

The Need to Strengthen Regulatory Enforcement

Gary D. Bass, Daniel Gotoff, Celinda Lake,
Katherine McFate, and Robert Weissman

New survey data show that the public wants fairer, tougher enforcement of existing laws and regulations. Seven in ten voters – with solid majorities across political party, gender, and geography – said better enforcement of laws and regulations is important. Voters also want tougher penalties, but the current enforcement system is characterized by underfunding, too few inspectors, and penalties that fail to deter violators from breaking the rules. The complexity of rulemaking has increased, and new hurdles have been imposed that delay efforts to improve public protections in a variety of arenas and combine to further weaken enforcement. Despite new partisan political efforts to further undermine regulatory structures, the survey data show there is a remarkably broad public consensus that we need tougher enforcement of existing laws and rules moving forward.

Regulations are the means by which laws and public policies are implemented. American University President Cornelius Kerwin describes rulemaking as “the single most important function” of government agencies and a “ubiquitous and indispensable means of responding to public challenges” (2003, p. xi, xii). They affect every aspect of life, yet few people understand how rulemaking occurs or its importance in ensuring our basic quality of life.

The premise of this article is that we need tougher enforcement. First, the article provides a brief

overview of the achievements of the regulatory state, and argues that it has become increasingly difficult to maintain or to improve on past successes, as business interests have mobilized against new regulations and won changes in the regulatory process that make new rulemaking far more difficult than it was several decades ago. This “regulatory capture” by powerful special interests also has adverse effects on the enforcement of rules. When modest fines and negotiated settlements are simply viewed as part of the cost of doing business, the system fails to deter irresponsible business practices. Today’s regulatory system is hyper-partisan, with busi-

Gary D. Bass, PhD, is executive director of Bauman Foundation and affiliated professor at Georgetown University’s McCourt School of Public Policy; Daniel Gotoff, BA, is a partner at Lake Research Partners; Celinda Lake, MA, is president of Lake Research Partners; Katherine McFate, MA, is president and CEO of Center for Effective Government; and Robert Weisman, JD, is president of Public Citizen. The authors wish to thank Adrien Schless-Meier, Rick Melberth, and Patricia Bauman for their helpful comments on earlier drafts.

ness interests and conservatives promoting less regulation and enforcement.¹ We provide two examples that illustrate how the public suffers from this weakened, hyper-partisan regulatory system. We conclude by presenting new survey data showing that the public – reaching across party lines – agrees on the need for stronger, tougher enforcement. The survey data suggest the enforcement framework is a unifying opportunity; that is, an opportunity for finding common ground to improve the way regulatory enforcement is done.

I. THE REGULATORY STATE TODAY

We begin with an overview of the system of national standards and public protections established in the US over the past century, followed by a short description of the way anti-regulatory industry groups and their allies have worked to add numerous procedural hurdles to the rulemaking process. Through a focus on regulation and rulemaking, these groups have been successful over the last 40 years to weakened rules and the enforcement of public protections.

WHY REGULATION IS IMPORTANT

Regulations issued in the United States over

¹ The term “hyper-partisan” is used because the sides have staked out turf in such a way that there is little opportunity for compromise. For example, congressional hearings on regulatory issues have become platforms to promote a single point of view and a vehicle to dismiss minority perspectives. Conservatives and business interests that promote less regulation rarely meet with public interest groups that promote improved regulation. Each side strongly criticizes the other, often in hyperbolic terms.

the last century have made our country stronger, better, safer, cleaner, healthier, fairer, and more just. It is hard to imagine what our quality of life would be without the modern regulatory state and its dramatic achievements. Research has shown that regulations have:

- Made our food safer (Centers for Disease Control 1999);
- Saved tens of thousands of lives by making our cars safer (Steinzor & Shapiro 2010);²
- Made it safer to breathe, saving hundreds of thousands of lives annually (US Environmental Protection Agency 2011);³
- Protected children’s brain development by phasing out leaded gasoline and dramatically reducing average blood levels (US Environmental Protection Agency 2000);⁴

² NHTSA’s vehicle safety standards have reduced the traffic fatality rate from nearly 3.5 fatalities per 100 million vehicles traveled in 1980 to 1.4 fatalities per 100 million vehicles traveled in 2006.

³ Clean Air Act rules saved 111,560 lives in 2000, 164,530 lives in 2010, and the EPA estimated that by 2020 they will save 237,380 lives annually. EPA air pollution controls saved eight million days of lost work and 1.2 million days of lost school in 2000. The equivalent numbers for 2010 are 13 million days of lost work and 3.2 million days of lost school, and the EPA estimates they will save 17 million work-loss days and 5.4 million school-loss days annually by 2020.

⁴ Environmental Protection Agency (EPA) regulations phasing out lead in gasoline helped to reduce the average blood lead level in US children ages one

- Empowered disabled persons by giving them improved access to public facilities and workplace opportunities through implementation of the Americans with Disabilities Act (National Council on Disability 2007);
- Guaranteed a minimum wage, ended child labor, and established limits on the length of the work week (Lardner 2011);⁵
- Saved the lives of thousands of workers every year (AFL-CIO Safety and Health Department 2014; Weeks & Fox 1983);⁶
- Saved consumers and taxpayers billions of dollars by facilitating generic competition for medicines (Troy 2007);⁷
- Protected the elderly and vulnerable consumers from a wide array of unfair and deceptive advertising techniques; and⁸
- For half a century in the mid-twentieth century, and until the onset of financial deregulation, provided financial stability and a right-sized financial sector, helping create the conditions for robust economic growth and shared prosperity (Stiglitz 2010; Kuttner 2008).

Despite the clear benefits of regulation in all aspects of public life, from health to employment to the economy, organized business interests continue to obstruct, delay, and weaken the establishment of new rules. Through different administrations and Congresses - controlled by both Republicans and Democrats - these corporate interests have helped to create administrative barriers to scale back funding for enforcement efforts and to weaken penalties for violators. While some degree of corporate push-back regarding restrictions on their decisions are to be expected, in the past few decades, corporate influence peddling has become more strategic (Powell 1971)⁹ and more dominant as

to five. Average concentrations of lead in the blood of children aged five and under fell 78 percent from 16.5 micrograms per deciliter in 1976-80 to 3.6 in 1992-94.

5 There are important exceptions to the child labor prohibition; significant enforcement failures regarding the minimum wage, child labor, and length of work week (before time-and-a-half compensation is mandated). But the quality of improvement in American lives has nonetheless been dramatic.

6 Deaths on the job have declined from more than 14,000 per year in 1970, when the Occupational Safety and Health Administration was created, to under 4,628 in 2012 (see AFL-CIO Safety and Health Department, May 2014). Mining deaths fell by half shortly after the creation of the Mine Safety and Health Administration (see Weeks & Fox, 1983).

7 Through regulations facilitating effective imple-

mentation of the Drug Price Competition and Patent Term Restoration Act of 1984 ("Hatch-Waxman"), including by limiting the ability of brand-name pharmaceutical companies to extend and maintain government-granted monopolies.

8 See 16 CFR 410-460 for regulations under the Federal Trade Commission.

9 The 1971 memo by Louis Powell for the US Chamber of Commerce was not focused specifically on regulation but on positioning the business commu-

the sheer number of lobbyists and campaign contributions has rapidly expanded.¹⁰ As Drutman notes, the average number of lobbyists per company more than doubled from 1981 to 2004 (Drutman 2015).

II. TILTING REGULATORY OUTCOMES TO FAVOR BIG BUSINESS

According to federal law, a rule is “the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy..”¹¹ In other words, a rule or regulation

nity to have more influence over the policymaking process. That memo, however, provided the impetus for an ongoing commitment, starting in the early 1980s and strengthening in the 1990s, to propose and to support ideas that would shift the rulemaking process to the benefit of businesses.

¹⁰ For data about the rise of money in politics, see the Center for Responsive Politics’ website at <https://www.opensecrets.org/>. The rise in money spent on lobbying and campaign contributions, combined with strong anti-regulatory messaging (see footnote 11), are key factors in shaping regulatory policies. Sympathetic Republicans and some Democrats have proposed regulatory reforms. When Republicans are in the majority, these proposals have a greater chance of moving forward. When Democrats are in the majority, success is often measured by stopping anti-regulatory legislation. When it comes to campaign contributions, there is seldom any benefit to elected officials for supporting progressive regulatory reforms.

¹¹ Administrative Procedure Act of 1946, Pub. L. No. 79-404, 60 Stat. 237 (codified as amended at 5 U.S.C. §§ 551-83, 701-06, 801-08, 3105, 3344, 6362,

is the vehicle used by government agencies to implement laws passed by Congress. Yet there are a number of ways that the system does not work, both in terms of efficiency and in terms of best protecting the public. This section will discuss the following tools that businesses and other special interests use to delay, to modify, or to stop regulation: 1) White House centralized reviews; 2) A more complex set of procedural requirements for agencies; 3) Exaggerated estimates of the financial costs to businesses; 4) Exaggerated estimates of job loss effects; and 5) Promotion of anti-regulatory legislation.

WHITE HOUSE CENTRALIZED REVIEWS

The Administrative Procedure Act (APA) of 1946 states that a rule must not be arbitrary, capricious, or unsupported by substantial evidence. And it must not overstep the agency’s discretion or power; a rule derives from congressional authority.¹² Before an agency issues a final rule, it must be published in the Federal Register and, except in unusual circumstances, the agency must give the public an opportunity to comment and to consider those comments.¹³

The APA’s notice and comment rulemaking requirements have not changed significantly since it was passed, but President Reagan did make major changes to the rulemaking process through executive powers¹⁴ establishing a cen-

7562 (2000)).

¹² Ibid. § 706.

¹³ Ibid. § 553.

¹⁴ An excellent resource on the regulatory process is Lubbers (2012), a guide that is more than 600 pag-

tralized White House regulatory review process. Under Executive Order 12291, agencies were required to submit their regulatory actions to the Office of Management and Budget (OMB), and, to the extent permitted by law, OMB was able to stop rules if “the potential benefits to society from the regulation [do not] outweigh the potential costs to society” (Executive Order 12291, Sec. 2(b)). This new process often substituted White House judgement for agency expertise, adding a new, highly-politicized step to the rulemaking process. It also elevated the importance of cost-benefit analysis as a tool in deciding whether a rule should proceed.¹⁵ And, since

es long. Lubbers notes that the APA has not changed although the use of informal rulemaking (e.g., notice and comment) has grown. He points out that since the 1970s, Congress has enacted requirements that “supplement or supersede the APA’s provisions” and that since the Nixon administration, presidents have used executive orders to add requirements beyond those required by the APA (p. 3).

