGERALD. Mr. Correa, please continue.

Mr. CORREA. Thank you.

The Supreme Court, when it comes to regulations, has made things worse. The Members of Congress are willing to go along with the President, essentially giving up more of our express authority to the President.

Are there cases of overregulation? Absolutely. Full-on deregulation is not the answer. It'll probably create more havoc, uncertainty for businesses, and imperil the health and safety of many Americans.

Mr. Vladeck, U.S. Government civil servants take an oath of loyalty to the Constitution and the United States. Does this oath of loyalty apply to all civil servants, including CIA, FBI, food inspectors, immigration frontliners, Social Security, and Medicare employees?

Mr. VLADECK. Everyone.

Mr. CORREA. These civil servants could be making much more money in the private sector, yet they work for the Federal Government because they believe in the mission of helping citizens and small business in this great country.

Please tell us what this oath of office means in the context of how civil servants should be carrying out their duty.

Mr. VLADECK. Well, Congressman, for generations it is meant, for better or for worse, that civil servants don't work for the President; they work for the government. That the mission is to do what is in the best interest of the Constitution of the United States, not the best interest of the current holder of the Chief Executive Office.

We won't always agree about how those civil servants carry out those missions. We won't always agree about what it means to be faithful to the Constitution. The mere agreement that this is the goal, the mere agreement that this is—

Mr. CORREA. The oath and loyalty to the United States.

Mr. VLADECK. We're all going to have different visions of what that is, Congressman, but at least we all agreed that this was the purpose.

Mr. CORREA. Professor Vladeck, let me cut you off. In your testimony, you said, quote, paraphrase,

> In three weeks, I've seen a more sustained assault by the President on this institution's Constitutional prerogatives than we've seen in the first 250 years of this Republic.

Please elaborate. That's a very strong statement.

Mr. VLADECK. It is, Congressman. It's not one I make lightly and it's not one I wish we were in a position to have to even be discussing today.

When I looked at how much power the President is claiming to not spend money that the Congress has appropriated, to defy statutory limits that Congress has imposed, to fire officials who Congress has insulated from removal, to take control of the bureaucracy in ways that politicize everything down to line attorneys in the Department of Justice, we might have seen flash points of that, Congressman—

Mr. CORREA. Professor Vladeck, everybody talks about inspector generals. For my folks back home, can you explain to us what an inspector general does?

Mr. VLADECK. So, the inspector general is a government officer who is meant to look inwards at the agency of which he or she is the inspector general and is meant to ensure that the agency is not engaged in fraud, waste, or abuse. They can do that on their own prerogative, they can do that at the request of employees, they can do that at the request of outsiders.

Mr. CORREA. So, if they're fired, what's the message here?

Mr. VLADECK. I think the message is that we don't want someone to look that carefully at what we're doing.

Mr. CORREA. Thank you very much, Mr. Chair. I'm out of time. If I can, I'd like to ask unanimous consent to have the following documents entered into the record.

Mr. FITZGERALD. Granted.

Mr. CORREA. The article from *The New York Times* called, "Trump's Actions Have Created a Constitutional Crisis, Scholars Say." Second, *ProPublica* article, "Do Regulators Really Kill Jobs Overall? Not So Much." The third article released from *Rutgers University*, "Federal regulations don't really affect economic growth." The fourth from the *Columbia Climate School*, "The Dangers of Deregulation."

Thank you.

Mr. FITZGERALD. Granted, without objection.

Mr. RASKIN. Mr. Chair, I have one UC request too, if that's OK.

Mr. FITZGERALD. The gentleman is recognized, yes.

Mr. RASKIN. This is an article from *The Economist* last year, October 2024, "The Envy of the World: The American Economy Has Left Other Rich Countries in the Dust." Cover story.

Thank you.

Mr. FITZGERALD. Granted, without objection.

Mr. FITZGERALD. I will now recognize the gentleman from California, Mr. Issa, for five minutes.

