The Daily Dish

The Future of the Regulatory State Hinges on the Election

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Eakinomics: The Future of the Regulatory State Hinges on the Election

One of the distinctive features of the Trump Administration has been its emphasis on deregulation. Specifically, the president adopted a regime in which each year the Office of Management and Budget (through the Office of Information and Regulatory Affairs, or OIRA) assigns to each executive agency a "regulatory budget" – the total amount by which the rulemakings of that agency may increase the cost to the private sector of complying with the new rules. This budget approach instills two important incentives. First, it provides an incentive to do each rule at as little a cost as possible, leading to a more efficient regulatory state. Second, to the extent that the budget is binding, the agency will have to eliminate unneeded or overly costly rules to make enough budget room for new rules. This is a dramatic change, as there has never before been a reason to regularly revisit the cost and utility of old regulations.

The magic of the Trump approach was that all the budgets were zero or negative numbers. Through this discipline, from the inauguration through July 24 federal agencies have generated savings of roughly $113 billion. It is pretty clear that if Trump wins a second term, one can expect a considerable focus on continued deregulation.

What about candidate Biden? One might suspect (or, at least I suspect) that one can anticipate a return to the hyper-regulatory approach of the Obama Administration that left a legacy of $890 billion in regulatory costs. Now, due to the latest from AAF's Daniel Bosch and Dan Goldbeck, we know that this is likely the future under former Vice President Biden. But we also know three more important items.

First, according to the authors, "Since many of the Obama Administration's regulatory policies were repealed or narrowed by the Trump Administration, it should be expected that a primary focus of a Biden Administration would be to re-install, or expand, those regulatory efforts." Second, should Democrats take not only the presidency, but also control of both the House and the Senate, one can expect a recurrence of aggressive use of the Congressional Review Act (CRA). When Republicans controlled both chambers, they showed how useful a tool this is to remove regulations issued under a previous administration. The CRA allows Congress to disapprove of regulations issued within the last 60 legislative days of the previous Congress by a simple majority in both chambers, along with the president's signature.

Third, the authors generate a likely target list of executive orders and rules. It includes such notable efforts as:

- **Reducing Regulation and Controlling Regulatory Costs** (EO 13,771 is the hallmark order establishing the Trump Administration's one-in, two-out policy and regulatory budget);
- **Regulatory Relief to Support Economic Recovery** (EO 13,924 calls on agencies to identify regulations modified or suspended during the COVID-19 pandemic and take action to make them permanent);
- **The Navigable Waters Protection Rule: Definition of "Waters of the United States"** (the culmination

of a Trump Administration effort to overturn a controversial 2015 Environmental Protection Agency rule);

- **The Affordable Clean Energy Rule** (it repealed the Clean Power Plan), **Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act** (a new rule reducing the scope of environmental review on federally approved projects);
- The Safer **Affordable Fuel-Efficient (SAFE) Vehicles Rule** (the largest deregulatory measure rolled back emissions limits on motor vehicles); and
- The **Inadmissibility Based on Public Charge Grounds** (a Department of Homeland Security rule broadened the number of potential immigrants that would be considered public charges).

It is not an overstatement to say that the future direction of the regulatory state is at stake in November.