¹⁵ Cost-benefit analysis has increasingly become the way of making critical policy decisions. When it comes to regulations, it presents two types of problems. Imposing presidential requirements, such as cost-benefit analysis, cannot legally displace the requirements in the authorizing laws, but can add a distraction. For example, under the Occupational Safety and Health Act, the law says, “The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period

the cost estimates often come from business, it provided a new way for business interests to shape the process. This White House centralized review process continues today.

MORE COMPLEXITY IN THE RULEMAKING PROCESS

A decade after the Reagan executive order (and other changes added by Reagan and George H. W. Bush), law professor Thomas McGarity (1992) wrote about an “ossified” regulatory system that stifled the ability of federal employees, chosen for their substantive expertise, to issue rules that reflect that expertise. A few years later McGarity wrote of the “paralysis by analysis” caused by the myriad new analytic requirements. He noted these new requirements were making it increasingly difficult to issue

of his working life.” In other words, standards must protect against significant risk, to the extent technologically and economically feasible, and the courts have held that cost-benefit analysis may not be used as the basis for these standards. Nevertheless, the cost-benefit requirements under presidential executive orders come perilously close to being decision criteria for whether to regulate, notwithstanding the criteria imposed in the authorizing statutes. Second, Ackerman and Heinzerling present a powerful argument on the dangers of cost-benefit analysis: “The basic problem with narrow economic analysis of health and environmental protection is that human life, health, and nature cannot be described meaningfully in monetary terms: they are priceless... Indeed, in pursuing this approach, formal cost-benefit analysis often hurts more than it helps; it muddies rather than clarifies fundamental clashes about values... [C]ost-benefit analysis promotes a deregulatory agenda under the cover of scientific objectivity” (2004, p. 10-11).

final rules (McGarity, 1996). Today “most academics and policymakers agree that the process is ossified and inefficient” (Johnson 2006, p. 61).

As an example of these hurdles, a 2000 study identified 110 requirements under 20 different laws, executive orders, and other policy pronouncements that agencies must follow to issue a rule (Seidenfeld 2000). Since then, additional requirements have been imposed. For some agencies, it now takes more than a decade to finalize a major rule. These changes have tilted regulatory outcomes toward business interests and away from the public’s economic, health, safety, and environmental interests by focusing this process on unreliable cost estimates instead of the public benefits of regulations. For example, if a workplace safety rule requiring a lower exposure of workers to a harmful substance is delayed for years, the plant owners do not have to take any action to reduce the risks to workers in the meantime. But while the rule is delayed, workers still face potential health hazards, with little to no opportunity for recourse. Of all the requirements placed on regulatory agencies, the most contentious, time-consuming, and biased is the demand to compare the specific costs to the affected industry with the more diffuse benefits to public health, workers, or the environment. Costs are often provided by the regulated businesses and are regularly over-estimated. Benefits rely on estimates of the numerical value of a life (often “discounted”) or the costs to families and the medical system of disease. Businesses’ assumptions about what is actually valuable often determine the numbers they derive for these kinds of analyses.

EXAGGERATED ESTIMATES OF THE FINANCIAL COSTS TO BUSINESS

Anti-regulatory advocates continue to try to produce and to promote inflated estimates of the overall costs of regulation. For example, the Small Business Administration (SBA) commissioned research that included an aggregated annual cost of federal regulations in the US (Crain and Crain 2010). The Congressional Research Service, an arm of Congress, criticized the authors for combining 30-year-old academic studies with outdated agency estimates of costs. Moreover, agency studies presented cost estimates as a range, but the authors used only the highest cost estimates (Copeland 2011). The White House Council of Economic Advisors called the research “utterly erroneous” (Goolsbee 2011). Two economists who tried to replicate the findings concluded that the regression model was “so conceptually flawed and statistically fragile that its findings should be rejected” (Irons & Green 2011). Even the SBA ultimately distanced itself from the study (Small Business Administration 2010).¹⁶ Nevertheless, industry groups and their allies, including those in Congress, continued to promote the “utterly erroneous” figure of \$1.75 trillion as a measure of the costs of regulation; using it in press releases, congressional hearings, newspapers, articles, and speeches.

¹⁶ Ignoring the independent assessments, the National Association of Manufacturers, a business lobbying association, asked Crains to update their work using basically the same flawed methods, and not surprisingly reported that the cost of regulation had increased to over \$2 trillion in 2012 (Crain & Crain 2014). Again, there was no estimate of the benefits.

In spite of the methodological challenges of comparing aggregate costs and benefits, the OMB is required by law to do so each year. Each year the report shows that aggregate benefits of regulations far exceed the aggregate costs (Office of Management and Budget 2014).¹⁷ Even as agencies like the OMB highlight the benefits of regulation, industry continues to claim that the next regulation will unreasonably raise the cost of doing business and even cause businesses to shut down. In fact, American firms innovate creatively and quickly to adapt to new regulatory standards, and the costs of compliance are typically lower than estimated (Mouzoon & Lincoln 2011). Here are some examples of industry pushback citing prohibitively high costs of new regulation:

- The auto industry long resisted installing air bags, referring to a cost of more than \$1,000 per car to do so. Internal cost estimates showed the costs would be \$206 per car (Behr 1981), and the cost today is even lower. The National Highway Traffic Safety Administration estimates that air bags saved 2,300 lives in 2010, and more than 30,000 lives from 1987 to 2010 (2012).
- The tobacco industry told restaurants, bars, and small business owners that smoke-free dining rooms would diminish

their revenue by 30 to 60 percent (Crane 2004). Numerous studies have found that smoke-free rules have had a positive or neutral economic impact on restaurants, bars, and small businesses (Crowther 2013).

- Industry projected that their costs of complying with acid rain rules would be \$5.5 billion annually, eventually rising to \$7.1 billion. Actual studies after implementation place costs at \$1.1 billion to \$1.8 billion per year (Pew Environment Group 2010).
- The chemical industry estimated it would cost \$350,000 per plant to regulate carcinogenic benzene emissions, but soon after controls were established, the plants developed a new process substituting safer chemicals for benzene, reducing their costs to almost zero (Shapiro & Irons 2011).

EXAGGERATED ESTIMATES OF JOB LOSS EFFECTS

A long list of other regulatory examples demonstrate the unreliability of predictions from vested interests of the damage regulations will cause to business: from child labor prohibitions, to the Family Medical Leave Act, restrictions on asbestos use, limits on coke oven emissions, cotton dust controls, strip mining regulations, and vinyl chloride controls (Crowther 2013; Hodges 1997; Shapiro & Irons 2011). Impacted industries typically overestimate the job loss effects of regulatory compliance because they discount the impact of technological dynamism and over-estimate costs (Ackerman and Heinzerling 2004). In fact, regulation often spurs innovation and can reduce costs and create jobs over time (Ashford

¹⁷ According to the draft 2014 report: “The estimated annual benefits of major Federal regulations reviewed by OMB from October 1, 2003, to September 30, 2013, for which agencies estimated and monetized both benefits and costs, are in the aggregate between \$217 billion and \$863 billion, while the estimated annual costs are in the aggregate between \$57 billion and \$84 billion” (p. 1-2).

1985; 2011). Notwithstanding this evidence, the US Chamber of Commerce and other business lobbying groups have put forward for decades the case that regulatory protections will destroy jobs and the economy.¹⁸

PROMOTION OF ANTI-REGULATORY LEGISLATION

These arguments – and the campaign contributions that push them forward – have frequently proved compelling to politicians on both sides of the aisle. Since 2011, anti-regulatory legisla-

18 May 18, 1971, the New York Times reported: “The United States Chamber of Commerce warned today that antipollution laws could kill entire industries and that the Government should be ready to pay for the economic consequences.” The New York Times. “Pollution Laws Called a Threat to Industries,” UPI, May 18, 1971.

In January 1981, Donald M. Kendall, Chamber vice chairman and chief executive of Pepsico said, “We simply must get a handle on regulatory overkill, waste and confusion. The federal government has become a virtual correctional institute for business, and excessive regulation is really strangling small business.” Beaver County Times. “Chamber Challenges Small Firms, AP, Jan. 14, 1981.

November 16, 2010, US Chamber President Thomas Donahue states, “Regulation is the vehicle by which some seek to control our economy, our businesses, and our lives – and left unchecked, it will fundamentally weaken our nation’s capacity to create jobs and opportunity.” Donohue, Thomas J. “Addressing the Challenges of a Nation at Risk,” Speech to the US Chamber of Commerce Board of Directors, Nov. 16, 2010.

tion has been introduced at a rapid pace.¹⁹ Led by Republicans, a number of bills designed to reduce regulatory oversight, workplace health standards, environmental and public health protections, and financial reforms have been introduced.

Most of these bills focus on the rulemaking process itself rather than on underlying enabling legislation like the Clean Air or Clean Water Acts.²⁰ In this way, politicians can avoid attacking popular legislation. Instead, they build upon negative stereotypes of “mindless bureaucrats” and make the debate an inside-the-beltway struggle over the power of Congress versus federal agencies and the president. Because the rulemaking process is already so complex and cumbersome, few observers in the media or the public fully understand the implications of proposed regulatory process reforms. The changes being put forth would add even more procedural hurdles; impose even tougher cost-benefit requirements; give industry interests more special access that is denied to the public; and allow courts rather than scientists and other experts to decide whether rules are justified.

19 This anti-regulatory agenda is accelerated by the seemingly unlimited campaign cash unleashed by court decisions such as *Citizens United v. FEC* and a burgeoning army of corporate lobbyists.

20 As discussed above this does not rule out strategies to amend the organic statutes, such as Dodd-Frank. But we are now focusing on legislation that has impact across multiple laws without ever amending those organic statutes.

Besides preventing agencies from updating standards to reflect the latest scientific and medical research, this Congress is undermining the effectiveness of regulatory agencies in other ways. Through restrictions to regulatory agency budgets, policy riders on “must pass” legislation that limit agency authority, delays in approving presidential confirmation positions, and oversight hearings to criticize agency actions and personnel, congressional actions have limited the capacity for agency rulemaking activities.

SEDUCING AGENCY STAFF: REGULATORY CAPTURE

Trying to influence the staff at regulatory agencies has been an industry objective since the origins of protective rules. Businesses have long used a two-pronged strategy to influence regulatory agencies: attack and seduce. Large corporations, as set out above, complain about their regulators and the unfair burdens they impose. They frequently denounce regulators and attempt to restrict their authority, and to encourage their allies to do the same. Yet, at the same time, whenever possible, they seek to work closely with those regulators to moderate rules and to prevent aggressive regulatory enforcement.

Though long established, this seduction process is poorly understood outside Washington, in part because it conflicts with industry denunciations of regulation. But it is a central part of business’ long game – to endure the early, reform period of a new agency, and then capture it – and absolutely crucial to business’ success in undermining regulatory enforcement.

