118TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 118–862
Part 1

MIDNIGHT RULES RELIEF ACT

DECEMBER 11, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JORDAN, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 115]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 115) to amend chapter 8 of title 5, United States Code, to provide for en bloc consideration in resolutions of disapproval for "midnight rules", and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

59–006

The amendment is as follows:

Strike all that follows after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Midnight Rules Relief Act".

SEC. 2. EN BLOC CONSIDERATION OF RESOLUTIONS OF DISAPPROVAL PERTAINING TO "MIDNIGHT RULES".

(a) IN GENERAL.—Section 801(d) of title 5, United States Code, is amended by adding at the end the following:

"(4) In applying section 802 to rules described under paragraph (1), a joint resolution of disapproval may contain one or more such rules if the report under subsection (a)(1)(A) for each such rule was submitted during the final year of a President's term.".

(b) TEXT OF RESOLVING CLAUSE.—Section 802(a) of title 5, United States Code, is amended—

(1) by inserting after "resolving clause of which is" the following: "(except as otherwise provided in this subsection)"; and

(2) by adding at the end the following: "In the case of a joint resolution under section 801(d)(4), the matter after the resolving clause of such resolution shall be as follows: 'That Congress disapproves the following rules: the rule submitted by the ____ relating to ____; and the rule submitted by the ____ relating to ____. Such rules shall have no force or effect.' (The blank spaces being appropriately filled in and additional clauses describing additional rules to be included as necessary).".

Purpose and Summary

H.R. 115, the Midnight Rules Relief Act, introduced by Rep. Andy Biggs (R–AZ) amends the Congressional Review Act to allow Congress to consider a joint resolution disapproving of more than one regulation issued during the final year of a President's term in office.

Background and Need for the Legislation

The Constitution separates the powers of the federal government by vesting the legislative power in Congress, the executive power in the President, and the judicial power in the courts.[1] The Framers established this structural separation to provide "security against a gradual concentration of the several powers in the same department" by "giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others."[2] In other words—those of James Madison—this separation of powers works such that "[a]mbition [is] made to counteract ambition."[3]

In addition, federal legislation requires the approval of the House of Representatives, the Senate, and the President.[4] These elected officials are accountable to the American people, who may petition their representatives to support or oppose legislation, and vote them out of office if they pass unpopular or unwise laws.[5] Under the Constitution, "[n]o law or resolution can . . . be passed without the concurrence, first, of a majority of the people, and then, of a

[1] U.S. CONST. art. I § 1, art. II § 1, art. III § 1; see Saikrishna B. Prakash, *A Note on the Separation of Powers*, THE HERITAGE GUIDE TO THE CONSTITUTION (2d ed. 2014).
[2] THE FEDERALIST NO. 51 (James Madison).
[3] *Id.*
[4] U.S. CONST. art. I § 7.
[5] *See* U.S. CONST. art. I § 2, art. II § 1, amends. 1& 17.

majority of the States."[6] The Framers intended this process to provide an "[i]mpediment . . . against improper acts of legislation."[7]

Contrary to this constitutional structure, the administrative state has consolidated the powers of the federal government in itself. Federal agencies exercise legislative power by issuing rules with the force of law, executive power by enforcing those rules, and judicial power by adjudicating disputes under them.[8] As one witness testified before the Judiciary Committee's Subcommittee on the Administrative State, Regulatory Reform, and Antitrust, in "the modern administrative state . . . the executive branch regularly runs the risk of encroaching on the authority of the legislative branch."[9] Another hearing witness framed the matter more starkly:

> If your knowledge of separation of powers is based on reading the Constitution or watching Schoolhouse Rock classics like "I'm Just a Bill" and "Three-Ring Government," you could be forgiven for believing that Congress makes laws and the President executes those laws by enforcement and education. . . . [T]he present reality is entirely different. . . . [F]ederal agencies regularly make new laws to fill gaps left by the legislature, intentionally or unintentionally. And at times, regulatory agencies even act to make new laws despite a lack of any Congressional authority.[10]

