

TESTIMONY OF STATE REPRESENTATIVE ARTHUR J. O'NEILL 69th HOUSE DISTRICT OF CONNECTICUT
TO
THE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE
SUBCOMMITTEE ON REGULATORY AFFAIRS AND FEDERAL MANAGEMENT

Good morning Chairman Lankford, Ranking Member Heitkamp and members of the Subcommittee. Thank you for your invitation to testify.

I am State Representative Arthur J. O'Neill from the 69th House District of Connecticut. I am a 27 year veteran of the Legislative Regulations Review Committee (LRRC) of the Connecticut General Assembly and have previously served for six years as co-Chair of the Committee.

The Connecticut General Assembly first began reviewing regulations in 1945: the Secretary of State was required to submit to each General Assembly all the regulations promulgated during the preceding biennium for its study (the legislature met biennially). Any regulation which the General Assembly disapproved was void and not reissued (CGSA, 1945 Supp., § 42h). In 1963, the first LRRC was established by statute (CGSA, § 4-48a). This committee was and is bicameral and bipartisan. It met during the interim between sessions and could only disapprove regulations that were already in effect. Disapproval voided the regulation unless the General Assembly overrode the committee's action at its next session. The legislature was not required to act on voided regulations.

In 1971 the current Legislative Regulations Review Committee was created pursuant to the Uniform Administrative Procedure Act (UAPA) (1971, PA 854). Under the 1971 law the Committee was authorized to review **proposed** regulations. The committee's disapproval of a regulation in 1976 led to a lawsuit challenging the legislature's role on constitutional grounds alleging a breach of the separation of powers principle. A Connecticut Superior Court ruled that the Committee's activity was unconstitutional (*Maloney v. Pac et al.* #20-6051 (1980)). The state Supreme Court in *Maloney v. Pac* (183 Conn. 313 (1981)) overturned the lower court decision. The reversal was on technical grounds, leaving the issue of constitutionality unresolved until 1982 when a constitutional amendment,

approved by the electorate, became effective and confirmed the legislature's authority to consider and disapprove administrative regulations (Ct. Const. Art. II on the Distribution of Powers).

The LRRC was established to ensure proper legislative review of **proposed** agency regulations. Administrative regulations have the force of law, therefore, closer scrutiny and control by the legislative branch is clearly in the public interest to ensure that regulations do not contravene legislative intent.

The Committee, which meets monthly, consists of 14 members: six Senators and eight House members. There are equal numbers of Republicans and Democrats. There are two co-Chairs: a Republican and a Democrat, one from each chamber. Each term the co-Chairs alternate. There is a system of Subcommittees which usually consists of two members: a Republican and a Democrat from each chamber. The Subcommittees are assigned to specific agencies. The Subcommittees review and, if necessary, make changes to the regulations. Regulations and other required documents are provided to each Committee member at least one month prior to the meeting at which action is to be taken. Legal opinions and recommendations from our legal staff and fiscal analysis from our fiscal staff are provided at least 10 days before such meeting.

The Committee can take the following types of action: (1) Approve in whole or in part, (2) Approve with technical corrections, (3) Reject without prejudice and (4) Disapprove. "Approval in part" allows the committee to make deletions. When deletions are made, sections or subsections are deleted not individual words. The Committee cannot add words to a regulation.

Technical changes are sometimes needed to correct spelling, punctuation, statutory references, and matters of style. Frequently, regulations are rejected without prejudice for lack of statutory authority. Rejection without prejudice requires the agency to resubmit the regulation with appropriate corrections within either 35 or 65 days depending on whether the regulation mandatory or permissive. There is no limit to the number of times that a regulation can be rejected without prejudice.

Disapproval is rare and signifies the Committee's interpretation that the proposed regulation is without statutory basis. Disapproval requires that the regulation be sent to an appropriate legislative committee for consideration during the next legislative session. The General Assembly then has the option to sustain or reverse the LRRC's action. Inaction by the General Assembly sustains the LRRC's Disapproval.

The Committee meets as necessary to consider Emergency Regulations.

The Committee functions as intended. It is an effective mechanism to protect legislative intent from executive branch dilution or distortion. It provides an opportunity for individuals interested in or affected by a regulation to influence the process without the time and expense of litigation. The Committee's bipartisan and bicameral structure enhances its effectiveness.

Some agency staffers who must deal with the Regulations Review Committee do not want to deal with the Committee and the additional process that we require. I consider that additional evidence of the effectiveness of the Committee in defending the authority of the legislative branch.

I welcome your questions.