The process is called “regulatory capture,” and has existed as long as the modern regulatory state. Judge Richard Posner defined regulatory

capture as “the subversion of regulatory agencies by the firms they regulate” (2014 p. 49). And Carpenter and Moss define it thus: when “regulation, in law or application, is consistently or repeatedly directed away from the public interest and toward the interests of the regulated industry, by the intent and action of the industry itself” (2014 p. 13).

Regulatory capture in the US dates back to the 1880s and the creation of the first federal regulatory agency, the Interstate Commerce Commission (ICC), established to regulate railroad freight rates. The Attorney General at the time, a well-known former railroad worker, was once asked by his former boss to help kill the ICC. The Attorney General replied that the smarter approach would be “not to destroy the Commission, but to utilize it” to serve the interests of railroad industrialists, noting that over time the Commission will take the “railroad view of things” (Carpenter & Moss 2014, p. 6).²¹

21 Attorney General Richard Olney responded to Charles E. Perkins, the president of the Chicago, Burlington, and Quincy Railroad, on Dec. 28, 1892: “The Commission ... is, or can be made, of great use to the railroads. It satisfies the popular clamor for a government supervision of the railroads, at the same time that that supervision is almost entirely nominal. Further, the older such a commission gets to be, the more inclined it will be found to take the business and railroad view of things... The part of wisdom is not to destroy the Commission, but to utilize it”.

Carpenter and Moss note that “Olney’s letter, although certainly powerful, provides no direct evidence that the Commission did in fact ‘take the business and railroad view of things.’” However, other experts, such as Marver Bernstein in *Regulating*

The most extreme and remarkable recent example of regulatory capture occurred at the now renamed and reorganized Mineral Management Service,²² the federal agency in charge of regulating oil and gas extraction. The regulators were literally sleeping with those they were supposed to regulate. A series of Department of the Interior Inspector General reports found a pervasive “culture of ethical failure” with widespread conflicts of interest. The agency’s royalty collection department had “a culture of substance abuse and promiscuity” (Savage 2008). This episode cost taxpayers billions of dollars in uncollected royalties, and enforcement failures have been widely attributed to the BP oil well

Business by Independent Commission (Princeton University Press: NJ 1955, pg. 265), Samuel P. Huntington in “The Marasmus of the ICC: The Commission, the Railroads, and the Public Interest,” *Yale Law Journal*, 1952, 614:467-509, and Thomas Frank, “Obama and ‘Regulatory Capture,’” *Wall Street Journal*, June 24, 2009, available at: <http://www.wsj.com/articles/SB124580461065744913> point to the ICC as a leading example of capture.

22 Now called the Bureau of Ocean Energy Management, Regulation, and Enforcement.

explosion in the Gulf of Mexico, potentially the worst environmental disaster in US history.^{23, 24}

THE REVOLVING DOOR

The “revolving door” is a key cause of regulatory capture: industry pays much higher wages than the public sector and often hires friendly regulators away from government. This makes last week’s regulators next week’s lobbyists. Disgraced former lobbyist Jack Abramoff made this point about congressional staff when he noted that offering the possibility of a future lobbying job was one of the most effective corrupting tools available (Abramoff 2011a; Abramoff 2011b). The same can apply with regulators, although the future job may not be as a lobbyist but rather another high-paying position.

Notwithstanding recent reforms by the Obama Administration, the revolving door continues

23 “For too long, for a decade or more, there has been a cozy relationship between the oil companies and the federal agency that permits them to drill. It seems as if permits were too often issued based on little more than assurances of safety from the oil companies. That cannot and will not happen anymore.” President Barack Obama, May 14, 2010, at <https://www.whitehouse.gov/blog/2010/05/14/re-lentless-efforts-stop-leak-and-contain-damage>.

24 While few would argue that MMS was “captured,” some have noted that the reasons it became captured are quite complicated and that “MMS’s capture might be less important in explaining the Deepwater Horizon tragedy...” noting additional factors also contributed (Carrigan 2014, p. 289). Even if accurate, it is still true that capture contributes to problems such as industrial accidents.

to spin. A recent report from the Project on Government Oversight (POGO) highlights the pervasiveness of the problem at one agency, the Securities and Exchange Commission. POGO found that “from 2001 through 2010, more than 400 SEC alumni filed 2,000 disclosure forms saying they planned to represent an employer or client before the agency” (Smallberg 2013, p. 2). And those disclosures “are just the tip of the iceberg, because former SEC employees are required to file them only during the first two years after they leave the agency” (Smallberg 2013, p. 2). The report quotes a spokesperson from investment firm T. Rowe Price, who argues: “We strongly believe that having people with industry experience work for a regulator and having people with a regulatory background work in the industry benefits both sides as well as investors” (Smallberg 2013, p. 5).

It is easy to see the merits of the revolving door from the perspective of regulated companies. Agency staff understand how industry works and can give insights into how the regulating agency will respond to company actions. But from the public’s viewpoint, former regulators turned lobbyists are exploiting insider information and relationships to give their new employers special advantages that others do not have (McGarity 2013).

III. REGULATORY ENFORCEMENT TODAY: THE RESULTS OF UNDER-INVESTMENT

For several decades, we have seen a systematic underinvestment – both in terms of funding and personnel – in regulatory enforcement. This has occurred despite new scientific evidence demonstrating a number of new and ongoing public health and safety risks, from

exposure to industrial toxins to more widespread contamination of our food supply. For example, in 2010, Congress passed the Food Safety Modernization Act which gave the Food and Drug Administration (FDA) new mandates and oversight authority to protect the food supply. Six months after passage, control of the House shifted to Republicans and the FDA saw its budget reduced by \$87 million – a sizable reduction of 10 percent. The FDA is responsible for regulating at least 80 percent of the country’s food supplies – everything except meat and poultry. It oversees over 82,000 domestic food producers, more than a quarter of whom are considered “high risk.” Yet FDA inspectors visited only 6 percent of these production facilities in 2011; only 44 percent were inspected between FY 2004 and FY 2008 (Steinzor 2014, p. 191).

Staff. The US Department of Agriculture (USDA) passed a rule in 2014 that reduces the number of inspectors in poultry processing plants, despite the high risk of salmonella and other bacteria in processed chickens. Federal poultry inspectors are required to examine birds on site as part of the production process. However, the poultry industry is advocating for a rule change that will reduce the number of federal inspectors on site by 40 percent and speed up the production lines in poultry processing plants (Kindy 2014), even though an estimated 25 percent of chicken parts and almost half of all packaged ground chicken have some level of salmonella contamination (Charles 2015).

Fines. The capacity of the Occupational Safety and Health Administration (OSHA) to carry out its mission has also been compromised in recent years. OSHA had fewer health and

safety compliance inspectors in 2011 than in 1981, yet the number of workplaces doubled to 9 million from 4.5 million, and the number of workers rose to 129.4 million from 73.4 million over the same period.²⁵ This means that the ratio of inspectors to workplaces fell by more than half: there is now only one inspector for every 4,300 workplaces; previously, there was one per 1,900 workplaces. Federal OSHA inspectors – at current staffing levels and workloads – would need between 131 and 136 years to inspect every workplace in America (Schwellenbach 2013). Theoretically, workers at these worksites have the legal right to raise job safety and health concerns, but employees who report hazards or violations often face retaliation or dismissal. Current legal whistleblower protections do not protect them from employer retaliation (Weatherford 2013). Financial penalties are not an effective deterrent either: fines for workplace violations involving a substantial probability of death or serious harm averaged \$1,895 in fiscal year 2013 (AFL-CIO Safety and Health Department 2014, p. 76).

Increasingly, companies appear to regard fines for violating regulations as “the cost of doing business” (Steinzor 2014, p. 2 & 46). In

25 According to data monitored by the AFL-CIO: The highest number of OSHA inspectors was in 1980 (1,469) at the end of the Carter administration. They began to decline in 1981 under Reagan. In 1981 there were 1,287 inspectors. This fell to 999 inspectors in 1987. In 1988, in the last year of Reagan there was an increase to 1,153 inspectors but that is because California gave up its State OSHA plan and federal OSHA had to hire federal inspectors to provide coverage. In 2011, there were 1,059 inspectors and has declined to 994 in 2013.

her book on industrial catastrophes, Steinzor argues that corporate executives are not held accountable, noting that too often senior management “focused on profitability at the expense of safety” (2014, p. 6). Additionally, there is a tendency by prosecutors to avoid criminal prosecution by taking “the route of least resistance, bringing civil cases against corporations and settling for amounts less than the compliance costs the company avoided by breaking the law” (Steinzor 2014, p. 6).

Not only is overall enforcement weak, but when issues are resolved through out-of-court settlements, unless the agreement specifies otherwise, the fines corporations pay are deductible from federal taxes as a business expense. For example, BP, which was found “grossly negligent” for its role in the Deepwater Horizon disaster, has to date paid nearly \$40 billion to clean up the environmental damage caused by the spill, to pay penalties in connection with the deaths caused by the Deepwater Horizon explosion, and to compensate local communities for widespread pollution. However, about 80 percent of the total payments made thus far qualify as “ordinary and necessary business costs,” allowing BP to pay a total amount which is at least \$10 billion lower than the stated costs (Cohen, 2015).

Since the Clinton years, the Department of Justice has been willing to negotiate “deferred prosecution agreements” that allow a company to not admit guilt; instead, the company simply promises to behave better or to mitigate the violation during a probationary period and pay a fine. Law professor Brandon Garrett created a database of corporate prosecutions to review the scale and scope of deferred prosecution agreements in corporate cases. He found more

than 300 in the past decade, many involving large, publicly traded companies (Garrett 2014). He also found that the agreements were vaguely written, largely unmonitored, and often leave little role for the courts. Former federal prosecutor Dan Richman told NPR that these agreements have not stopped companies from becoming repeat offenders (Zarrolì 2015).

TWO EXAMPLES OF ENFORCEMENT FAILURES

Two recent examples – a chemical spill in West Virginia and financial reform rules – demonstrate: (a) the consequences of weak regulations and enforcement; (b) the influence of powerful special interests; (c) how regulatory capture influences the culture of government regulators; and (d) how regulatory progress can be undone – even with strong public support for action.

ELK RIVER CHEMICAL SPILL

In the early hours of January 9, 2014, a chemical foaming agent used by the coal mining industry to clean and process coal began leaking from an aboveground storage tank north of Charleston, West Virginia. By the end of the day roughly 10,000 gallons of crude MCHM (4-Methylcyclohexanemethanol), whose health effects are largely unknown (Ward 2014a), leaked into the Elk River, just upstream from the Kanawha Valley Water Treatment facility which provides water to residents of nine counties in the state and all of Charleston.

Early in the day, the West Virginia Department of Environmental Protection sent a crew to a Freedom Industries site where they discovered the leaks in the storage tank and the containment area (Ward 2014b). They followed a trail of the liquid, which was pushing through a

containment wall and down a slope where it disappeared beneath the ice covering the Elk River. Throughout the day Freedom Industries, the owners of the water treatment facility, and government authorities provided conflicting information about the safety of the drinking water.