Mr. ISSA. Thank you.

I really appreciate the testimony of my colleague from California since it looked like it was testimony and nothing more.

The interesting thing is that that oath he talked about, every State employee in California takes a similar oath. The odd thing is the district attorneys take an oath to the California Constitution and the United States Constitution, which means that they understand that sanctuary city law is unconstitutional, that it's wrong, and that interfering with Federal employees trying to execute, in fact, would be a conflict of their oath. So, I know the gentleman means well, but people sign oaths. How many take it seriously? The answer is not nearly enough of our Federal employees.

Just yesterday we dealt with the recognition that some people at the FBI, either agents or staff, had willfully disclosed ICE's actions in a way that could cause them to be shot or killed by the MS–13 people they were attempting to round up as both criminals and illegal immigrants.

Oaths are a wonderful thing, but with all due respect to my colleague, who's left the room, let's talk about faithfully executing the Constitution.

Mr. Smith, on the subject that we're here on, are you aware that the Federal Trade Commission has nearly a 100 percent success rate in their administrative court?

Mr. SMITH. Yes, certainly.

Mr. ISSA. Are you aware that, even if an administrative judge was to not find you guilty, so to speak, that the Commission can overrule that and basically make you guilty?

Mr. SMITH. Yes. I believe they do almost all the time.

Mr. ISSA. Are you aware, under the last four years of the Federal Trade Commission, they had far less than a 50 percent chance of surviving if they went to a Federal court with a judge and a normal process of due process?

Mr. SMITH. I believe that.

Mr. ISSA. The reality is, you've got a kangaroo court at the Federal Trade Commission, and with all due respect, it doesn't really matter who's in the White House, the Federal Trade Commission has asserted its authority far beyond the intent of Congress.

Mr. SMITH. I agree.

Mr. ISSA. Now, in your case, you struck a chord with the Supreme Court. Basically, the recognition that when they start getting into Constitutional issues, they don't have that right, period, that the Article III judges do have that right, and you don't have to exhaust all the kangaroo court procedures before getting to the Article III court. Is that true?

Mr. SMITH. It is, yes.

Mr. ISSA. Let's ask the question for you and the others here. Wouldn't we be better off if, knowing that the Federal Trade Commission is not faithfully executing the intent of Congress, the statutes, and the Constitution, that you didn't have to wait and spend millions of dollars and perhaps lose an acquisition, and you were simply able to go to where you have a right, which is the Article III judges themselves if it's a Federal law?

Mr. SMITH. One hundred percent, yes.

Mr. ISSA. Here's the last question, and I'd like each of you to opine on it briefly. The REINS Act attempts to say for major regu-

lations. Is there any reason that any of you can find that Congress should not be able to at any time by a simple vote second-guess, in other words, second-guess a regulation that has been made by an agency that says it's the will of Congress but, in fact, cannot substantiate that it is?

Bearing in mind, the same numbers that it takes to pass a law are the same numbers it takes to object to a regulation. You, Mr. Smith, first.

Mr. SMITH. Seems reasonable.

Mr. ISSA. Ms. Wade?

Ms. WADE. Likewise. Seems reasonable.

Mr. ISSA. Doctor?

Dr. MCLAUGHLIN. Yes. Absolutely, the REINS Act—yes, I agree.

Mr. ISSA. Yes, sir?

Mr. VLADECK. There's a longer conversation to have, Congressman, about legislative vetoes after *INS* v. *Chadha*. One of the things that I'm struck by is I don't know—

Mr. ISSA. Wait a second. I was asking a more narrow question than a legislative veto.

If, in fact, regulations were considered by Congress de novo and they simply said, will we support that regulation—it's not a veto if you ask is that regulation consistent with Congress, and you go through the process of the House, the Senate, and the White House. Is there anything inherently wrong—

Mr. VLADECK. I'm sorry, Congressman. I misunderstood. I thought you were skipping presentment.

