

The Congressional Review Act

Background:

Historically, when a new President takes office, the public expects inevitable policy shifts, but that such actions would be done in a thoughtful manner reflecting the best interests of the public. However, President Trump's record over the first 120 days of his administration demonstrated more political posturing and caving into special interest groups than any principled change in policy. This pattern of actions calls into serious question whether the President will perform his duty to faithfully execute the laws of the land.

The Congressional Review Act, 5 U.S.C. Section 801 et seq., is a law that was adopted as a part of Newt Gingrich's Contract with America. It allows a regulation to be rendered null and void if both the House and the Senate pass a resolution of disapproval within 60 legislative days of a new regulation being published and that resolution of disapproval is signed by the President. The resolution of disapproval is not subject to judicial review. The law set forth detailed procedural rules to guarantee that proposed resolutions of disapproval cannot be filibustered. If the resolution of disapproval is signed, the federal agency cannot issue a replacement rule for 10 years

In the absence of the Congressional Review Act, the President could direct an agency to conduct a rulemaking to change or reverse a policy. Presumably before such a change would be made, the agency would receive public comments and develop a record under the Administrative Procedure Act. If a policy difference between an agency and the Congress develops, Congress has the power to adopt an law or amend the underlying law in question. However, such Congressional actions would be subject to the normal procedural rules of the House and the Senate.

The bulk of legislation adopted by the Republican controlled House and Senate and signed by President Trump has been Resolutions of Disapproval under the Congressional Review Act of regulations adopted during the last portion of the Obama Administration. For example, in response to a Federal Court ruling that the Federal Trade Commission did not have jurisdiction to regulate the privacy policies of internet service providers (ISPs), the Federal Communications Commission (FCC) step in and adopted its own rule for ISPs. Congress passed and Trump signed a bill backed by the industry to overturn the FCC rule. As a result, the FCC cannot adopt a new rule in this area for 10 years.

The Federal Government has for many year provided states with Title X funding for family planning. Recently some states have prohibited any entity (such as Planned Parenthood) that performs abortions to receive any of the Title X funding. In response, the Obama administration adopted a rule prohibiting states from discriminating against abortion providers when awarding this unrelated Title X funding. (81 Fed. Reg.91852) Again, Congress passed and Trump signed

a bill to overturn this rule. even though there is already a law prohibiting the use of federal funds for abortions.

Therefore, be it resolved that, the 2017 Eighth District Democratic Convention:

- 1) Condemns the Trump Administration for hasty partisan action that ignores the basic rights of citizens and the responsibilities of government.
- 2) Calls for the repeal of the Congressional Review Act.
- 3) Suggests that in the absence of complete repeal, the Congressional Review Act be amended to provide that a 2/3 vote be required in each house to adopt a resolution of disapproval.