By the end of the workday, the treatment facility had warned 300,000 residents not to drink or to use their tap water for bathing, washing hands, brushing teeth, or cooking (Bernstein, L. 2014). At least 600 people checked themselves into local hospitals, complaining of rashes, nausea, vomiting, abdominal pain, and diarrhea (Atkin 2015). Schools were closed, restaurants locked their doors, and hotels refused reservations. The do-not-use order lasted five days, but some residents said they could not drink or bathe in their water for more than a week, and traces of the MCHM were found in the water six weeks later (Atkin 2015).

It soon became clear that oversight at the Freedom Industries facility was minimal. The US Chemical Safety Board report regarding the incident said it had “thus far found no record of a formal, industry approved inspection performed on any of the chemical storage tanks at Freedom Industries prior to the massive leak which occurred on January 9, 2014” (2014). In general, the facility “was subject to almost no state and local monitoring,” because it was used primarily for storage rather than manufacturing or processing (Berzon & Maher 2014). Because MCHM was exempt from federal and state chemical safety regulations (Weatherford 2014), the water treatment plant did not even know the chemical was on the site upstream, leading to inadequate emergency response plans (RT.com 2014).

In the aftermath of the leak, the West Virginia governor and state legislature began crafting a bill to address the situation. The governor convened a meeting of “the stakeholders,” which included the Chamber of Commerce, the Oil and Gas Association, and the Coal Association, but no citizens’ or environmental groups. After the meeting, the West Virginia Manufacturers’ Association provided language for various exemptions to the bill. When it came time for a legislative hearing on the bill, regulators could not justify all the exemptions written into it. “They didn’t have any idea why things were in there,” Ken Ward Jr., a reporter for the West Virginia Gazette, said. “It’s so ingrained in the way the legislature works that most of the people that cover the State House are kind of immune to how outrageous that is” (Osnos 2014).

Even in West Virginia, a state with a culture of lax enforcement and a business-friendly legislature, the spill bill moved quickly and some of the exemptions businesses sought were dropped. The bill passed unanimously, with no industry opposition.²⁶ The bill was signed into law on April 1, 2014 and officially took effect on June 6, 2014. The law requires an inventory and registration of aboveground storage tanks, new standards for minimizing future accidents, tank-specific emergency response plans, and gives inspection and enforcement authority to the state. It also requires large water utilities to install equipment to monitor water quality for certain contaminants (or to demon-

strate why such monitoring is not feasible), and to establish emergency protection plans.

Yet one year and one state election after the Freedom Industries leak, industry is balking at the requirements of the new law. Bills have been introduced that would exempt “roughly 84 percent of tanks in the state from stricter oversight” (Maher 2015). Another analysis says less than one percent of chemical storage tanks in the state – just 90 – would be regulated under the new bills (Hansen, Betcher, Stroud, and Rosser 2015, p. 1). According to the *Wall Street Journal*, “Now, some in the state Legislature, which is Republican-controlled for the first time in 83 years, and Gov. Earl Ray Tomblin, a Democrat who signed the original legislation, say the provisions requiring new permitting, leak-detection systems, and inspections for tanks may have gone too far” (Maher 2015).

“The special interests who seek to dismantle our water protections know that when the crisis has passed, and people go back to attending to their everyday lives, it’s easy to lose sight of what’s at stake,” Angie Rosser of the West Virginia River Coalition said. “We know from history, water protections will backslide when we’re not paying attention” (Ward 2015).

FINANCIAL REFORM

A second example of weak regulatory enforcement examines the business-friendly environment inside the Federal Reserve, and ongoing efforts by Wall Street interests to reduce regulatory oversight now that the Great Recession is over. Most experts agree that deregulation, lax enforcement, and extremely risky financial products were key factors in the financial collapse of 2008 (The Economist 2013; Friedman 2011). The response was passage of the Wall

26 It was two bills rolled into one. See Senate Bill 373, which includes the Aboveground Storage Tank Act §22-30 and the Public Water Supply Protection Act §22-31.

Street Reform and Consumer Protection Act, commonly called Dodd-Frank, and efforts to change the culture between regulators and the banks. The example that follows demonstrates the challenges in trying to change this enforcement culture.

Dodd-Frank²⁷ provided more powers for regulators to “communicate in real time with one another and watch for problems ahead” (Dodd 2012) as well as oversee the biggest banks, credit rating agencies, hedge funds, and derivatives. It established a new watchdog – the Consumer Financial Protection Bureau – whose purpose is to protect consumers from abusive and deceptive financial practices. It also created the Volcker Rule, which prohibits banks from using depositors’ money to gamble in the stock market.

Dodd-Frank did not pass without significant resistance from the financial sector. According to one analysis, nearly 1,000 lobbyists worked on legislative proposals related to derivatives regulation; opponents of reform outnumbered reformers by an 11 to one margin (Cohen & Taylor 2010). More than 900 former government officials lobbied for the financial industry in 2009, including more than 70 former members of Congress (Public Citizen 2009). After the legislation passed, Scott Talbott, the chief

lobbyist for the Financial Services Roundtable, a group representing 100 of the country’s largest financial institutions, called it “halftime,” making it clear the industry would try to prevent its implementation (Rivlin 2013).

Even before Dodd-Frank went into effect, many bank regulators took a hard look at their own behavior, since it was clear they shared blame for the meltdown. For example, the Federal Reserve Board of New York gave Columbia University finance professor David Beim unlimited access to people and files in the institution. He found that the “New York Fed had become too risk-averse and deferential to the banks it supervised. Its examiners feared contradicting bosses, who too often forced their findings into an institutional consensus that watered down much of what they did” (Bernstein 2014).

In response, the New York Fed agreed to hire more aggressive investigators. One of these, Carmen Segarra, lasted only seven months before being fired. During her tenure, however, Segarra secretly recorded approximately 46 hours of audio from New York Fed meetings that reveal a continuing culture of deference to big banks. For example, when Segarra was asked to review the conflict of interest policy of Goldman Sachs and to assess whether it met federal standards, she found it wanting. She has tapes of her boss trying to get her to change her conclusion.²⁸ Shortly after that confrontation, Segarra was fired.

27 There are numerous summaries of Dodd-Frank, several of which are identified on the Americans for Financial Reform website at <http://ourfinancialsecurity.org/current-issues/dodd-frank-act/>. See also Morrison & Foerster. *The Dodd-Frank Act: A Cheat Sheet*, at <http://media.mofo.com/files/Uploads/Images/SummaryDoddFrankAct.pdf>. Also Koba, Mark. (May 11, 2012). *Dodd-Frank Act: CNBC Explains*, CNBC, at <http://www.cnbc.com/id/47075854#>.

28 Bernstein (2014) reports that ProPublica sent the conflict of interest policy to two legal and compliance experts. “Each said Goldman’s Code of Conduct would not qualify as a firm-wide conflicts of interest policy as set out by the Fed’s guidance.”

As Senator Elizabeth Warren noted, the audio tapes “indicate the banks – not the Fed – are in charge. Congress can keep making the rules tougher and tougher, but it won’t make an ounce of difference if the regulators won’t enforce those rules” (2014).

The financial industry’s power continues to shape policy discussions and outcomes. In 2014, Wall Street contributed a total of \$184 million in the 2014 midterm elections – a \$75 million increase over 2010, the last non-presidential election (Sugden 2015). And Wall Street spent \$98.6 million lobbying Congress in 2014.²⁹ By mid-2014, 30 bills aimed at chipping away at aspects of Dodd-Frank had been introduced in the House during the 113th Congress (Bennett 2014). The chair of the House Financial Services Committee, Rep. Jeb Hensarling (R-TX), publicly stated: “We can never, ever accept a Dodd-Frank world, nor should we” (Hensarling 2014).

Wall Street’s plan to enervate Dodd-Frank is straightforward: pass free-standing bills in the GOP-controlled House, then tie the provisions as amendments to must-pass legislation. Gretchen Morgenson (2015), a New York Times financial columnist described the strategy as, “First, seize on complex and esoteric financial activities that few understand. Then, make supposedly minor tweaks to their

29 See <http://www.opensecrets.org/lobby/industry-client.php?id=F07&year=2014>. This is a subset of the financial sector and excludes the banks. The more common reference is to finance, real estate, insurance (FIRE), which is admittedly overbroad: <http://www.opensecrets.org/lobby/industry-client.php?id=F&year=>

governing regulations that actually wind up gutting them.”

That strategy gained national attention as Congress tried to pass a government spending bill in December 2014, essential to keeping government open (Schroeder & Cirilli 2014). Republicans attached a rider to the bill that waived a Dodd-Frank provision set to take effect in 2015. Dodd-Frank required large banks to separate trades in financial derivatives from traditional bank accounts, which are insured by the federal government through the Federal Deposit Insurance Corporation. The waiver again makes taxpayers responsible for bank losses. Even though some members of Congress tried to stop the rider, it passed as part of the spending bill (Kim 2014).

Reacting to the 2014 midterm elections, the Center for Responsive Politics said, “With the GOP in charge in both the House and Senate, Wall Street’s investments [in the 2014 elections] are likely to show good returns” (Sugden 2015). And in the first months of the 114th Congress, Wall Street exercised its muscle, and the House passed “technical fixes” and “relief for small banks” – to slow the enforcement of Dodd-Frank and to weaken its regulation and enforcement of financial services companies.

Wall Street has also been proposing ways to reduce the “burdens” of stress tests on banks (designed to prevent them from taking on more risk than they can manage), undo mortgage restrictions, and cut other regulations to “help small banks.” At the same time, Republicans have asked for cost-benefit analysis of the direct and indirect costs of new financial rules – a task economists say is impossible. They are also likely to cut the budget of financial regula-

tory agencies, especially the Consumer Financial Protection Bureau (Finkle 2015).

Unregulated financial institutions brought the US and world economies to the brink of another Great Depression. Europe is still trying to recover from its financial crisis. Trillions of dollars of housing equity disappeared. Tens of millions of Americans lost their homes and jobs. The generation entering the labor market in the past eight years will be “scarred” for life. Public anger ran deep. But even before the crisis dissipated, powerful special interests went to work to undermine the new safeguards put in place to prevent another financial collapse.