No. Of course, Congress can do anything to overturn a regulation through bicameralism and presentment, and I wish Congress would do it more.

Mr. ISSA. Right. Now, Doctor, I'm going to close with this very briefly. If, in fact, Congress doesn't have the will to sustain a regulation, effectively holding a vote and not getting a majority would be the equivalent of saying we don't want that law. Isn't that correct?

Dr. MCLAUGHLIN. That does sound correct, yes, sir.

Mr. ISSA. Thank you. I yield back.

Mr. FITZGERALD. The gentleman yields back.

I now recognize the gentleman from Illinois, Mr. Garcia, for five minutes.

Mr. GARCIA. Thank you, Chair Fitzgerald.

What we're experiencing right now is a five-alarm fire of the Administrative State, and not for the reasons that my colleagues across the aisle are saying. Instead, in the first few weeks he's been President, Trump and his pal Elon, an unelected bureaucrat, are bulldozing key watchdog agencies instead of protecting people from government overreach. They're destroying the mechanisms to protect them.

As it turns out, their approach is so unpopular with the American people that they've had to save face a couple times by pretending to abandon course. That happened with the government funding freeze. What people want is for corporations to be held accountable, not for their Medicaid benefits to disappear then used to fund tax cuts for the ultra-wealthy.

What my constituents want is for their civil rights and liberties to be respected, not Elon Musk's teenage fanboys prying into their personal information. What their actions prove is that DOGE isn't about efficiency of the Administrative State or for the American people. Instead, it's about allowing corporations to abuse workers with fewer rules and ripping off consumers with more impunity than they already do.

Take the National Labor Relations Board. Since the Great Depression, the NLRB has had a proud history of protecting the rights of employees to bargain collectively. In fact, the NLRB has repeatedly ruled against Tesla for violating labor laws, including retaliating against workers for union organizing and focusing employees to delete pro-union tweets.

On January 27th, the Trump Administration made the unprecedented decision to illegally fire NLRB board member Gwen Wilcox. Federal law states that the NLRB members may be removed for neglect of duty or malfeasance in office but no other case. Yet, neither was cited as the basis for Ms. Wilcox's firing.

So, my first question for Professor Vladeck. Based on your legal expertise, how does this action validate statutory protections for independent agency members, and what does it mean for American workers?

Mr. VLADECK. It's pretty clear that it violates the statute, Congressman. I think the question that's going to arise in litigation is arguments that this statute's unconstitutional, but we're not there yet. The courts haven't said as much.

What does that mean? It means that you lose the capacity even in this administration to have meaningful enforcement through the NLRB and through its processes of our Federal labor laws, which, of course, tilts the scales in one direction toward the folks who are alleged to have violated those laws.

Mr. GARCIA. Thank you.

Moving on to the CFPB. It's an independent agency created to protect consumers from predatory financial practices, including hidden fees and data privacy violations. It's won back 17.5 billion for Americans since its creation in 2008.

In just two weeks before Trump took over, the CFPB sued Capital One for cheating people out of interest payments, ordered a major auto lender to return 10 million to customers, and ordered Cash App to refund 120 million to customers. Predictably, billionaires who want to get rich off predatory practices don't love this agency. As of this weekend, Trump and his cronies shut it down.

Professor Vladeck, from a legal perspective, can you explain the importance of independent agencies like the CFPB which have a statutory mandate to protect consumers and when they're eliminated, who gets hurt?

Mr. VLADECK. So, for over a century, Congressman, Congress' position has been—and I think it's been borne out—that independent agencies and independent commissions are better situated to look out for things like the securities market, to look out for things like consumer protection, than Presidents of political parties who have donors, political allies to try to support.

Who gets hurt? I think the folks who get left in the balance are the folks who don't have access to the White House, the folks who

don't have the ability to persuade this President that it's in his interest to support them. I think that's increasingly the members of the American working class, Congressmen, Democrats, and Republicans alike.