Congress enacted the Congressional Review Act (CRA) in 1996 to help "reclaim[ ] for Congress some of its policymaking authority" and "give[ ] the public the opportunity to call the attention of politically accountable, elected officials to concerns about new agency rules."[11] The CRA requires agencies to submit rules to Congress and the Government Accountability Office (GAO) before they can take effect, and provides an expedited process for Congress to disapprove a rule by passing a joint resolution.[12] In effect, the CRA gives Congress a legislative veto mechanism over agency rulemaking that satisfies the Constitution's bicameralism and presentment requirements.[13] As then-President Bill Clinton explained in signing the CRA, "th[e] legislation increases congressional accountability for regulations" and "provid[es] expedited procedures for the Congress to review those regulations."[14]

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[6] THE FEDERALIST NO. 62 (Alexander Hamilton or James Madison).

[7] *Id.*

[8] Michael Uhlmann, *A Note on Administrative Agencies*, THE HERITAGE GUIDE TO THE CONSTITUTION (2d ed. 2014).

[9] *Reining in the Administrative State: Reclaiming Congress's Legislative Power: Hearing Before the Subcomm. on the Administrative State, Regulatory Reform, and Antitrust of the H. Comm. on the Judiciary,* 118th Cong. 1 (2023) (statement of Allyson N. Ho, Partner, Gibson, Dunn & Crutcher LLP).

[10] *Reining in the Administrative State: Reclaiming Congress's Legislative Power: Hearing Before the Subcomm. on the Administrative State, Regulatory Reform, and Antitrust of the H. Comm. on the Judiciary,* 118th Cong. 2 (2023) (statement of Jonathan A. Wolfson, Chief Legal Officer and Policy Director, Cicero Institute).

[11] 142 Cong. Rec. S3683–01, 683–84 (daily ed. Apr. 18, 1996) (statement of Sens. Nickles, Reid, and Stevens); *see* 5 U.S.C. §§801–808.

[12] *See* Maeve P. Carey & Christopher M. Davis, Congressional Research Service, *The Congressional Review Act (CRA): Frequently Asked Questions* 1 (Nov. 12, 2021); Christopher M. Davis, Congressional Research Service, *The 118th Congress and the Congressional Review Act "Lookback" Mechanism* 1 (Dec. 1, 2022).

[13] *See* Carey & Davis, *supra* note 12, at 23 n.128.

[14] Statement on Signing the Contract With America Advancement Act of 1996, 1 Pub. Papers 525 (Mar. 29, 1996).

Congress's power to disapprove agency rules under the CRA provides a check on federal administrative power. Currently, however, the CRA requires Congress to introduce separate joint resolutions for each agency rule it seeks to disapprove.[15] By forcing Congress to consider agency rules one at a time, the CRA slows Congress's ability to oversee agency action. This inefficiency is especially pronounced in the final year of a President's term. In so-called "midnight rulemaking," executive agencies historically have issued substantially more regulations in the President's final year of his term.[16] During the Clinton, Bush, and Obama administrations, agencies issued about 2.5 times more regulations during the last year of each President's term.[17]

The Midnight Rules Relief Act addresses this inefficiency. The bill would allow Congress to consider multiple agency rules at once if the rules were issued in the final year of the President's term.[18] The bill does not change Congress's review of rules in the first three years of the President's term and in no way alters the substantive requirements for Congress to disapprove agency rules. Rather, the bill allows Congress to more efficiently review rules issued during the "midnight hours" of the President's term by reviewing more than one rule at a time.[19] This change would allow Congress to properly oversee agency rulemaking in the period when a disproportionate amount of rulemaking occurs.