IV. WHAT DOES THE PUBLIC THINK? A SURPRISING PERSPECTIVE

Given the weak enforcement structure, the authors of this paper decided to assess public attitudes about enforcement of laws and regulations. An initial review of the extant literature found little information on the subject. Lake Research Partners was asked to conduct a national survey and a pair of focus groups on voters’ attitudes toward enforcement.³⁰

30 Lake Research Partners designed and administered this survey, which was conducted by telephone using professional interviewers; the full report is available at <http://www.sensiblesafeguards.org/assets/documents/reg-enf-poll-results-presentation-2014.pdf>. The survey reached a total of 700 likely 2016 General Election voters nationwide. The survey was conducted July 21st – 28th, 2014. The margin of error for this poll is +/-3.7percent. Two focus groups were also designed, conducted, and moderated by Lake Research Partners. The focus groups were located in Columbus, Ohio and took place on

The survey data reveal that, with near unanimity, voters nationwide believe there should be increased enforcement of laws and regulations in the US.³¹ Voters respond with similar support and intensity whether increased enforcement is defined as “commonsense,” “fairer, more equal,” “proper,” or “tougher.” Across these various semantic permutations, 87 percent of voters agree that we need more robust enforcement of laws and regulations. (See Figure 1.)

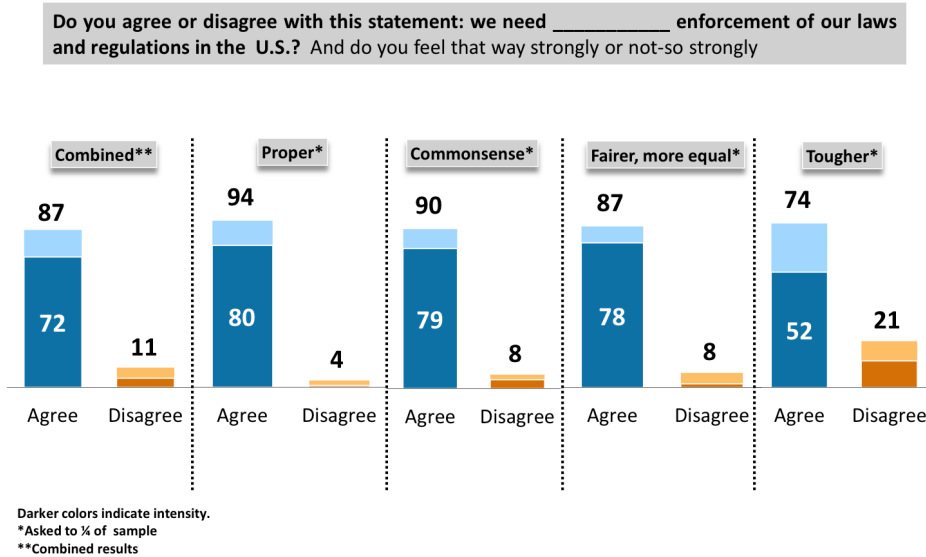
Strong regulatory enforcement is far from a partisan issue – 89 percent of Democrats, 85 percent of Republicans, and 87 percent of Independents support fair and tough enforcement of the rules. This support for enforcement also traverses regional, generational, educational, and racial lines. While the question of how much regulation is enough remains a highly polarized issue, these data indicate that views on enforcement do not split along party divides. This suggests enforcement is a useful framework for moving forward in the contested regulatory space.

In fact, engaging a debate over this issue, using the argument that increased enforcement is a costly, big government job-killer, does little

June 3, 2014.

31 Seventy-one percent of voters believe increased enforcement of national regulations is a good thing (49 percent strongly). The percentage jumps to 74 percent when discussing state regulations (55 percent strongly). For both national and state regulations, this solid majority cuts across political allegiance, geography, gender, and employees in small and big business.

Figure 1: Enforcement of Our Laws and Regulations



to diminish support for greater enforcement. After voters hear arguments for and against, 77 percent agree there is a need for tougher enforcement (including 56 percent who feel that way strongly). Just 18 percent of voters disagree. The text of the arguments is included in Table 1.

Despite the decades-long attack on regulations and regulatory agencies described in this paper, perceptions of the regulatory agencies tested in this study are by-and-large positive, with majorities of voters – including majorities of Republicans – expressing favorable opinions of the FDA (58 percent), the USDA (58 percent), OSHA (57 percent), the NHTSA (55 percent), and the Consumer Product Safety Commission (55 percent). Even the much-maligned EPA enjoys positive ratings from 52 percent of voters. As important, no more than one-third of voters has an unfavorable opinion of any of these agencies. These findings may stun a good number of opinion-makers, who believe that

the criticism of these agencies has permeated the public conscience.³² (See Figure 2.)

However, despite positive ratings of the enforcement agencies and the fact that two-thirds of voters believe the enforcement of laws in the US generally works well (66 percent generally works, 30 percent generally does not work) (see Figure 3), voters see room for improvement when it comes to the actual execution and application of enforcement procedures.

Moreover, a 51 percent majority believes there is too little enforcement of laws and regulations in the US compared to just 30 percent who believe there is too much enforcement.

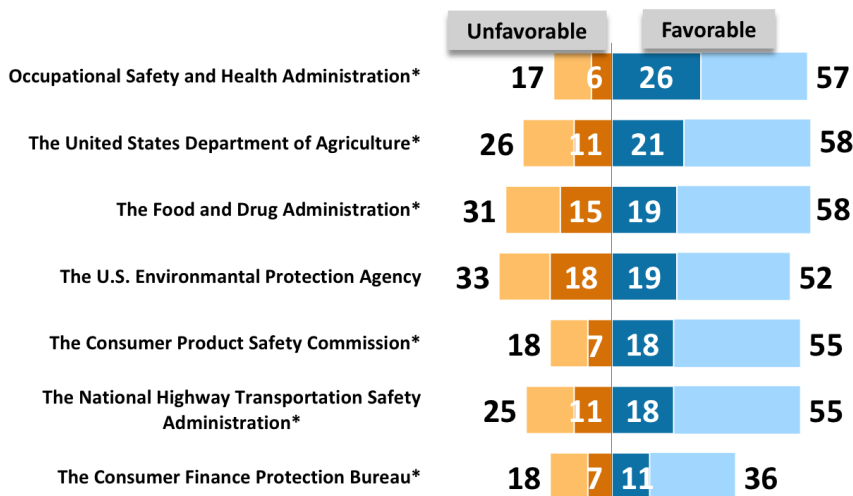
32 A plurality of voters (46 percent) lacks an opinion of the Consumer Finance Protection Bureau, though positive attitudes outweigh negative attitudes by two-to-one among those voters who have an impression (36 percent favorable, 18 percent unfavorable).

Table 1: Text of Engaged Debate Messages

<p>OPPONENTS' MESSAGE</p> <p>(Some/Other people say) protecting consumers is important but government regulation has gone too far, so that some politicians seem to think government is the answer to every problem. Increased regulation, bureaucratic red tape, mandates, and uneven enforcement hold back economic growth and destroy jobs. America was built on the free market and free enterprise. Forcing entrepreneurs, small business owners, and citizens to submit to arbitrary government regulations puts all the power in the hands of out-of-touch bureaucrats. It raises the costs of goods and services at a time when we can't afford higher prices.</p>	
<p>PRO MESSAGE: FAIR, JUST APPLICATION</p> <p>(Some/Other people say) proper enforcement of our laws and regulations can ensure that everyone plays by the same set of rules. Today, the system is too often rigged to favor the wealthy and powerful over ordinary Americans, or big corporations over small businesses. That's an argument for better enforcement. Whether prohibiting big banks from destroying our economy, stopping the credit card industry from charging hidden fees, or preventing the wealthiest 1% from hiding billions of tax dollars in offshore tax havens – we need stronger, more just enforcement of our laws and regulations to ensure that everyone has a fair shot.</p>	<p>PRO MESSAGE: PROTECTION/PREVENTION</p> <p>(Some/Other people say) enforcement of our laws and regulations is about safeguarding Americans. And when done properly, enforcement can prevent economic catastrophe, protect our health, and save lives. Whether it's preventing dangerous foreign imports and food products – affected by e.Coli and salmonella poisoning – from coming to U.S. markets. Preventing dangerous pollutants from contaminating our land, air and drinking water. Or ensuring nuclear and toxic waste facilities safely contain their content. Proper enforcement of our laws helps keep Americans and our communities safer from physical and economic harm.</p>
<p>(80% Agree, 16% Disagree, 4% DK)</p>	<p>(75% Agree, 21% Disagree, 4% DK)</p>

Figure 2: Ratings of Regulatory Agencies

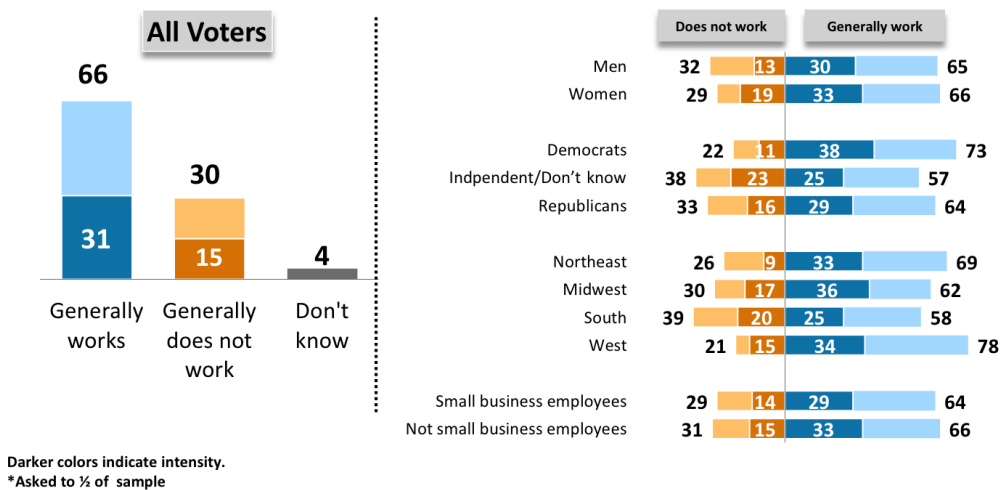
Now I'd like to ask you about some public figures or institutions. For each, please tell me whether you have a very favorable, somewhat favorable, somewhat unfavorable, or very unfavorable impression. If you haven't heard of the person, or if you don't know enough about that person to have an impression, just say so and we will move on.



Darker colors indicate intensity
 *Asked to 1/2 of sample

Figure 3: Do Our Laws and Regulations Generally Work?

In your opinion, does the enforcement of our laws and regulations in the U.S. generally work or generally not work?*



Republicans are split on this question, although a plurality believe there is too little. Workers also concur that there is too little enforcement, particularly those not working in small businesses.³³ (See Figure 4.)

Voters believe that enforcement of laws and regulations can be most effective when it comes to “preventing deadly mistakes” (68 percent say this describes the enforcement of

laws and regulations well), “protecting seniors and children” (66 percent), “reducing pollution” (59 percent), and “holding big business accountable” (51 percent).