Mr. GARCIA. Thank you, sir.

Finally, Mr. Chair, I ask unanimous consent to enter into the record an article from *Foreign Policy*, dated January 24, 2024, that reports that the economic zones, which have been referenced by one of our witnesses today and she was just celebrating, were found to have no transparency or accountability mechanisms bear an astonishingly level of autonomy which the U.N. has expressed concern for human rights. They have created private courts, private police forces, and private ties, law systems, which have no place anywhere in the world and certainly not in the U.S.

Mr. FITZGERALD. Granted, without objection.

Mr. GARCIA. Thank you, sir. The title is "U.S. Investors Could Bankrupt Honduras, With Biden Administration Support."

I yield back.

Mr. FITZGERALD. The gentleman yields back.

The gentleman from Kansas, Mr. Schmidt, is now recognized for five minutes.

Mr. SCHMIDT. Thank you, Mr. Chair.

I want to thank all the witnesses for being here and for their patience.

We heard a lot of words today. I marked these, Ms. Wade, when you said them the first time through. I think perhaps the most important words we've heard today were in your prepared testimony. You said,

> I'm here to provide a sense of urgency regarding the need for streamlined regulatory and administrative rules.

Then, you said,

> A large powerful firms can afford armies of lawyers and attorneys to stay compliant; smaller entities do their best and try not to slip up.

Mr. Chair, that is what this hearing is about, and I want to thank you for calling this today.

Look, this stuff can get mind-numbingly dull, especially when you get into the academic literature surrounding administrative law. There's a fairly new book out. It's in plain English. It's not aimed at an academic audience. I don't know if our witnesses have had a chance yet to read Justice Gorsuch's new book, "Overruled: The Human Toll of Too Much Law."

I see Mr. Vladeck has a chuckle. Apparently, he thinks Justice is insufficiently brilliant on this subject matter. I have a different point of view.

One of the things that appears in that book is a chart drawn from the Regulatory Studies Center at George Washington University. I've asked the staff to place it on the screens for us. This is a chart of the number of pages in the **Federal Register** starting in 1950. Take a look at that chart. It's a zero-based chart. It's not cutting off the top. It's about 10,000 pages of regulatory law in the United States in 1950. The year I was born, 1968, and it exploded after the Great Society to about 50,000 pages. It is today pushing 200,000 pages of binding regulatory law.

Mr. Chair, that is why the folks I represent in Kansas sound a whole lot more like Ms. Wade and Mr. Smith than they do like Professor Vladeck or some of my colleagues on this Committee. They're not worried about the academic impact and theory. They're worried about what it means for their day-to-day lives, and can they stay compliant, and can they continue to operate, and can they pursue the American Dream.

I have a couple of questions for our witnesses. Let me start with Mr. Smith. Mr. Smith, as Kansas Attorney General, I took a number of cases all the way to the U.S. Supreme Court challenging various Federal regulatory actions. I know how burdensome it can be.

I'm thinking of one when we challenged an Obama-era iteration of the Waters of the U.S. rule. We started in district court in Georgia, we ended up MDL in, it was Ohio, fighting about whether we'd started in the right court. We had to await a Supreme Court decision on the jurisdiction issue.

We went back to Georgia after that all happened. We finally got an injunction and the administration appealed, and then we were three Presidents later before the political system finally overtook the litigation.

You talked about how much money you spent fighting your one battle. Could you have used that money more effectively in some other manner?

Mr. SMITH. Oh, goodness yes. We could have put it into research and development, building new products, innovating—entering new markets with sales investments, lots of places that would have had a return for our investors.

Mr. SCHMIDT. Did the regulators pay your attorney's fees when that was all over?

Mr. SMITH. No, sir, they did not.

Mr. SCHMIDT. I see.

