In their crusade against “wokeness,” congressional Republicans are taking aim at Labor Department rule about pension plan investments. The rule’s transgression is apparently that it makes easier for pension plans to consider how climate-related risks might affect a company’s bottom line. To avoid being woke, the GOP would apparently prefer pension managers to close their eyes to financial realities, sleepwalking their way through the climate crisis. The real fear, of course, is that more wide-awake investment might disfavor some of the GOP’s biggest corporate supporters.

In trying to quash the new regulation, Republicans plan to take advantage of the Congressional Review Act or CRA. The CRA fast-tracks efforts to veto specific regulations. It’s a symbolic effort since Biden will surely veto any such action. But it does provide a splendid illustration of just what’s wrong with the CRA and why it should be repealed.

To begin with, the CRA is a blunt tool. Congress has to either block the entire regulation or none of it, with no opportunity for finetuning. The Labor Department regulation contains provisions dealing with a variety of topics, from investment choices by pension funds, to their proxy voting and whether they can offer plan options designed to fit the non-financial preferences of participants. The process provides no opportunity for members of Congress to reject some of these requirements but not others or to modify specific language.

In this case, the new regulation replaces a Trump regulation attempted to discourage consideration of climate risks and similar issues without actually prohibiting it. Many of the changes made by the new regulation are fairly subtle, like referring to “factors relating to risk and return” rather than “pecuniary factors.” The odds are low – or be blunt, zero — that many members of Congress are aware of these subtleties.

They’re not likely to find out much more about the issue before voting. Based on past use of the Congressional Review Act, they’ll have little opportunity to learn more, since debate is truncated and hearings aren’t required. In other words, it’s a situation that’s rife for political grandstanding rather than serious deliberation.

Moreover, even if they wanted to make an informed decision, the legal consequences of voting to overturn a regulation are very uncertain because the language in the CRA is so vague. The specific regulation becomes void but what about the future? Under the CRA, an agency like the Labor Department may not reissue the rule in “substantially the same form” or issue a “new rule that is substantially the same” as the overturned rule. No one really knows what this language means. How similar do two things have to be in order to be “substantially the same”? More than a little similar and less than completely identical, I guess. That leaves a very large gray area.

That means that no one can answer some important practical questions. If the current regulation is overturned, what if the agency repeals the Trump rule but does not replace it, or replaces only a few provisions, or replaces it with something much stronger than the Biden rule? Which if any of those are "substantially the same" as the Biden rule? Your guess is as good as mine. The answer seems to be in the eye of the beholder.

The CRA was a bad idea when it was passed, and its actual use has confirmed that it's little more than an opportunity for political posturing and pandering to special interests. The GOP's current effort to blindfold pension managers is yet another confirmation of the need to repeal that law.