Hearings

For the purposes of clause 3(c)(6)(A) of House rule XIII, the following hearing was used to develop H.R. 115: "Reining in the Administrative State: Reclaiming Congress's Legislative Power," a hearing held on March 10, 2023, before the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust. The Committee heard testimony from the following witnesses:

- Allyson N. Ho, Partner and Co-Chair of Appellate and Constitutional Law, Gibson, Dunn & Crutcher LLP;
- Jonathan Wolfson, Chief Legal Officer and Policy Director, Cicero Institute;
- Ryan Cleckner, Co-Founder, Gun University LLC and Owner, Law office of Ryan M. Cleckner; and
- Emily Hammond, Professor, George Washington University Law School.

The hearing addressed the growth of the administrative state and how it has aggrandized legislative power.

Committee Consideration

On September 19, 2024, the Committee met in open session and ordered the bill, H.R. 115, favorably reported with an amendment in the nature of a substitute, by a vote of 14–10, a quorum being present.

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[15] *Id.*

[16] *See Federal Rulemaking: Trends at the End of President's Terms Remained Generally Consistent Across Administrations,* GOV'T ACCOUNTABILITY OFFICE (Jan. 31, 2023).

[17] *See Id.* at 14.

[18] Midnight Rules Relief Act, H.R. 115 (2023).

[19] *See* Robert Farley, *Cherry-Picking on Regulation,* FACTCHECK.ORG (Sep. 22, 2011) *citing* Susan E. Dudley, *Administrative Law & Regulation: Regulatory Activity in the Bush Administration at the Stroke of Midnight,* FEDERALIST SOCIETY (2009).

Committee Votes

In compliance with clause 3(b) of House rule XIII, the Committee states that the following roll call votes were taken during consideration of H.R. 115:

1. Vote on favorably reporting H.R. 115, as amended—passed 14–10.

COMMITTEE ON THE JUDICIARY

Date: 9/19/24

118th CONGRESS

25-19

ROLL CALL

Vote on: Final passage of HR 115, as amended

Roll Call #: 2

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*	✓			MR. NADLER (NY) *Ranking Member*		✓	
MR. ISSA (CA)	✓			MS. LOFGREN (CA)		✓	
MR. GAETZ (FL)	✓			MR. COHEN (TN)			
MR. BIGGS (AZ)	✓			MR. JOHNSON (GA)			
MR. McCLINTOCK (CA)	✓			MR. SCHIFF (CA)			
MR. TIFFANY (WI)	✓			MR. SWALWELL (CA)		✓	
MR. MASSIE (KY)				MR. LIEU (CA)			
MR. ROY (TX)				MS. JAYAPAL (WA)		✓	
MR. BISHOP (NC)	✓			MR. CORREA (CA)			
MS. SPARTZ (IN)				MS. SCANLON (PA)		✓	
MR. FITZGERALD (WI)	✓			MR. NEGUSE (CO)			
MR. BENTZ (OR)	✓			MS. McBATH (GA)			
MR. CLINE (VA)	✓			MS. DEAN (PA)		✓	
MR. ARMSTRONG (ND)				MS. ESCOBAR (TX)			
MR. GOODEN (TX)				MS. ROSS (NC)		✓	
MR. VAN DREW (NJ)	✓			MS. BUSH (MO)			
MR. NEHLS (TX)				MR. IVEY (MD)		✓	
MR. MOORE (AL)	✓			MS. BALINT (VT)		✓	
MR. KILEY (CA)				MR. GARCIA (IL)		✓	
MS. HAGEMAN (WY)							
MR. MORAN (TX)							
MS. LEE (FL)							
MR. HUNT (TX)	✓						
MR. FRY (SC)							
MR. RULLI (OH)	✓						

Roll Call Totals: Ayes: 19 Nays: 10 Present:

Passed: ✓ Failed:

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974* and with respect to the requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. The Chairman of the Committee shall cause such estimate and statement to be printed in the *Congressional Record* upon its receipt by the Committee.

Congressional Budget Office Cost Estimate

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974* was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

Committee Estimate of Budgetary Effects

With respect to the requirements of clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974*.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 115 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H.R. 115 would amend the Congressional Review Act to allow Congress to consider a joint resolution disapproving of more than one regulation issued during the final year of a President's term in office.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, H.R. 115 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House rule XXI.

