This post is co-authored by Beth Kent and Cara Horowitz

Last week's Georgia Senate victories have given Democrats (bare) control of the Senate—and, with it, the potential to use the Congressional Review Act (CRA) to erase some of the Trump Administration's regulatory rollbacks. Here are four key things to know about this unique legislative oversight tool.

(1) It's fast. The CRA allows Congress to work quickly to overturn rules federal agencies have recently promulgated. The CRA outlines a special set of "fast track" procedures under which Congress can introduce legislation to overturn agency rules. Any member of the House or Senate can introduce a joint resolution of disapproval using the model language specified in the CRA. Once a resolution is introduced, it is referred to the appropriate Congressional committee in each chamber and then to the floor in chamber for a vote. If a committee delays a resolution, thirty Senators can move the resolution out of the committee, bypassing committee review. Then, any Senator can introduce a non-debatable motion to have the resolution considered by the full Senate. Under these procedures, no amendments are permitted, and floor debate is limited to ten hours. All of these procedures are built to speed the process of getting to a vote. At the end of this quick process, there's a low hurdle for passage: A simple majority is sufficient.

This speed is very attractive to those who whose goal is to roll back large chunks of the Trump Administration's regulatory legacy quickly, saving agency time for more affirmative work advancing President Biden's priorities. (By contrast, the traditional alternative to using the CRA to undo administrative regulations is to undertake new notice-and-comment rulemaking, which is slow and resource-intensive.) That said, Congress has limited floor time, and it cannot spend all of it overturning rules using the CRA. The Senate has to confirm the new President's cabinet members–not to mention deal with an impeachment trial–and both chambers will want to develop and pass new legislation. Therefore, Congress would have to prioritize which rules to target while still fulfilling its other responsibilities.

(2) It erases rules from the books, sometimes leaving permanent gaps behind. The adoption of a joint resolution of disapproval prevents a final rule from taking effect and rescinds a final rule that has already been implemented. The immediate outcome associated with overturning any given rule using the CRA depends on context. Since the CRA effectively erases a rule, it may leave a gap in an agency's regulatory framework or restore an agency's previous rule. When the CRA overturns a rule that amends, modifies, or revises a previous rule, the previous

rule is restored. Where previous rules have been repealed or where there is no prior rule to revert to, overturning a rule can create a gap that the agency may not be able to fill, or fill quickly.

The CRA includes two provisions that are particularly important for understanding the effect on future rulemaking of a joint resolution of disapproval. First, if a rule is rescinded using the CRA, an agency may not issue future rules and guidance documents that are "substantially the same" as the overturned rule. The meaning and scope of this restriction on future rulemaking is untested. Second, the CRA bars judicial review of decisions and actions made under it. The breadth of this bar on judicial review is undefined and unsettled, affecting the implementation of the CRA and the application of the "substantially the same" provision.

(3) It's anti-regulatory at its core. The CRA was enacted in 1996 as one of a series of measures undertaken by a Republican-controlled Congress to limit the power of administrative agencies, adopted as part of House Speaker Newt Gingrich's "Contract with America." When Congress exercises its authority under the CRA to disapprove a rule, it shifts power away from regulatory agencies and provides the current Congress with a way to check and restrain recent uses of administrative power. To date, the use of the CRA has been lopsidedly partisan; it has been used almost exclusively during the early months of the Trump Administration. From 1996-2016, only one rule was overturned. The Republican-controlled 115th Congress (2017-2018) overturned 16 Obama Administration regulations.

(4) As Dan Farber has discussed, it's controversial. Several scholars and advocates have called for the repeal of the CRA altogether. Opponents of the CRA argue that Democrats should not employ and further validate a fundamentally anti-regulatory tool that undermines the administrative state and circumvents long-standing and robust democratic processes and public input. They also worry about the substantial uncertainty about how courts would interpret key CRA provisions, the interpretation of which may determine whether the CRA is ultimately effective at restoring more appropriate regulation or, instead, will hamper it.

On the other hand, proponents of using the CRA would take the opportunity to quickly dispose of harmful Trump Administration rules, many of which roll back critical environmental and public health protections. With the Democrats having won a historically strong mandate to act decisively to reverse those actions, using the CRA would allow Congress to quickly "clear the brush" and give regulatory

agencies time to work on affirmative advances, rather than having to spend time and administrative capacity undoing the Trump Administration's regulations. Moreover, they point out that undoing regulations via the CRA could be more durable than via new regulations, which are subject to judicial scrutiny in a way that CRA resolutions are not. The preclusive effect of the "substantially the same" provision could work in the Democrats' favor in some instances, forever barring some of Trump's most damaging policies.

As we embark on the new Congressional term, fill your popcorn buckets to see how these opposing views play out.