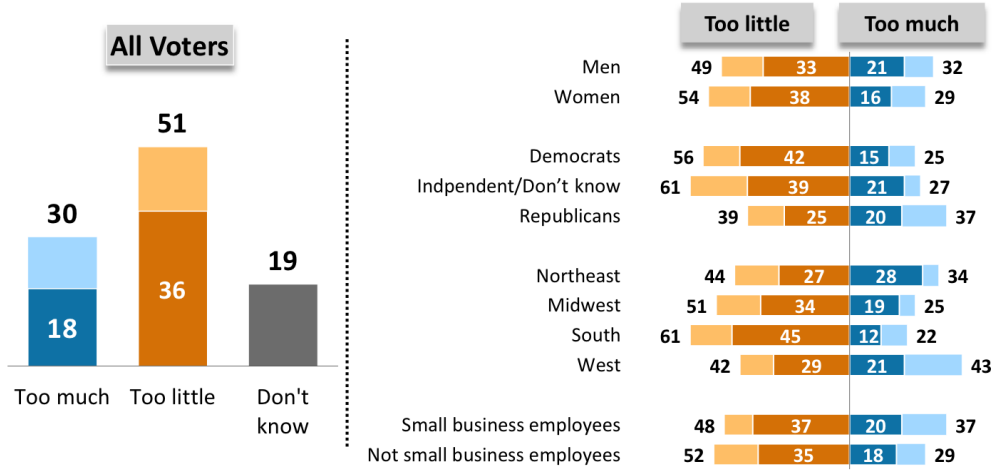
Voters see a critical role for enforcement of laws and regulations in a number of areas of American life. Majorities believe enforcement is extremely important when it comes to “clean water” (64 percent), “food and drugs from other countries” (56 percent), and – as we have seen in previous research³⁴ – “government of-

33 The survey question was as follows: “Are you employed by a small business?” and respondents who answered “no” were not further broken out into employed/ not employed. However, given that 48 percent of small business employees believe there is too little enforcement (37 percent too much) and 52 percent of non-small business employees feel the same (29 percent too much), it is safe to say that “workers” or “the employed” concur there is too little enforcement.

34 Lake Research Partners designed and administered a survey conducted May 3 through May 5, 2011 by telephone using professional interviewers that reached a total of 700 likely 2012 General Election nationwide. (The margin of error for this poll is +/- 3.7 percent.) The survey found that majorities of voters would like to see greater regulation of “government officials” (55 percent) and of special interests

Figure 4: General Concerns About Our Laws and Regulations

And which of the following concerns you more: Too much enforcement of laws and regulations in the U.S. or Too little enforcement of laws and regulations in the U.S.*



Darker colors indicate intensity.
*Asked to 1/2 of sample

ficials” (50 percent). Other areas where voters believe enforcement plays an important role include “civil rights,” “drugs produced in the US,” “nuclear energy,” “Wall Street,” “clean air,” “work places,” and “credit card companies.”

These data demonstrate a substantial disconnect between the industry-backed rhetoric that denounces regulation and enforcement, and popular sentiment. Voters want the government to play a more active role in enforcing the laws to prevent and to protect against potential problems and disasters, as well as to improve accountability. They not only think enforcement provides protections, but also that it establishes fairness. Rules are designed to favor powerful special interests, but with equal

and lobbyists (50 percent) – with both ranking in the top tier of areas where voters want to see greater regulation.

enforcement, everyone (for example, small business versus big business) has a fair chance. The specific areas where voters want more enforcement are so extensive and widespread as to be nearly ubiquitous. This once again shows how much voters want broader and tougher enforcement.

Finally, this study examined the efficacy of a range of messages in support of tougher enforcement. Not surprisingly, given voters’ underlying attitudes, all of the messages resonate powerfully, but the leading arguments tend to revolve around case studies, where lives and great sums of money were lost as a result of insufficient enforcement. These case studies – such as the West Virginia chemical spill – make it painfully clear that failing to enforce our laws and regulations causes costly and deadly disasters. In addition, voters prioritize messages that emphasize how lives and dollars can be saved when enforcement agencies are effective,

as well as a message that calls for criminal penalties for CEOs who are found guilty of engaging in wage theft. Figure 5 and Table 2 provide information about the most convincing case studies about enforcement.

These case studies provide insight into how to discuss the need for increased enforcement. The case studies emphasize the importance of providing factually-based stories that are not overloaded with too many points. The stories also highlight the importance of having those that not only show the dangers of weak enforcement but also those that show the benefits from stronger enforcement. When money and lives are saved or problems are pre-emptively avoided, it demonstrates the value of enforcement and also shows that government is capable of doing the work, a concern for many people.

The enforcement frame tested in this research was re-tested in a survey conducted by Repub-

lican and Democratic polling firms (The Tarance Group and Lake Research Partners in 2014), where fully half of voters surveyed said that the government should engage in fairer and tougher enforcement of government regulations. Presented with two differing perspectives on regulation and enforcement, 50 percent agreed with the statement: “We need fairer and tougher enforcement of regulations in the US to protect American workers and families and to give the little guys, including small businesses, a fair chance to compete.” Just 43 percent picked the statement that read: “We need fewer burdensome government regulations because these regulations only work to make things more difficult for small businesses and individuals to create jobs and economic growth.”

This finding is important. It tests the enforcement frame against the industry-led meme that regulations are burdensome and bad for the economy. Given the 40-year drumbeat in

Figure 5: Messages for Enforcement

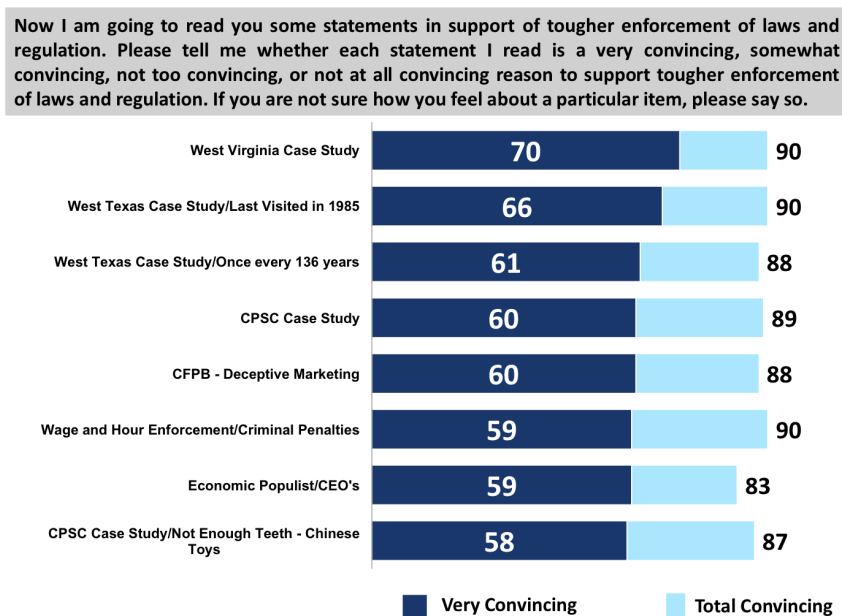


Table 2: Text of Enforcement Messages (in order of how convincing)

West Virginia Case Study

Just this year, an estimated 10,000 gallons of toxic chemical waste leaked from a private storage facility into a West Virginia river due to lax enforcement. The leak contaminated the drinking water supply of over 300,000 residents, putting pregnant women, seniors, and children at risk. States are required to test public water systems regularly, but this water system hadn't been tested in over a decade, and warnings of contamination were ignored. We need proper enforcement to ensure disasters like this don't happen again.

West Texas Case Study/Last Visit '85

When enforcement of public protections is neglected, the results can be disastrous. In 2013, an explosion at a fertilizer facility in West, Texas killed 15 people, including 12 first responders, and destroyed three schools, a nursing home, and hundreds of homes. The last time that facility was inspected by OSHA was in 1985, and despite a serious violation it got just a \$30 fine. We need strong and improved enforcement to prevent deadly situations like this.

West Texas Case Study/Once Every 136 Years

When enforcement of public protections is neglected, the results can be disastrous. In 2013, an explosion at a fertilizer facility in West, Texas killed 15 people, including 12 first responders, and destroyed three schools, a nursing home, and hundreds of homes. With current staff, OSHA inspectors can visit workplaces like these only once every 136 years, on average. We need strong and improved enforcement to prevent deadly situations like this.

CSPC Case Study

US Consumer Product Safety Commission investigators analyze data to focus their inspections on high-risk cargo. During one six-month period in 2013, the CPSC identified more than 600 shipments containing illegal or defective products from other countries, totaling about 8.2 million units, which inspectors prevented from moving into US markets and into the hands of unsuspecting consumers. When enforcement is done right, it can save Americans dollars and lives.

CFPB – Deceptive Marketing

Recently, the Consumer Financial Protection Bureau ordered Bank of America to pay nearly \$727 million in fines because of the bank's deceptive practices, including charging consumers for products they never agreed to. It also ordered JPMorgan Chase to pay customers \$309 million, and American Express to pay customers \$59.5 million for deceptive and unauthorized billing. This agency saved consumers nearly \$3.5 billion in excessive fees and interest since its creation two years ago. We need to strengthen enforcement of these laws, not weaken enforcement.

Wage and Hour Enforcement/Criminal Penalties

The Fair Labor Standards Act bans oppressive child labor, requires workers be paid a minimum wage, and entitles workers to overtime pay. Even so, many employers break the law, don't pay workers for their time and illegally deduct money from their paychecks. The Department of Labor collected \$250 million in this kind of wage theft last year, but still lacked the resources and manpower to investigate thousands of other complaints. We need stronger enforcement, and CEOs who engage in wage theft should be held accountable with criminal penalties if found guilty.

Economic Populist/CEOs

As Americans, we prize innovation, entrepreneurship, and hard work—but all of that means little when multinational corporations are allowed to operate unchecked and take advantage of us. The CEOs who wrecked our economy, wrote themselves bonuses from our bailout money and don't pay their fair share of taxes, should be held accountable and not allowed to commit the same crimes again. It's past time we started protecting regular working families. Because if CEOs continue playing by their own rules, our shrinking middle class will disappear entirely.

CSPC Case Study/Not Enough – Chinese Toys

US Consumer Product Safety Commission investigators analyze data to focus their inspections on high-risk cargo. During one six-month period in 2013, the CPSC identified more than 600 shipments containing illegal or defective products from other countries, totaling about 8.2 million units and prevented them from entering our markets. But hundreds of thousands of dangerous lead-based Chinese toys still made their way into US stores and into the hands of our children. We need improved and expanded enforcement to protect America's youngest citizens.

the media of the anti-regulatory message, it is surprising that the enforcement frame wins in a head-to-head confrontation. This reinforces the potential of the enforcement frame as a means for sidestepping the tired debate about more or less regulation.