Federal Mandates Statement

An estimate of federal mandates prepared by the Director of the Congressional Budget office pursuant to section 423 of the *Unfunded Mandates Reform Act* was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

Advisory Committee Statement

No advisory committees within the meaning of section 5(b) of the *Federal Advisory Committee Act* were created by this legislation.

Applicability to Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the *Congressional Accountability Act* (Pub. L. 104–1).

Correspondence

Committee on Rules
U.S. House of Representatives
H-312 The Capitol
Washington, DC 20515-6269

December 9, 2024

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Jordan:

I am writing to express my agreement that the Committee on Rules may be discharged from further consideration of H.R. 115, the *Midnight Rules Relief Act of 2023*, so that your committee is able to file its committee report reflecting your committee's work on that legislation during the 118th Congress.

This agreement is made with the understanding that it does not in any way diminish or alter the jurisdiction of the Committee on Rules or prejudice our jurisdictional prerogatives on that bill, which was not considered by the Committee on Rules, or similar, future legislation.

Sincerely,

Michael C. Burgess, M.D.
Chairman

CC: The Honorable James P. McGovern, Ranking Member, Committee on Rules
The Honorable Jerrold Nadler, Ranking Member, Committee on the Judiciary
The Honorable Mike Johnson, Speaker of the House
The Honorable Jason Smith, Parliamentarian

JIM JORDAN, Ohio
CHAIRMAN

JERROLD NADLER, New York
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216
(202) 225-6906
judiciary.house.gov

December 10, 2024

The Honorable Michael Burgess
Chairman
Committee on Rules
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Burgess:

Thank you for consulting with the Committee on the Judiciary and agreeing to be discharged from further consideration of H.R. 115, the Midnight Rules Relief Act of 2023.

I agree that your forgoing further action on this measure does not in any way diminish or alter the jurisdiction of your committee, or prejudice its jurisdictional prerogatives on this measure or similar legislation in the future. I would support your effort to seek appointment of an appropriate number of conferees from your committee to any House-Senate conference on this legislation.

I will include the exchange of these letters in the Judiciary Committee's report to accompany this legislation. I appreciate your cooperation regarding this legislation and look forward to continuing to work together on matters of shared jurisdiction during this Congress. Thank you for your attention to this matter.

Sincerely,

Jim Jordan
Chairman

cc: The Honorable Jerrold Nadler, Ranking Member, Committee on the Judiciary
The Honorable Jim McGovern, Ranking Member, Committee on Rules
The Honorable Jason Smith, Parliamentarian

Section-by-Section Analysis

Section 1. Short title

The "Midnight Rules Relief Act."

Section 2. En Bloc consideration of resolutions of disapproval pertaining to "Midnight Rules"

This section amends 5 U.S.C. § 801(d) to allow a joint resolution of disapproval against one or more rules if the report for each such rule under subsection (a)(1)(A) was submitted during the President's final year in office.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * * * *

PART I—THE AGENCIES GENERALLY

* * * * * * *

CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

* * * * * * *

§ 801. Congressional review

(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

(i) a copy of the rule;

(ii) a concise general statement relating to the rule, including whether it is a major rule; and

(iii) the proposed effective date of the rule.

(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress—

(i) a complete copy of the cost-benefit analysis of the rule, if any;

(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction

under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

(D) For any rule submitted under subparagraph (A), if the Federal agency promulgating the rule, in whole or in part, revokes, suspends, replaces, amends, or otherwise makes the rule ineffective, or the rule is made ineffective for any other reason, the Federal agency shall submit to the Comptroller General a report containing—

(i) the title of the rule;

(ii) the Federal Register citation for the rule, if any;

(iii) the date on which rule was submitted to the Comptroller General; and

(iv) a description of the provisions of the rule that are being revoked, suspended, replaced, amended, or otherwise made ineffective.

(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B), and shall in addition include an assessment of the agency's compliance with such requirements of the Administrative Pay-As-You-Go Act of 2023 as may be applicable.

