



Chairman Steve Cohen
1004 Longworth House Office Building
Washington DC 20515

February 3, 2009

Dear Chairman Cohen:

We're concerned about midnight rulemaking. As representatives of two groups that question many types of government regulation, we have enthusiasm for the particulars of some of the Bush administration's last-minute rules while maintaining doubts about others. We agree, however, that presidential administrations on their way out of office should issue new regulations carefully, deliberately, and meagerly.

The rulemaking process itself needs to follow rules and respect America's democratic institutions. The Administrative Procedure Act of 1946 establishes a regulatory process that includes opportunity for public comment, review, and investigation of new regulations. Ultimately, however, enormous power rests with the regulators themselves. The people, through their votes, provide a check on unwise rulemaking. When a departing administration issues regulations, it does so without this check and, in some cases, may do so against the will of the people.

The act of midnight rule making should not know partisan or even ideological lines. Administrations of both parties have issued numerous last-minute rules and all of these rules have served to erode the check that the people maintain on rulemaking power.

As you inquire into midnight rulemaking by the Bush administration, you should pay attention to the last-minute rules issued by other administrations. This is not a partisan issue, no matter how desperately people from both parties would like it to be. Only through a thorough examination of past abuses can one avoid future transgressions. If and when you consider legislation intended to give the current administration enhanced powers to review, suspend, and modify rules issued during the waning days of the previous administration, you should write the legislation in such a way that it becomes a permanent part of the United States Code and, thus, applies to all future administrations.

Administrations of both parties have violated the spirit of the rulemaking process by issuing midnight rules. Congress can and should act to enhance the review, oversight, and accountability of the rulemaking process during the waning days of all administrations.

Yours truly,

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