V. CONCLUSIONS

The chemical spill in West Virginia and attempts to dilute Wall Street reforms are examples of an ongoing problem that the public rarely sees: a rulemaking system dominated by powerful special interests. When rules and enforcement are weak, the public's health and safety suffer.

Daily news stories show a common pattern: The mine explosion that kills workers; the salmonella-tainted peanut butter that sickens hundreds of people; the explosion of a fertilizer facility that kills first responders and destroys surrounding buildings such as schools and homes; imports that endanger the health of our children and pets; deceptive marketing practices; the ignition switch defect in cars that kills and injures people; and more. However, these examples are not seen by our elected leaders as part of a pattern pointing to a need for policy reform. According to the survey data presented in this article, the public sees the pattern.

If voters are frustrated about regulations, it is because they want better enforcement. They want fairer, more equal, and tougher action by government agencies. This is true regardless of political party – there is no statistically meaningful difference between Republicans, Democrats, and Independents on these issues.

More attention and more resources need to be focused on improving enforcement. Instead of cutting funding for federal agencies charged with enforcement, funding and resources should be increased. Instead of limiting agency authority to enforce, such laws should be expanded to protect the public. Instead of permitting corporate executives to walk away from the harm they cause, criminal and stronger civil penalties should be imposed. Penalties levied against corporate violators should be large enough to serve as a meaningful deterrent from future violations. If the public – on a bipartisan basis – can agree to these steps, our elected leaders should also find common ground.

This article started with a description of research that demonstrates the public benefits and value of regulations. Unfortunately, the promise of further regulatory protections has been undermined by a long-term campaign led by industry and conservatives that has vilified regulation. Through various forms of regulatory capture and legislative and executive reforms, industry has delayed rulemaking, tilted regulatory outcomes in favor of industry, and underfunded agencies. The net result has been a weakened regulatory system characterized by toothless enforcement.

The survey data presented in this article demonstrate nearly unanimous support among voters for increased enforcement of laws and regulations. A majority of voters is concerned that there is too little – not too much – enforcement of current laws and regulations. While these voter sentiments may not translate into immediate policy change, they provide a good foundation for new, public interest-oriented reforms.

VI. REFERENCES

- Abramoff, J. Nov 18, 2011. "Willing Vassals" in Congress Do Lobbyist Bidding, *Bloomberg Business*. Retrieved from <http://www.bloomberg.com/news/articles/2011-11-18/willing-vassals-in-congress-do-lobbyist-bidding-jack-abramoff>.
- Abramoff, J. 2011. *Capitol Punishment: The Hard Truth About Washington Corruption From America's Most Notorious Lobbyist*, WND Books.
- Ackerman, F. and Heinzerling, L. 2004. *Priceless: On Knowing the Price of Everything and the Value of Nothing*, The New Press: New York.
- AFL-CIO Safety and Health Department. May 2014. Death on the Job: The Toll of Neglect, 23rd Edition. Retrieved from <http://www.aflcio.org/content/download/126621/3464561/DOTJ2014.pdf>.
- Ashford, N. A., Ayers, C., & Stone, R. F. 1985. Using Regulation to Change the Market for Innovation, *Harvard Environmental Law Review*, Vol 9 (No. 2), 419-466. Retrieved from <https://dspace.mit.edu/bitstream/handle/1721.1/15555/252319.PDF?sequence=1>.
- Ashford N. A. & Hall, R. P. 2011. *Technology, Globalization and Sustainable Development: Transforming the Industrial State*, New Haven: Yale University Press. P. 412-415.
- Atkin, E. Jan 12, 2015. New Analysis Shows West Virginia's Chemical Spill Traveled Into Kentucky, *Climate-Progress*. Retrieved from <http://thinkprogress.org/climate/2015/01/12/3610693/chemical-spill-not-just-west-virginia/>.
- Behr, P. Aug 13, 1981. U.S. Memo on Air Bags in Dispute. *Washington Post*. Retrieved (for fee) from: http://pqasb.pqarchiver.com/washingtonpost_historical/doc/147350954.html?FMT=ABS&FMTS=ABS:AI&type=historic&date=Aug+13%2C+1981&author=By+Peter+Behr+Washington+Post+Staff+Writer&-desc=U.S.+Memo+On+Air+Bags+In+Dispute,
- Bennett, J. July 21, 2014. Four Years After Passage, House Keeps Trying to Kill Dodd-Frank, *Center for Public Integrity*. Retrieved from <http://www.publicintegrity.org/2014/07/21/15124/four-years-after-passage-house-keeps-trying-kill-dodd-frank>.
- Bernstein, J. September 26, 2014. Inside the New York Fed: Secret Recordings and a Culture Clash, *Pro-Publica*. Retrieved from <http://www.propublica.org/article/carmen-segarras-secret-recordings-from-inside-new-york-fed>.
- Bernstein, L. January 10, 2014. Chemical Spill into W.Va. River Spurs Closures, Run on Bottled Water, *The Washington Post*. Retrieved from http://www.washingtonpost.com/national/health-science/chemical-spill-into-wva-river-spurs-closures-run-on-bottled-water/2014/01/10/a6ec518a-7a0e-11e3-b1c5-739e63e9c9a7_story.html.
- Berzon, A., & Maher, K. January 13, 2014. West Virginia Chemical-Spill Site Avoided Broad Regulatory Scrutiny, *Wall Street Journal*. Retrieved from <http://www.wsj.com/articles/SB10001424052702303819704579317062273564766>.
- Carpenter, D. & Moss, D. A. 2014. Introduction. In Daniel Carpenter and David A. Moss (Eds.), *Preventing Regulatory Capture: Special Interest Influence and How to Limit It*, (pp. x-x). Cambridge University Press.
- Carrigan, C. 2014. Captured by Disaster? Reinterpreting Regulatory Behavior in the Shadow of the Gulf Oil Spill. In Daniel Carpenter and David A. Moss (Eds.), *Preventing Regulatory Capture: Special Interest Influence and How to Limit It*, (pp. 239-291). Cambridge University Press.
- Centers for Disease Control. October 15, 1999. Achievements in Public Health, 1900-1999: Safer and Healthier Foods, *MMWR Weekly*, 48(40):905-913. Retrieved from <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm4840a1.htm>.
- Charles, D. January 21, 2015. Clean Up Those Contaminated Chicken Parts, USDA Tells Industry, *NPR*. Retrieved from <http://www.npr.org/blogs/thesalt/2015/01/21/378844287/clean-up-those-contaminated-chicken-parts-usda-tells-industry>.
- Cohen, A. & Taylor, L. May 18, 2010. Eleven to One: Pro-Reform Derivatives Lobbyists Vastly Outnumbered by Opposition, Public Citizen. Retrieved from <http://www.citizen.org/documents/DerivativesLobbyistsReport.pdf>.
- Cohen, P. February 3, 2015. When Company Is Fined, Taxpayers Often Share Bill, *The New York Times*. Retrieved from <http://www.nytimes.com/2015/02/04/business/when-a-company-is-fined-taxpayers-often-share-the-punishment.html?rref=us&r=2>.
- Copeland, C. W. April 2011. Analysis of an Estimate of the Total Costs of Federal Regulations, Congressional Research Service. Retrieved from http://www.progressivereform.org/articles/CRS_Crain_and_Crain.pdf.

- Crain, W. M. & Crain, N. V. September 2010. The Impact of Regulatory Costs on Small Firms, Washington, DC: Office of Advocacy, U.S. Small Business Administration. Retrieved from https://www.sba.gov/sites/default/files/advocacy/The%20Impact%20of%20Regulatory%20Costs%20on%20Small%20Firms%20%28Full%29_0.pdf.
- Crain, W. M. & Crain, N. V. September 2014. The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business, National Association of Manufacturers. Retrieved from <http://www.nam.org/Data-and-Reports/Cost-of-Federal-Regulations/Federal-Regulation-Full-Study.pdf>.
- Crane, R. February 1, 2004. The Myths and Realities of Financial Effects of Clean Indoor Air Legislation, Dept of Family Medicine, The Ohio State University. Retrieved from http://www.quitting-smokingtimeline.com/info/faqs/nfaqs/pdf/category/878267545327/Economics_White_Paper.pdf.
- Crowther, A. February 14, 2013. Regulation Issue: Industry's Complaints About New Rules Are Predictable – and Wrong, Public Citizen. Retrieved from <http://www.citizen.org/documents/regulation-issue-industry-complaints-report.pdf>.
- Dodd, C. July 22, 2012. Why Dodd-Frank is Necessary, *Politico*. Retrieved from <http://www.politico.com/news/stories/0712/78819.html>.
- Drutman, L. 2015. *The Business of America is Lobbying: How Corporations Became Politicized and Politics Became More Corporate*, New York:Oxford University Press.
- Executive Order 12291. 1981. Federal Regulation, 46 FR 13193, 3 CFR, 1981 Comp., p. 127, unless otherwise noted. Retrieved from <http://www.archives.gov/federal-register/codification/executive-order/12291.html>.
- Finkle, V. March 4, 2015. Could the Fight Over Cost-Benefit Analysis Kill Reg Relief? *American Banker*. Retrieved from <http://www.americanbanker.com/law-regulation/>.
- Friedman, J (Ed.). 2011. *What Caused the Financial Crisis*, University of Pennsylvania Press.
- Garrett, B. 2014. *Too Big to Jail*, Belknap Press.
- Goolsbee, A. June 2011. A 21st Century Regulatory System, White House website. Retrieved from <https://www.whitehouse.gov/blog/2011/06/23/21st-century-regulatory-system>.
- Hansen, E., Betcher, M., Stroud, A. & Rosser, A. February 5, 2015. Impacts of HB 2574 and SB 423 on the number of tanks regulated by the Aboveground Storage Tank Act. Retrieved from http://www.downstreamstrategies.com/documents/reports_publication/asts-in-wv-a-snapshot.pdf.
- Hensarling, J. July 16, 2014. Hensarling: Dodd-Frank Results in Less Freedom, Less Opportunity and a Less Dynamic Economy, *Press Release*. Retrieved from <http://financialservices.house.gov/news/documentsingle.aspx?DocumentID=388236>.
- Hodges, H. 1997. Falling Prices: Cost of Complying With Environmental Regulations Almost Always Less Than Advertised, Economic Policy Institute. Retrieved from <http://www.epi.org/publication/bp69>.
- Irons, J. & Green, A. July 2011. Flaws Call For Rejecting Crain and Crain Model, Economic Policy Institute. Retrieved from http://sl.epi.org/files/page/-/EPI_IssueBrief308.pdf.
- Johnson, S. M. 2006. Junking the “Junk Science” Law: Reforming the Information Quality Act. *Administrative Law Review*, 58:1, 37-83.
- Kerwin, C.M., 2003. *Rulemaking: How Government Agencies Write Law and Make Policy*, 3rd Edition, CQ Press.
- Kim, S. M. December 10, 2014. Elizabeth Warren to Dems: Kill the Bill, *Politico*. Retrieved from <http://www.politico.com/story/2014/12/elizabeth-warren-budget-bill-opposition-113470.html>.
- Kindy, K. March 17, 2014. Congress Members Protest USDA's Proposed Poultry Inspection System, *The Washington Post*. Retrieved from <http://www.washingtonpost.com/blogs/federal-eye/wp/2014/03/17/congress-members-protest-usdas-proposed-poultry-inspection-system/>.
- Kuttner, R. 2008. *The Squandering of America: how the failure of our politics undermines our prosperity*. Vintage.
- Lardner, James. 2011. Good Rules: 10 Stories of Successful Regulation, Demos. Available at: http://www.demos.org/sites/default/files/publications/good-rules_1_11.pdf.
- Lubbers, J. S. 2012. *A Guide to Federal Agency Rulemaking (5th edition)*. American Bar Association: IL.
- Maher, K. February 23, 2015. Storage-Tank Safety Revisited, *The Wall Street Journal*, p. A3.
- McGarity, T. O. 1992. Some Thoughts on “Deossifying” the Rulemaking Process, *Duke Law Journal*, vol. 41,1385-1462. Retrieved from <http://scholarship.law.duke.edu/dlj/vol41/iss6/2>.