Dr. McLaughlin, let me ask you this. I was intrigued by my colleague's, Congressman Issa, line of questioning. I was especially intrigued when he went down the panel, and I believe all four of our witnesses agreed—Professor Vladeck enthusiastically, if I'm not mistaken; I don't want to mischaracterize it. As long as there's bicameralism and presentment, I think your words were you would like to see Congress do more of overseeing and deciding whether to keep particular regulations.

So, my question for you, Dr. McLaughlin, is this. The Congressional Review Act currently has what is functionally a fixed lookback window. Right now, it's a regulation came in around August of last year or later, we can use the CRA's mechanisms to decide whether we want to keep it or reject it as an elected body exercising the Article I power that is ultimately the basis for the regulatory action in the first place.

Is there any reason we ought to limit ourselves to this functionally six-ish month lookback? We got a bill on the floor this week that would make it a year lookback. Would that be better?

Dr. MCLAUGHLIN. There's no reason not to extend the lookback, in my opinion. Extending the CRA would allow more—we're talking about midnight regulations, effectively, that the CRA—

Mr. SCHMIDT. We don't have to be, right? Why are we worried only about midnight? It's great to be worried about midnight, but

why not 6 p.m.? Why aren't we worried about a regulation that was promulgated in 1994 if it no longer makes sense, and you have bicameralism and presentment, and this body wants to reject that regulation? Or in 1958? Or in 1973? What's the rationale?

Dr. MCLAUGHLIN. I don't think there is a rationale for not extending it farther back. I think that we're just stuck in a situation of inertia.

Mr. SCHMIDT. We've always done it this way. Would you encourage us to take a look at amending the Constitutional Review Act to give this body the authority under its procedures to reject agency regulations regardless of when they were promulgated?

Dr. MCLAUGHLIN. Well, as a scholar, I'm hesitant to endorse any specific bill, but it does seem like it would have positive economic consequences.

Mr. SCHMIDT. Just asking for the concept. Thank you very much.

Mr. Chair, thank you.

Mr. FITZGERALD. The gentleman yields back.

I now recognize the Chair of the Full Committee, Mr. Jordan, for five minutes.

Chair JORDAN. Thank you, Mr. Chair.

Ms. Wade was making this point earlier. I thought it was well stated, talking in a broad sense. To lead the world diplomatically, to lead the world militarily, you first have to lead the world economically. To lead the world economically, you need some basic things. You need readily available energy at affordable cost, and you need freedom. That's Ms. Wade's point.

You know what? We had a lot more freedom when that chart that Mr. Schmidt just put up there was a lot lower in regulations, which would help people like Ms. Wade and Mr. Smith, the entrepreneurs who make our economy go and go and go, able to do their thing.

Ms. Wade, you wanted to respond to one of the Democrats. I forget who was asking it or saying something. You wanted to respond. I'm going to give you a chance to respond, then I'm going to go to our economist and to Mr. Smith.

Hit your microphone.

Ms. WADE. Can you hear me?

Chair JORDAN. Yes, we got you now.

Ms. WADE. Thank you so much.

I want to respond to two things. Mr. Garcia is gone, but I wish he was here, and the same with Mr. Correa, I think it was.

So, I'll start with Mr. Garcia when he brought up, oh, these prospera, these zones, she wants them here. No space for them here in America. Well, guess what? It is going to happen in America.

That article that you brought up *Foreign Policy*, I just would like the same way that article is going to be included, I would like for the FAQ that I'm going to send you to be included in there as well so we can refute all those claims that are made in articles like that.

If anything, these zones were put in place by the Government of Honduras itself in this situation. Government of Honduras. If anything, we know by now that organizations like the USAID, funding NGOs have been actually undermining these type of initiatives be-

cause these are antibusiness, NGOs. So, USAID is hurting us, there you go.