(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of—

(A) the later of the date occurring 60 days after the date on which—

(i) the Congress receives the report submitted under paragraph (1); or

(ii) the rule is published in the Federal Register, if so published;

(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

(i) on which either House of Congress votes and fails to override the veto of the President; or

(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

(b)(1) A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.

(2) A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of subsection (a)(3) may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

(2) Paragraph (1) applies to a determination made by the President by Executive order that the rule should take effect because such rule is—

(A) necessary because of an imminent threat to health or safety or other emergency;

(B) necessary for the enforcement of criminal laws;

(C) necessary for national security; or

(D) issued pursuant to any statute implementing an international trade agreement.

(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 or the effect of a joint resolution of disapproval under this section.

(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with subsection (a)(1)(A) during the period beginning on the date occurring—

(A) in the case of the Senate, 60 session days, or

(B) in the case of the House of Representatives, 60 legislative days,

before the date the Congress adjourns a session of Congress through the date on which the same or succeeding Congress first convenes its next session, section 802 shall apply to such rule in the succeeding session of Congress.

(2)(A) In applying section 802 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

(i) such rule were published in the Federal Register (as a rule that shall take effect) on—

(I) in the case of the Senate, the 15th session day, or

(II) in the case of the House of Representatives, the 15th legislative day,

after the succeeding session of Congress first convenes; and

(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a rule can take effect.

(3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).

(4) In applying section 802 to rules described under paragraph (1), a joint resolution of disapproval may contain one or more such

rules if the report under subsection (a)(1)(A) for each such rule was submitted during the final year of a President's term.

(e)(1) For purposes of this subsection, section 802 shall also apply to any major rule promulgated between March 1, 1996, and the date of the enactment of this chapter.

(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

(A) such rule were published in the Federal Register on the date of enactment of this chapter; and

(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.

(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

(g) If the Congress does not enact a joint resolution of disapproval under section 802 respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

§ 802. Congressional disapproval procedure

(a) For purposes of this section, the term "joint resolution" means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is *(except as otherwise provided in this subsection)* as follows: "That Congress disapproves the rule submitted by the ____ relating to ____, and such rule shall have no force or effect." (The blank spaces being appropriately filled in). *In the case of a joint resolution under section 801(d)(4), the matter after the resolving clause of such resolution shall be as follows: "That Congress disapproves the following rules: the rule submitted by the ____ relating to ____; and the rule submitted by the ____ relating to ____. Such rules shall have no force or effect." (The blank spaces being appropriately filled in and additional clauses describing additional rules to be included as necessary).*

(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

(2) For purposes of this section, the term "submission or publication date" means the later of the date on which—

(A) the Congress receives the report submitted under section 801(a)(1); or

(B) the rule is published in the Federal Register, if so published.

(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) has not reported such joint resolution (or an identical joint resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further

consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

(d)(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

(e) In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a rule—

(1) after the expiration of the 60 session days beginning with the applicable submission or publication date, or

(2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.

(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

(1) The joint resolution of the other House shall not be referred to a committee.

(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(B) the vote on final passage shall be on the joint resolution of the other House.

(g) This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

* * * * * * *

DISSENTING VIEWS

I. INTRODUCTION

H.R. 115, the "Midnight Rules Relief Act" would enable a Republican-controlled 119th Congress to use an expanded Congressional Review Act ("CRA") to nullify every rule issued by public agencies under the Biden Administration since (approximately) August 2, 2024, with a *single vote.* This bill would therefore allow the reversal of numerous life and cost saving rules at once. Further, public agencies would be prevented from ever promulgating "substantially similar" rules again. This Congressional repeal of rules is unreviewable, has blunt effect and is vaguely defined—thus tying agencies' hands forever after. Under the CRA's special procedures, a vote under H.R. 115 would also be exempt from filibuster in the Senate.

