Soon after Trump took office, Republicans used the Congressional Review Act (CRA) to overturn sixteen Obama-era regulations. If they win control of the government in 2024, they'll undoubtedly do the same thing to Biden regulations. It behooves us, then, to understand the effect of these legislative interventions. A Ninth Circuit ruling last week in a case involving bear baiting, *Safari Club v. Haaland* sheds new light on this murky subject.

The CRA provides a fast-track process for Congress to repeal administrative regulations. Such a repeal also impacts the agency's power to issue new regulations. In the absence of further legislation, agency may not reissue the rule in "substantially the same form" or issue a "new rule that is substantially the same" as the overturned rule. As a thorough report by the Congressional Research Service explains, however, no one really knows that "substantial the same" means. More than "a little similar" and less than "identical," presumably, but that leaves a very large gray area. Some agencies have concluded that they can't even issue a rule dealing with the same subject as the old one. A couple of agencies found themselves forced to issue new rules that weren't all that different, however, because an existing statute gave them little choice but to try again. Until the *Safari Club* case, however, there hadn't been any judicial rulings on the issue.

Safari Club involved restrictions on hunting on federal land in Alaska. In 2016, the Fish and Wildlife Service (FWS) issued the Kenai Rule, which banned baiting of bears in the Kenai National Wildlife Refuge. (The idea of baiting is apparently to lure bears with food in order to shoot then, for those who like the idea of killing something without the trouble or risk of actually having to go hunting for a dangerous animal.) The rule also banned hunting coyote, lynx and wolves in a specific area of Kenai called the Skilak Wildlife Recreation Area.

A few months later, the FWS issued a rule expanding the ban on baiting bears to all Alaskan wildlife refuges and restricting hunting of predators. In 2017, Congress overturned the "Refuges Rule" under the Congressional Review Act.

The issue before the court in *Safari Club* was the effect of the CRA resolution on the earlier Kenai Rule. Alaska argued that the CRA resolution "made clear that intensive management or predator control was *not* in conflict with the Service's federal mandate for administering national wildlife refuges." Thus, in the state's view, the Kenai Rule was based on the same legal theory as the Refuges Rule and should suffer the same fate.

The Ninth Circuit decided otherwise. The court identified three separate reasons for rejecting this argument:

- The CRA resolution didn't mention the Kenai rule.
- The Kenai Rule wasn't a "new rule" since it came before the Refuges Rule. (This was the only argument made by the federal government.)
- The Kenai Rule was not "substantively identical" to the Refuges Rule because it was more limited geographically and limited hunting of only certain predators.

In short, the Ninth Circuit did not see the congressional disapproval of the Refuges Rule as a shift in policy; merely as a veto of one specific administrative action. In some other cases, courts have rejected the argument that in vetoing a federal rule, Congress also indicated disapproval of similar state rules. Moreover, the Ninth Circuit was clearly untroubled by the fact that the Kenai Rule was simply a more limited version of the disapproved Refuges Rule and did not view that as a basis for finding substantive identify.

The situation in the Safari Club case was unusual, and the court's discussion of the CRA issue was brief. Clearly, the decision doesn't represent the last word on the subject. Given the lack of other authority on the issue, the decision does represent a significant data point. The ruling should provide some reassurance to agencies that they retain some power to regulate the same subject, based on similar policies, and even in similar ways, after Congress has killed a previous effort.