Commentary: David Driesen of Syracuse University School of Law says propsed REINS law unneccessary

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By David Driesen Syracuse University College of Law

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JOHN BOEHNER, Republican of Ohio, then House minority leader, holds up a copy of the GOP agenda, "A Pledge to America" in September. The REINS Act, which would require Congress to approve major regulations by federal agencies, is part of the House GOP legislative agenda.

Most observers recognize that the financial crises came about because the federal government did not set standards needed to rein in subprime mortgage lending and rabid gambling through derivatives trading. More recently, the Deepwater Horizon disaster in the Gulf of Mexico followed a failure to set adequate standards to prevent oil spills. New York recently declared a moratorium on hydrofracking, in part out of concern that administrative agencies have not learned enough about the fracking fluid to set standards for its use and disposal that will safeguard our water supply.

Because Congress, even when it functions reasonably well, never has time to establish the detailed and informed standards necessary to comprehensively address serious complex problems, our laws delegate standard-setting authority to administrative agencies, such as the Securities and Exchange Commission, the Environmental Protection Agency and the Food and Drug Administration. These agencies implement specific legislative policies Congress and the president have jointly established to protect financial markets, our health and the environment. But expert agencies must enact standards as problems arise in order to avoid repeats of recent disasters and some new ones.

Congressional Republicanshave moved to enact a new law, called the REINS Act, to prevent expert administrative agencies from enacting any economically significant standards without Congressional approval. Since gridlock, backed by filibusters, makes passage of legislation extremely difficult today, this approach promises to make setting significant standards to address looming problems, from climate disruption to a new potential economic crisis, very unlikely. Just

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to make sure that routine delays in Congress can derail even popular and obviously needed standards, the proposed legislation provides that a lack of approval in 90 days makes new agency-enacted standards invalid.

This legislation serves the interests of corporate campaign contributors, who spent an unprecedented $50 billion in Senate races alone last time around, at the expense of everybody else. And it's completely unnecessary. Agencies left to their own devices typically apply expert judgment to standard setting, rather than the base form of unalloyed political decision-making that typifies Congress these days. Of course, even a well-intentioned expert agency can make a mistake, and Congress can already override any regulation. The new bill, however, assumes that all standards seeking to limit financial shenanigans, protect public health or limit environmental hazards should become void, unless Congress manages to get around to declaring otherwise. It thus establishes a strong presumption against any effort to rein in abuses by financial corporations, polluters and other actors threatening the public.

Supporters ofthe REINS Act seek to justify their subservience to corporate interests by portraying agencies as out-of-control job-killing machines completely lacking in accountability. On the contrary, politicians have in recent years wholly prevented regulatory agencies from carrying out their basic missions, such as preventing financial crises and environmental disasters. Agencies typically act under intense political pressure from Congress and regulated corporations, face skeptical scrutiny from an Office of Management and Budget keen to avoid burdening industry, and endure judicial review regularly to make sure that agencies have conformed to congressional policies established in legislation. They face, if anything, too much accountability, with enormous forces arrayed against any effort to solve problems in ways that might offend some corporation.

Although corporations regularly play on public fears that standards will kill jobs, inadequately regulated banking and securities firms have caused record unemployment. Many government standards effectively force firms to hire people to install pollution control devices, monitor food production to prevent poisoning consumers and perform other tasks necessary to keep the public safe. Corporations detest government standards because they frequently interfere with their efforts to maximize profits by minimizing the number of people they employ. It's a travesty that many in Congress have bought into corporate propaganda linking behavioral standards for firms to job loss.

The REINS Act invites disasters, and we've had more than enough of those already.

David Driesen is a university professor at Syracuse University College of Law and a member scholar of the Center for Progressive Reform (www.progressivereform.org).

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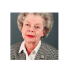
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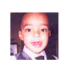
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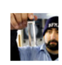
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