Representative Geoff Davis (R-KY) has once again sponsored a bill that would require Congressional approval of any regulatory rule that imposes compliance costs in excess of $100 million annually. The Regulations from the Executive in Need of Scrutiny (REINS) Act (H.R. 10) would require agencies to seek Congressional approval of such regulation. If Congress fails to approve the rule within 70 days of promulgation, the rule is void. David Goldston, at NRDC, has a thorough analysis that is worth reading.

This bill threatens environmental and public health regulation and poses a potentially unconstitutional attack on executive power.

The REINS Act characterizes agency regulations as either “major rules” or “nonmajor rules.” A major rule is one that the Office of Management and Budget (OMB) finds is likely to result in “an annual effect on the economy of $100 million or more”, OR “a major increase in costs or prices for consumers, individual industries…”, OR “significant adverse effects on competition, employment….” A nonmajor rule is everything else.

Any agency rule would require the agency to submit to Congress a description of the rule, along with analysis of related regulatory actions and a copy of the cost-benefit analysis, if any. To go into effect, major rules would require Congressional approval (by joint resolution) within 70 days. Minor rules could be disapproved by Congress (again, by joint resolution) within 60 days, but would otherwise go into effect without explicit approval. There is a bunch of additional rules limiting debate and otherwise circumventing normal legislative procedure: check out the bill text for more.

HR 10 has gained 115 co-sponsors to date, all Republicans. OMB Watch notes that the number—H.R. 10—signals that the bill is a top legislative priority for House leadership. The spin by supporters is that the bill would increase accountability of regulators and decrease regulatory burdens.

More likely, this bill would, as David Goldston put it, “impose a slow-motion government shutdown.” Imagine, first, Congress attempting to evaluate—within 70 days—nuanced scientific reports and economic analysis concerning a piece of regulation that has been in development for years. Second, consider how many pieces of regulation—both “major” and “nonmajor”—are passed by federal agencies in the course of one year. And the scope of this oversight is enormous: regulations

protecting miners from hazardous conditions, regulations for Wall Street, and practically every agency action requiring an environmental assessment.

Moreover, I think there is a strong case to be made that HR 10 is an unconstitutional attack on executive power. Note that HR 10 does not say anything about Presidential veto, because Congress would not be passing any laws. Thus, this veto may violate bicameral passage and presentment. Here is what Chief Justice Burger, speaking for the majority in *INS v. Chadha*, had to say about the one-House veto:

> Disagreement with the Attorney General's decision on Chadha's deportation—that is, Congress' decision to deport Chadha—no less than Congress' original choice to delegate to the Attorney General the authority to make that decision, involves determinations of policy that Congress can implement in only one way; bicameral passage followed by presentment to the President.
>
> INS v. Chadha, 462 U.S. at 954–55.

HR 10 also unconstitutionally makes Congress the executor of laws in a different sense: it makes Congress the final step to regulatory enactment for "major" regulation. This goes further than *INS v. Chadha* because Congress not only can *veto* agency regulations already in effect, it can stop agency regulation from ever taking effect. In fact, since Congressional approval would be the last required step before an agency rule is promulgated, it can be fairly argued that *Congress*, not the *agency*, is choosing to promulgate the rule. Congress, of course, cannot execute law.

> To permit an officer controlled by Congress to execute the laws would be, in essence, to permit a congressional veto. . . . This kind of congressional control over the execution of the laws, *Chadha* makes clear, is constitutionally impermissible.
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> *Bowsher v. Synar*, 478 U.S. at 726–27.

Many will argue that executive power has become unnaturally enhanced due to the regulatory power of agencies under its putative control. If this is in fact a problem,

the solution is not to create an unconstitutional Congressional veto, however, but rather to craft actual laws that limit the scope of agency power. The 115 co-sponsors of HR 10 recently read the Constitution aloud; perhaps now they should seek to understand it.

> The accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny.
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> James Madison, *Federalist No. 47*