

Conservatives are now spreading the myth that, if the country fails to elect Mitt Romney, the aftermath will be a deluge of federal regulations. Republican state attorney generals are hitting the campaign trail to this fear of a coming regulatory flood in a post-Romney world. ([here](#)).

This myth has been debunked by Cass Sunstein, who just stepped down as regulatory czar. Before he went to Washington, he dedicated much of his academic career to singing the praises of Reagan's executive order on cost-benefit analysis. As regulatory czar, he was resented by environmentalists for his pro-industry interventions. Here's what he says about the approach to regulation in a second Administration: "Obama's regulatory history suggests he has no such designs, Sunstein said. Rather, he said, there is plenty of evidence the president would continue cutting red tape." ([E&E News](#)) Like Sunstein, Obama spent years hanging around the University of Chicago Law School, a stronghold of the law and economics movement. There's no reason to think that he and Sunstein were out of sync — both want to get their decisions right economically.

There are other reasons to be dubious about this supposed regulatory flood. Adopting a new regulation is a very expensive, time-consuming process. To survive a judicial challenge to a rule, the agency has to show that the rule was firmly rooted in the evidence and that it considered and responded reasonably to all of the objections raised by industry. This typically takes years and a huge amount of agency staff. Agencies have limited budgets and therefore a limited capacity to take on these major efforts. It's pretty hard to create a flood when all the water has to go through a garden hose!

Finally, a regulatory flood is unlikely because only part of the regulatory agenda is under the agency's control. On the one hand, Congress can use riders to delay regulatory efforts. On the other hand, courts can force agencies to consider an issue against its will — that's exactly what happened with climate change, which the Supreme Court demanded that the Bush Administration EPA consider in depth. So even the most determined President has only partial control of the agency's regulatory agenda.

Some people might like to see a flood of new regulations — there are a lot of problems that need solving, after all. But, whether you long for it or fear it, you shouldn't spend much time on the idea of a regulatory deluge if Obama is reelected.