This bill is yet another effort by Republicans to prevent public agencies and tireless civil servants from protecting Americans from scammers, polluters, monopolies, and corporate profiteers, at the cost of our health, safety, and environment. H.R. 115 is intended to hamstring the government's fundamental ability to protect people. This bill has the dubious distinction of being specifically advocated for in Project 2025, the blueprint for the incoming Trump Administration.[1] Recall that for Project 2025, it is not enough to thoughtfully pare back the administrative state. It seeks to use a machete. This is consistent with Project 2025's admonition that "dismantling" the administrative state "must [be] a top priority for the next conservative President."[2]

H.R. 115 embodies the same unbridled animosity to the necessary and expert work of our public agencies. Members of Congress of both parties have expressed concern in the past about "midnight rulemaking," the act of an outgoing presidential administration issuing a flurry of rules that will bind its successor. However, the problem is relatively narrow. It tends to occur in the closing days of an administration (i.e., during the presidential transition) and there are already ample means to address such rules.

[1] *See* Heritage Foundation, Project 2025 Presidential Transitional Project, Mandate for Leadership: The Conservative Promise (2023) at 50.

[2] *Id.* at 7.

This bill will be used not solely against midnight rules, but also against the broad range of strong rules public agencies crafted to protect consumers, workers, and the public from corporations and the people who break the law.

An identical version of this legislation, introduced as H.R. 21 by Rep. Darrell Issa (R–CA), passed the House in January 2017, on a nearly party-line vote.[3] The bill bypassed Committee consideration that year, but the previous year, the Committee marked up an identical bill. In the dissenting views included in the Committee Report on the bill, Democrats argued that the bill would jeopardize public health and safety and allow special interests to threaten critical regulations.[4] Democrats also argued that the en bloc rejection of midnight rules amounted to a radical solution to a problem that had failed to materialize.[5] Those criticisms remain salient today.

II. CONCERNS

H.R. 115 expands the Congressional Review Act to allow for multiple rules to be rolled back with a single vote. The Midnight Rules Relief Act enables a narrow majority of one party to undo years of agency work and to bar these agencies from ever passing a "substantially similar" rule in the future, thus undermining the statutory mission Congress entrusted them with. The bill exacerbates key issues with the Congressional Review Act, including its broad effect and vague time scope.

A. BACKGROUND ON THE CONGRESSIONAL REVIEW ACT

Congress has numerous means at its disposal to effectively check agency behavior. These include placing limits on its delegations of authority, the appropriations process, and oversight activity. Congress also can roll back agency rules under the Congressional Review Act ("CRA"). The CRA was enacted in 1996 as part of then-Speaker Newt Gingrich's Contract with America.[6]

The CRA requires an agency promulgating a rule[7] to submit a report to both Houses of Congress and to the Government Accountability Office ("GAO") containing: (1) a copy of the rule; (2) a concise general statement describing the rule, including whether it is a major rule (i.e., one that will likely have an annual effect on the economy of $100 million or more, increases costs or prices for consumers, industries or State and local governments, or have significant adverse effects on the economy);[8] and (3) the proposed effective date of the rule.[9]

If the rule is a major rule, the agency must also submit to GAO and each House of Congress: (1) a complete copy of any cost-benefit

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[3] 115th Cong., 1st Sess., Roll Call Vote No. 8 (Jan. 4, 2017).

[4] H. Rept. 114–782, H.R. 5982, Midnight Rules Relief Act of 2016 (Sept. 21, 2016) at 25–26.

[5] *Id.* at 27.

[6] Ben Geman, *Top Republican Eyes Congressional Review Act Challenge to EPA Rules*, THE HILL (Jan. 2, 2011), http://thehill.com/blogs/e2-wire/677-e2-wire/135595-upton-eyes-congressional-review-act-challenge-to-epa.

[7] As used in the CRA, the term "rule" means "the whole or part of an agency statement of general . . . applicability and future effect designed to implement, interpret, or prescribe law or policy." 5 U.S.C. § 551 (2006). *See also* 5 U.S.C. § 804(3) (2008) (defining "rule" by reference to § 551, with certain exceptions).

[8] 5 U.S.C. § 804(2) (2018).

