David Goldston
Director of Government Affairs
Natural Resources Defense Council

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Mr. Chairman, Senator Collins and Members of the Committee,

Thank you for inviting me to appear before you today. This hearing concerns a range of bills, but all of them would have a similar impact – they would all further complicate the regulatory process, with an eye toward making it harder for agencies to carry out their legal mandate to protect the public.

With that in mind, I'd like to start by asking everyone to remember why we need public safeguards to begin with. As experience has repeatedly shown, the marketplace alone cannot produce clean air or clean water, guarantee the safety of our food or medicines, or of consumer products, cannot improve worker safety, or ensure the integrity and stability of our financial system. The market is not designed to accomplish these vital public goals. They can be achieved only through public action, which is to say through safeguards enforced by the government. Such "rules of the road" not only protect the public, but they provide certainty and a fair playing field for industry. These rules are no more a violation of the notion of "free enterprise" than having a police force is a violation of the notion of a "free country."

That's why once rules have been in place for a time, they tend either to be taken for granted, or celebrated as "progress" that was made by society as a whole. Companies tout how much cleaner and safer their products are; everyone appreciates how much cleaner the nation's air and water are compared to the mid-twentieth century.

But pretty much each step of the progress that is now so universally acclaimed was fraught with controversy. The same kind of fears that we hear expressed today – about job losses, about high costs, about burdens on small business, about cures that are worse than the disease – those same fears were raised about all the safeguards that we now take for granted. And there is no more reason to excessively credit such fears now than there was then. Whenever industry is asked what safeguards pose the greatest threat to their interests, they seem to answer "the next one." But this is a perverse kind of future orientation that merely confirms that experience has not borne out past claims.

Regulatory agencies, like all human institutions, are imperfect, but it's not clear what fundamental problem the bills before this Committee are trying to solve. The public is unlikely to gain from the duplicative analyses, additional lawsuits, creative accounting and elaborate procedures contemplated in these bills; it's not even clear business would gain from adding potentially costly new loops in an already highly elaborated process. But it is clear that there will be opportunity costs if agencies need to focus all their resources on additional process rather than on protecting the public.

The closest anyone ever seems to come to describing the problem that these bills are intended to solve is a general lament that the nation is "over-regulated." But the appropriate response to that claim is, "Compared to what?" We are certainly over-regulated compared to some kind of Messianic state in which everyone would have complete liberty with the knowledge that it would never be abused. We are over-regulated compared to what would be needed in an 18th century society of small towns and farms.

It's not so apparent that we are over-regulated given the actual world we live in today, with its global corporations and industrial pollutants, and problems that individuals have little capability to counter and that corporations have limited incentive to address. That said, even Adam Smith recognized in 1776 that markets have their limits and that the visible hand of government was sometimes needed to keep the market system afloat.

We certainly have ample experience of late seeing what can happen in a world that is under-regulated. In that world, banks can blithely decide that housing prices can never fall, bringing the economy to its knees; eggs can spread salmonella to households throughout the country; and oil wells can spew massive amounts of petroleum into fertile seas with companies not having so much as a workable response plan.

The problems that pending regulations are designed to address are every bit as real as the ones we casually and catastrophically ignored not so long ago. And many of them are coming forward now not because of some paroxysm of regulatory fervor on the part of the Obama Administration, but because of the continuous working of underlying statutes and court rulings enforcing them.

In many ways, the bills before the Committee are really "work-arounds," efforts to monkey with regulatory procedure rather than debating whether the statutes underlying regulation are doing their jobs. Perhaps this is because the public would be far more alarmed by efforts to undermine fundamental protections for clean air, clean water and the like, than they are by seemingly benign and arcane changes in regulatory process.

The bill that takes this approach to its logical extreme is the REINS Act (S. 299), which would block any major safeguard from moving forward unless Congress approved it within 70 legislative days. All an industry would have to do to derail a safeguard is to convince a bare majority in one House of Congress to vote against it. There is then nothing the other body could do to resurrect the safeguard. And the Administration's role – under any President – would be limited, in effect, to advising the Congress on what a detailed regulation should say.

The REINS Act is a summary rejection of the hard-earned knowledge that led to the creation of agencies and of a century of bipartisan experience. The Act radically repositions Congress, the most political branch of government, as the place to make ultimate decisions that involve detailed technical matters. Congress should, through law, be making the basic political and policy decisions about what kinds of activities need to be regulated – those that affect air and water quality, for example – and on the criteria for regulating them. And Congress already has the authority and processes to review agency decisions. But the REINS Act goes far beyond that

to make Congress the arbiter of each and every regulatory call in an effort to shut down the system.

The other bills before the Committee are not as radical as the REINS Act – that would be hard to achieve – but they share its purpose of making it harder for agencies to carry out their legislative mandates in an attempt to advantage corporate interests.

These bills presume a broken regulatory system when study after study has found the benefits of regulation to far outstrip the costs (and it is the proponents of these bills who want to elevate the significance of cost-benefit analysis). Studies have also found repeatedly, and unsurprisingly, that in most cases the expected costs of regulation are greater than what the actual costs turn out to be, often by a large margin. Moreover, studies have found the impact of regulation on jobs to be neutral to positive.

So, instead of tearing down a system that has repeatedly provided proven benefits to the public – cleaner air and water, better health, safer food – we ought to be talking about how to strengthen it. We ought to be sure that agencies have the staff and resources they need to continue to protect the public as well in the future as they have in the past. That has been a path not only to better health and safety, but to greater prosperity.

Thank you.