

David Goldston  
Director of Government Affairs  
Natural Resources Defense Council

Testimony before the House Committee on Energy and Commerce  
Subcommittee on Oversight and Investigations

June 3, 2011

Mr. Chairman, Ranking Member DeGette and Members of the Subcommittee,

Thank you for inviting me to appear before you today. The title of this hearing appropriately calls for a “balanced approach” to regulation. But very little balance can be found in many of the intemperate statements one hears in Washington today on this subject. And too often calls to “improve” the regulatory system are merely cover for seeking to dismantle it.

In such a contentious environment, it pays to remember why we need public safeguards to begin with. As experience has repeatedly shown, the marketplace alone cannot produce clean air or clean water, guarantee the safety of our food or medicines, or of consumer products, cannot improve worker safety, or ensure the integrity and stability of our financial system. The market is not designed to accomplish these vital public goals. They can be achieved only through public action, which is to say through safeguards enforced by the government. Such “rules of the road” not only protect the public, but they provide certainty and a fair playing field for industry. These rules are no more a violation of the notion of “free enterprise” than having a police force is a violation of the notion of a “free country.”

That’s why once rules have been in place for a time, they tend either to be taken for granted, or celebrated as “progress” that was made by society as a whole. Companies tout how much cleaner and safer their products are; everyone appreciates how much cleaner the nation’s air and water are compared to the mid-twentieth century.

But pretty much each step of that progress that is now so universally acclaimed was fraught with controversy. The same kind of fears that we hear expressed today – about job losses, about high costs, about cures that are worse than the disease – those same fears were raised about all the safeguards that we now take for granted. And there is no more reason to excessively credit such fears now than there was then. Whenever industry is asked what safeguards pose the greatest threat to their interests, they seem to answer “the next one.” But this is a perverse kind of future orientation that merely confirms that experience has not borne out past claims.

Still, looking back at what’s already on the books can do little harm and perhaps some good if it is done in a fair-minded way and does not prevent making further progress. NRDC is still examining the results of the Obama Administration’s regulatory “look-back,” but it seems, on the whole, to be a genuine effort to update regulatory approaches and to squeeze out unnecessary expenditures. Agencies were allowed to rely on their expertise and technical knowledge rather than being told to reach pre-ordained political conclusions.

This approach is a far cry from some current proposals before the Congress to upend the way the nation has long gone about developing public safeguards.

Of particular concern is the REINS Act (H.R. 10), which would block any major safeguard from moving forward unless Congress approved it within 60 legislative days. All an industry would have to do to derail a safeguard is to convince a bare majority in one House of Congress to vote against it. There is then nothing the other body could do to resurrect the safeguard. And the Administration's role – under any President – would be limited, in effect, to advising the Congress on what a detailed regulation should say.

The REINS Act is a summary rejection of the hard-earned knowledge that led to the creation of agencies and of a century of bipartisan experience. The Act radically repositions Congress, the most political branch of government, as the place to make ultimate decisions that involve detailed technical matters. Congress should, through law, be making the basic political and policy decisions about what kinds of activities need to be regulated – those that affect air and water quality, for example – and on the criteria for regulating them. And Congress already has the authority and processes to review agency decisions. But the REINS Act goes far beyond that to make Congress the arbiter of each and every regulatory call in an effort to shut down the system.

Instead of tearing down a system that has repeatedly provided proven benefits to the public – cleaner air and water, better health, safer food – we ought to be talking about how to strengthen it. We ought to be sure that agencies have the staff and resources they need to continue to protect the public as well in the future as they have in the past. That has been a path not only to better health and safety, but to greater prosperity.

Thank you.