[9] Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104–121, subtitle E, 110 Stat. 857–74 (codified as 5 U.S.C. §§ 801–808).

analysis; (2) a description of the agency's actions pursuant to the requirements of the Regulatory Flexibility Act[10] and the Unfunded Mandates Reform Act of 1995;[11] and (3) any other relevant information required under any other act or executive order.[12]

The CRA authorizes Congress to disapprove an agency rule to which it objects by enacting a joint resolution of disapproval.[13] Such a joint resolution must be introduced within at least 60 days of the rule's submission to Congress.[14] For a joint resolution of disapproval to take effect, it must pass both Houses of Congress and be signed by the President.[15] A joint resolution of disapproval can only refer to a single rule and must follow the precise wording prescribed by the CRA, stating after its resolving clause:

> 'That Congress disapproves of the rule submitted by the ____ relating to ____, and such rule shall have no force or effect.' (The blank spaces being appropriately filled in)."[16]

If such a joint resolution is enacted into law, the disapproved rule is deemed not to have been in effect at any time.[17] Additionally, the CRA prohibits an agency from reissuing a rule "in substantially the same form" or issuing "a new rule that is substantially the same" as a disapproved rule.[18] The CRA prescribes special expedited procedures for Senate consideration of a joint resolution of disapproval, though it does not provide for similar procedures in the House of Representatives.[19] Most importantly, when the Senate acts on a CRA resolution within 60 session days of the agency submitting the rule to Congress, the resolution is not subject to a filibuster.[20]

Barring congressional action, a major rule goes into effect on the latest of three possible dates: (1) 60 calendar days after it has been submitted to Congress or has been published in the Federal Register; (2) 30 session days after a presidential veto of a joint resolution of disapproval or earlier if either House of Congress votes and fails to override such veto; or (3) the date on which the rule would otherwise have gone into effect absent the CRA review requirement.[21] A nonmajor rule goes into effect as otherwise provided for by law.[22] In either case, Congress still has 60 legislative or session days to disapprove the rule.

The CRA's reporting requirements allow Congress to be kept regularly informed of rulemaking activity from all administrative agencies.

B. H.R. 115, THE "MIDNIGHT RULES RELIEF ACT"

H.R. 115 unnecessarily expands the CRA and is designed to address a problem that does not exist.

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[10] Regulatory Flexibility Act of 1980, Pub. L. No. 96–353.
[11] Unfunded Mandates Reform Act of 1995, Pub. L. No. 104–4.
[12] 5 U.S.C. § 801(a)(1)(B) (2018).
[13] *See* 5 U.S.C. § 802 (2015) (outlining congressional disapproval procedure).
[14] 5 U.S.C. § 802(a) (2015).
[15] U.S. CONST. art. I, § 7, cl. 2–3.
[16] 5 U.S.C. § 802(a) (2018).
[17] 5 U.S.C. § 801(f) (2015).
[18] 5 U.S.C. § 801(b)(2) (2015).
[19] 5 U.S.C. § 802(c) (2015).
[20] Maeve P. Carey and Christopher M. Davis, Cong. Research Serv., IF10023, The Congressional Review Act (CRA): A Brief Overview 2 (2023).
[21] 5 U.S.C. § 801(a)(3) (2015).
[22] 5 U.S.C. § 801(a)(4) (2015).

1. The CRA Already Has a Lookback Period to Address Rules Promulgated at the End of any Congressional Term

The CRA already gives Congress additional time to disapprove rules submitted near the end of a congressional session. Effectively, this also works for the end of any Presidential term. For any rule submitted to Congress and the GAO during the period beginning 60 legislative days (or, in the Senate, 60 session days) before Congress adjourns a session, the Act treats the rule as though it were submitted on the 15th legislative (or session) day of the *following* congressional session.[23]

From there, Congress has an additional 60 legislative (or session) days to introduce a resolution of disapproval and take advantage of the Act's expedited Senate procedures.[24] This end-of-session period under which the CRA extends the deadline for resolutions of disapproval is referred to as the "look-back period."[25] In practice, the look-back period has tended to begin running between mid-July and early August, meaning that rules published after those dates are subject to disapproval under the extended CRA deadlines.[26]