- McGarity, T. O. Autumn, 1996. The Expanded Debate over the Future of the Regulatory State, *University of Chicago Law Review*, Vol. 63, No. 4, pp. 1463-1532
- McGarity, T. O. 2013. *Freedom to Harm: The Lasting Legacy of the Laissez Faire Revival*, Yale University.
- Morgenson, G. January 10, 2015. Kicking Dodd-Frank in the Teeth, *The New York Times*. Retrieved from http://www.nytimes.com/2015/01/11/business/kicking-dodd-frank-in-the-teeth.html?_r=0.
- Mouzoon, N. & Lincoln, T. September 2011. Regulation: The Unsung Hero in American Innovation, Public Citizen. Retrieved from <http://www.citizen.org/documents/regulation-innovation.pdf>.
- National Council on Disability. 2007. The Impact of the Americans with Disabilities Act: Assessing the Progress Toward Achieving the Goals of the ADA. Retrieved from http://www.ncd.gov/rawmedia_repository/f493e262_8a9e_49c8_ad84_404a1b91d-7c3?document.pdf.
- National Highway Traffic Safety Administration. May 2012. Traffic Safety Facts: Occupant Protection. Retrieved from <http://www.nrd.nhtsa.dot.gov/Pubs/811619.pdf>.
- Obama, B. July 21, 2010. Remarks by the President at Signing of Dodd-Frank Wall Street Reform and Consumer Protection Act. Retrieved from <http://www.whitehouse.gov/the-press-office/remarks-president-signing-dodd-frank-wall-street-reform-and-consumer-protection-act>.
- Office of Management and Budget. 2014. 2014 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities. Retrieved from https://www.whitehouse.gov/sites/default/files/omb/infocore/2014_cb/draft_2014_cost_benefit_report-updated.pdf.
- Osno, E. April 7, 2014. Chemical Valley, *The New Yorker*. Retrieved from <http://www.newyorker.com/magazine/2014/04/07/chemical-valley>.
- Pew Environment Group. October 2010. Industry Opposition to Government Regulation. Retrieved from <http://www.pewtrusts.org/~media/Assets/2011/03/Industry-Clean-Energy-Factsheet.pdf>.
- Posner, R. A. 2014. The Concept of Regulatory Capture: A Short, Inglorious History. In Daniel Carpenter and David A. Moss (Eds.), *Preventing Regulatory Capture: Special Interest Influence and How to Limit It*, (pp. 49-x). Cambridge University Press.
- Powell, L. August 23, 1971. Attack on the Free Enterprise System. Retrieved from <http://law2.wlu.edu/dept-images/Powell%20Archives/PowellMemorandum-Typescript.pdf>.
- Public Citizen. November 19, 2009. Cashing In: More Than 900 Ex-Government Officials, Including 70 Former Members of Congress, Have Lobbied for the Financial Services Sector in 2009. Retrieved from [http://www.citizen.org/documents/Ca\\$hing_in.pdf](http://www.citizen.org/documents/Ca$hing_in.pdf).
- Rivlin, G. April 30, 2013. How Wall Street Defanged Dodd-Frank, *The Nation*. Retrieved from <http://www.thenation.com/article/174113/how-wall-street-defanged-dodd-frank#>.
- RT.com. January 15, 2014. Single Cinder Block Was Used to Contain Toxic Chemical Prior to Mass W. Virginia Spill. Retrieved from <http://rt.com/usa/west-virginia-chemical-emergency-606/>.
- Savage, C. Sept 10, 2008. Sex, Drug Use and Graft Cited in Interior Department, *New York Times*. Retrieved from http://www.nytimes.com/2008/09/11/washington/11royalty.html?pagewanted=all&_r=0.
- Schwellenbach, N. August 2013. What's at Stake: Austerity Budgets Threaten Workers Health and Safety, Center for Effective Government. Retrieved from <http://www.foreffectivegov.org/whatsatstake-workersafety>.
- Schroeder, P. & Cirilli, K. December 10, 2014. Warren, Left Fume Over Deal, *The Hill*. Retrieved from <http://thehill.com/regulation/finance/226638-democrats-balking-at-dodd-frank-changes-in-crom-nibus>.
- Seidenfeld, M. 2000. A Table of Requirements for Federal Administrative Rulemaking, *Florida State University Law Review*, Vol. 27, 533-545. Retrieved from <http://archive.law.fsu.edu/Journals/laWrevieW/downloads/272/Seid.pdf>.
- Shapiro, I. & Irons, J. April 12, 2011. Regulation, Employment, and the Economy: Fears of job loss are overblown, Economic Policy Institute. Retrieved from <http://www.epi.org/files/2011/BriefingPaper305.pdf>.
- Small Business Administration. 2010. The Impact of Regulatory Costs on Small Firms, Washington, DC: Office of Advocacy. Retrieved from <https://www.sba.gov/advocacy/impact-regulatory-costs-small-firms>.
- Smallberg, M. February 2013. Dangerous Liaisons: Revolving Door at SEC Creates Risk of Regulatory Capture, Project on Government Oversight. Retrieved from <http://www.pogo.org/our-work/reports/sec-revolving-door.html>.

- Steinzor, R. 2014. *Why Not Jail? Industrial Catastrophes, Corporate Malfeasance, and Government Action*, Cambridge University Press.
- Steinzor, R., & Shapiro, S. 2010. *The People's Agents and the Battle to Protect the American Public: Special Interests, Government, and Threats to Health, Safety, and the Environment*. University of Chicago Press.
- Stiglitz, J. E. 2010. *Freefall: America, free markets, and the sinking of the world economy*. WW Norton & Co Inc.
- Sugden, J. January 14, 2015. Wall Street's Investments in Deregulation, *Center for Responsive Politics*. Retrieved from <http://www.opensecrets.org/news/2015/01/wall-streets-investments-in-deregulation/>.
- The Economist. September 7, 2013. The Origins of the Financial Crisis: Crash Course. Retrieved from <http://www.economist.com/news/schools-brief/21584534-effects-financial-crisis-are-still-being-felt-five-years-article>.
- The Tarrance Group and Lake Research Partners. December 18, 2014. The Battleground Poll, Global Media Institute at George Washington University. Retrieved from <https://mediarelations.gwu.edu/battleground-poll>.
- Troy, D. E. 2003. Drug Price Competition and Patent Term Restoration Act of 1984 (Hatch-Waxman Amendments). Statement before the Senate Committee on the Judiciary. Retrieved from <http://www.fda.gov/newsevents/testimony/ucm115033.htm>
- U.S. Chemical Safety Board. July 16, 2014. CSB Investigation Finds No Record of Inspections on Freedom Industries Chemical Storage Tanks; Leak in Bottom of Tank that Contaminated Charleston, WV, Drinking Water Resulted from Corrosion Caused by Water Seeping through Holes in Tank Roof. Retrieved from <http://www.csb.gov/csb-investigation-finds-no-record-of-inspections-on-freedom-industries-chemical-storage-tanks-leak-in-bottom-of-tank-that-contaminated-charleston-wv-drinking-water-resulted-from-corrosion-caused-by-water-seeping-through-holes-in-tank-roof/>.
- U.S. Environment Protection Agency. 2000. America's Children and the Environment: A First View of Available Measures. Retrieved from <http://www2.epa.gov/sites/production/files/2014-05/documents/ace-report.pdf>.
- U.S. Environmental Protection Agency, Office of Air and Radiation. April 2011. The Benefits and Costs of the Clean Air and Radiation Act from 1990 to 2020. Retrieved from http://www.epa.gov/cleanairactbenefits/feb11/fullreport_rev_a.pdf.
- Ward, K., Jr. January 10, 2014. What is "Crude MCHM"? Few know, *The Charleston Gazette*. Retrieved from <http://www.wvgazette.com/News/201401100078>.
- Ward, K., Jr. January 13, 2014. DEP inspectors describe early scene at Freedom leak site, *The Charleston Gazette*. Retrieved from <http://www.wvgazette.com/News/201401130118>.
- Ward, K., Jr. January 8, 2015. A Year Later: Chemical Spills Continue, and So Do Questions, *West Virginia Gazette*. Retrieved from <http://www.wvgazette.com/article/20150108/GZ01/150109388/1419>.
- Warren, E. October 3, 2014. Primer for the Goldman Sachs Secret Tapes, *The Boston Globe*. Retrieved from <http://www.bostonglobe.com/opinion/2014/10/03/elizabeth-warren-recommended-reading-for-goldman-sachs-secret-audio-tapes/DeSAYInKEnxEhWLYpmcC9J/story.html>.
- Weatherford, K. October 2013. Securing the Right to a Safe and Healthy Workplace, *Center for Effective Government*. Retrieved from <http://www.foreffectivegov.org/right-to-safe-workplace>.
- Weatherford, K. December 9, 2014. UPDATE: Freedom Industries President Faces Criminal Charges for West Virginia Chemical Leak, *Center for Effective Government*. Retrieved from <http://www.foreffectivegov.org/almost-heaven-west-virginia-contamination-highlights-long-standing-problems-chemical-oversight>.
- Weeks, J. L., & Fox, M. 1983. Fatality rates and regulatory policies in bituminous coal mining, United States, 1959-1981. *American Journal of Public Health*, 73 (11), 1278.
- Zaroli, J. March 24, 2015. Not Prosecuting Companies If They Promise To Behave, *NPR*. Retrieved from <http://www.npr.org/2015/03/24/394897368/not-prosecuting-companies-if-they-promise-to-behave>.