Then, Mr. Correa, who is not here—I wish he was here—when he had the nerve to tell us that these regulations are here to help us. I just would like him to answer me to this situation. Around 1800—since the 1800s, it was known that lead pipes that are being used are were toxic, bad, causing probably brain damages in children. As early as 1800 it was known. Then, you tell me why until 19—it took until 1986 for it to be taken care of.

In the meantime, you had the mayor of Chicago who made it mandatory for people—builders to use lead pipes for the water pipes. Where did the government really help us here? Where? I wish Mr. Correa was here. Government is helping us? These regulations are helping us? Give me a break.

I see you looking at [inaudible] like this. I will send you my reports on this, Mr. Raskin.

So, thank you so much for giving me that opportunity to respond, because it irks me when I see us sitting in these rooms and when I hear your fights, I don't hear government working for the people. I see government working for government, whatever the heck that sounds like. OK?

I would like, for one, that it is about my my safety and about my well-being. In situations like this and as many others that—it is clear that these regulations are not put in place with us in mind. That needs to stop.

The fact that, Mr. Raskin, you're here—this whole time we've been here, you've just been complaining about the process. I'll call it the process. Again, I'm not agreeing, disagreeing with your issues right now around Musk and the process, but following Mr. Vladeck, the process that you're following, at some point what is the end game? Isn't the end game to make us, the American people, better off. Isn't it? Isn't it?

No. I hear you saying that the stuff that would make us better off doesn't matter. All you care about right now is a process of Musk and his associates are not doing this the right way. The goal—is the goal moral and right or not? If you say it is, as I think you should be saying, then the fight shouldn't be about needing to take Musk down or Trump down.

Let us rethink that if you want, but keep your eye on the ball, and your ball should be me. It should be me. I'm sorry. It should be me.

Chair JORDAN. Yes.

Ms. WADE. It should be me. How do we make me better off?

Thank you, Mr. Jordan.

Chair JORDAN. You bet. By me, you mean the American people?

Ms. WADE. That's what I mean by that.

Chair JORDAN. Dr. McLaughlin—and we appreciate that.

Dr. McLaughlin, in college I majored in wrestling, but you're supposed to get a degree in college, so I got one in economics. One of the terms I remember was this term called opportunity cost. Can you tell us really quick what the opportunity cost is?

Dr. MCLAUGHLIN. It's the things you don't do because something else requires your resources.

Chair JORDAN. It was Mr. Smith spending millions of dollars fighting some—

Dr. MCLAUGHLIN. Right. Exactly.

Chair JORDAN. —stupid bureaucrat regulation where, if he fought it there, he'd have to go—the very bureaucrats who made the rule, tell him to do things, he'd have to go to their court, and he had to go to other courts. He could have been expanding our economy and building his business.

No, he had to deal with the bureaucrats who the other side thinks are the experts and should run our government. Isn't that what opportunity cost—when you boil it all down, that's what Mr. Smith had to deal with. Is that right?

Dr. MCLAUGHLIN. Yes, sir. That's what my research finds, is when businesses get deflected from investing in R&D and expansion, that big economy does not grow, and it's because regulations are making them spend their resources on other activities.

Chair JORDAN. Which makes it tougher for our country to lead, to Ms. Wade's point. If you're making it tougher for the people who grow our economy, make us stay the economic superpower, it's tougher than to lead militarily, diplomatically, and that's what it all does. That's what the Chair—why he's having this hearing—that's what he's trying to change.

We got a bill on the floor tomorrow, midnight rules bill. It gets rid of a bunch of these stupid rules that these agencies do. We can get rid of packages of them instead of one at a time. That's a good thing.

I appreciate the Chair's work on this Committee, and I yield back.

Mr. FITZGERALD. The Chair yields back.

That concludes today's hearing. We thank our witnesses for appearing before the Committee today.

Without objection, all Members will have five legislative days to submit additional written questions for the witnesses and additional materials for the record.

Without objection, the hearing is adjourned.

[Whereupon, at 11:45 a.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust can be found at: *https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=117869*.

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