2. H.R. 115 is Designed to Address a Problem That Does Not Exist

Congress intended the extended deadline for end-of-session rules to address the perceived problem of "midnight rulemaking," the practice of an outgoing presidential administration issuing a flurry of new rules before leaving office.[27] Both parties have raised concerns about midnight rulemaking in the past.[28] The practice can be problematic because, if abused, midnight rulemaking enables an outgoing president to bind his or her successor.[29] A new administration seeking to rescind or modify rules adopted under the notice-and-comment provisions of the Administrative Procedure Act would need to undertake a new round of notice-and-comment, a process that could take months or years to complete.[30] On the other hand, a nonpartisan study of the practice found that the uptick of rulemaking near the end of a presidential administration results more often from "deadlines outside the agency's control" rather than a desire to regulate without political accountability.[31]

Moreover, Congress has had no trouble considering a flurry of CRA resolutions without the en bloc authority contained in H.R. 115. For example, in 2017, the Republican-controlled 115th Congress, with the support of the newly inaugurated Trump administration, used the CRA to disapprove as many of the Obama administration's rules as possible. In total, Congress passed 16 resolutions of disapproval at the start of the Trump administration, nullifying Obama-era regulations on everything from how employers

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[23] 5 U.S.C. § 801(d)(1)–(d)(2)(A) (2018).
[24] 5 U.S.C. § 802(e)(2) (2018).
[25] Jesse M. Cross, Technical Reform of the Congressional Review Act (Nov. 30, 2021) (report to the Admin. Conf. of the U.S.) at 30.
[26] *Id.* at 35.
[27] *See* Maeve P. Carey, Cong. Research Serv., R42612, Midnight Rulemaking: Background and Options for Congress 11–12 (2016).
[28] *Id.* at 1–2; H. Comm. On the Judiciary Majority Staff, Final Report to Chairman John Conyers Jr.: Reining in the Imperial Presidency—Lessons and commendations Relating to the Presidency of George W. Bush, at 181 (March 2009).
[29] Carey, *supra* note 160, at 1.
[30] *See* Jack M. Beerman, Midnight Rules: A Reform Agenda (May 14, 2012) (report to the Admin Conf. of the U.S.) at 69.
[31] Admin. Conf. of the U.S., Recommendation 2012–2, Midnight Rules, (adopted June 14, 2012) at 1–2.

maintain records of workplace injuries to the protection of stream water from coal mining pollution and financial disclosures mandated by the SEC.

III. CONCLUSION

The Midnight Rules Relief Act is a highly irresponsible and dangerous proposal that would open numerous life-saving rules up to significant political interference and would undo rules that took years of agency time and public input, without much more than a cursory review by Congress, in addition to preventing these agencies from ever promulgating a "substantially similar" rule ever again. No matter who is in office, this bill would allow Congress to nullify rules and key agency oversight in an unchecked and unreviewable manner.

Project 2025, the blueprint for the incoming Trump Administration, states that "the only real solution is for the national government to do less."[32] And to be clear, the "less" that they want to do refers to the important work undertaken by the country's administrative agencies. Duly enacted regulations at risk of summary execution include those by the Consumer Financial Protection Bureau, Environmental Protection Agency, the Federal Trade Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Securities and Exchange Commission, the Small Business Administration, the Department of Transportation, and the Treasury.

This legislation would supercharge Republicans' ability to pursue their anti-government agenda of dismantling the regulatory process, enabling them to roll back months' and years' worth of agency time and deliberation under cover of darkness in a single party-line vote.

For all these reasons, I dissent, and I urge my colleagues to oppose the bill.

JERROLD NADLER,
Ranking Member.

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[32] *See* the Heritage Foundation, Project 2025 Presidential Transitional Project, Mandate for Leadership: The Conservative Promise (2023) at 83.