



Insight

The Mandate Roadblock

DAN GOLDBECK, SAM BATKINS | APRIL 4, 2012

President Obama loves to rail against what he calls the “do-nothing Congress.” He argues that Republican intransigence, not his cumbersome, overregulated agenda, is to blame for the country’s mediocre economic performance. However, a recent government report reveals the new Republican Congress has succeeded in one measure: slowing the pace of unfunded mandates.

While the administration wants to position itself against “Congress,” the real gap is between results in the House and stagnation in the Senate. In 2011, the House passed a number of regulatory reform bills. They remain in legislative limbo, blocked by Harry Reid’s Senate. Even when pressed to implement provisions of the president’s executive order on regulatory reform, it’s Senate Democrats who are “do-nothing.”

This month, Congress will take up a joint resolution under the Congressional Review Act disapproving of the National Labor Relations Board’s recently-finalized snap election rules. The resolution’s future is not particularly bright but it does serve as a stark example of each party’s priorities: regulatory reform v. regulatory hubris.

The president’s contention is that Congress does nothing. In truth, Congress just doesn’t do what he wants.

The Congressional Budget Office (CBO) recently released its report on legislation triggering the Unfunded Mandates Reform Act (UMRA). Across the board, 2011 saw steep declines from 2010 in the quantity and significance of unfunded federal mandates. Granted, 2010, with such wildly expansive legislation as ObamaCare and Dodd-Frank, would be tough to beat in that department.

According to CBO, there were 28 federal laws in 2011 that contained at least one intergovernmental or private-sector mandate. This amounts to a 64 percent decrease from 79 such laws President Obama signed in 2010. That year, the Pelosi Congress managed to

pass 129 private-sector mandates, 250 percent more than last year's total under Speaker Boehner. The drop in total mandates under Speaker Boehner, from 215 to 74, is also a profound reduction.

Not only did Congress impose fewer mandates, but they also placed less of a burden on states and businesses. Only seven mandates in 2011 had costs that exceeded UMRA's statutory threshold (\$71 million for intergovernmental, \$142 million for private entities).

The preceding four years averaged 19.5 significant mandates. On this count, "doing nothing" meant imposing fewer regulatory burdens.

As CBO notes, "Many of those mandates were temporary extensions of existing mandates and were included in continuing resolutions that provided funding for federal programs until full-year appropriations were enacted." The primary reason for this consistent stream of continuing resolutions is the Democrat-controlled Senate's infamous failure to pass, or even propose, a budget.

A closer look at CBO's list of laws reveals that most of the non-appropriations UMRA laws are various free-trade agreements. In fact, only 2 of the 28 UMRA laws dealt with issues other than appropriations or trade: the Leahy-Smith America Invents Act and the Child and Family Services Improvement and Innovation Act.

CBO noted the America Invents Act could impose "private-sector mandates ... with costs that would exceed the statutory threshold or that could not be determined." A year after passage, it appears CBO was right. The American Action Forum has recorded three rulemakings that implement the act. Their combined private-sector and intergovernmental cost is \$122 million.

Outside of UMRA, President Obama's contentious relationship with Congress isn't just a rallying cry for his campaign; it's also the impetus for many of his recent actions. From a host of expensive EPA regulations to constitutionally dubious "recess" appointments, this administration has openly boasted of its plans to ignore a co-equal branch of government and implement its agenda via regulation. Because, according to the administration, "We can't wait."

President Obama may think obstructionism is the message to yell from the mountain top. Yet, for local governments drowning in debt and small businesses just scraping by, fewer federal mandates and regulations are a welcome change.