

Written Testimony of

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before the

Committee on Oversight and Government Reform
United States House of Representatives

on

How a Broken Process Leads to Flawed Regulations

September 14, 2011



Mr. Chairman and members of the Committee:

Thank you for the opportunity to testify on the U.S. regulatory system. I am David Arkush, director of Public Citizen's Congress Watch division. Public Citizen is a national nonprofit organization with over 225,000 members and supporters.

Generations of Americans have benefited from federal safeguards that protect everything from our food and water to our cars and workplaces. The record of U.S. regulation is one of striking success. They have saved millions of lives and benefited the economy by trillions of dollars. Recent events like the financial meltdown and BP oil spill have demonstrated the severe costs of a lack of strong, effective oversight. But the regulatory process is broken and needs fixing. Under current law, it is far too difficult for agencies to do their jobs and provide the protections that the public and the economy need. Policymakers should work to reduce unnecessary burdens on our regulators and ensure that they can write common sense rules without the delays that currently costs millions of lives and billions of dollars.

I. PUBLIC SAFEGUARDS HAVE BEEN CRITICAL TO AMERICA'S SUCCESS.

Discussions about regulation often center around a purported conflict between government oversight and the "free market." In these discussions, regulation is portrayed as a drag on the market, hindering economic growth. But the distinction between government and markets is false, as is the notion that regulation stands in opposition to economic growth.

There can be no markets without regulation. Regulation is what structures markets and brings them into existence. At a minimum, market exchange is impossible without property rights. The notion of property, in turn, is meaningless without a government to define and enforce it, with coercive measures like police and prisons, if necessary.¹ This point may seem trivial or irrelevant to contemporary debate on regulation, but it is not. When Environmental Protection Agency (EPA), acting under authority delegated to it by the Congress, regulates the emissions of a pollutant, the EPA is in one sense defining the boundaries of property rights: It is defining what the owners of power plants can do with their property—in particular, how much damage they can do to other people's property (not to mention physical health).

All of this is to say that it doesn't make much sense to talk in the abstract about whether we should have regulation, or how much. The real questions are what kinds of

¹ See, e.g., Robert W. Gordon, *Some Critical Theories of Law and Their Critics*, in *THE POLITICS OF LAW* 641, 651-52 (David Kairys ed., 3d ed. 1998).

regulations we want, and how to ensure that they are effective. As for the types of regulations currently under attack in Washington political debates—the record of their success is remarkable.

A. Health, safety, and environmental regulation have provided immense benefits to Americans.

Overwhelming evidence demonstrates that health, safety, and environmental regulation has vastly improved the lives of Americans in recent decades. Although they are not without significant flaws, federal agencies like the Occupational Safety and Health Administration (OSHA), the Food and Drug Administration (FDA), the National Highway Transportation Safety Administration (NHTSA), the Consumer Product Safety Commission (CPSC), and the EPA have made remarkable progress in protecting public health, safety, and the environment. Below, I highlight a few of their successes, organized by issue area.

1. Worker safety

- Immediately prior to the creation of OSHA in 1970, an average of 14,000 workers died annually from occupational injuries. In 2009, despite a doubling of the size of workforce, deaths on the job had been reduced to 4,340.²
- A rule requiring the cotton industry to reduce dust in textile factories lowered the prevalence of brown lung disease among workers by 97 percent, from roughly 50,000 cases in the early 1970s to roughly 1,700 in the mid-1980s.³
- A rule requiring employers to place locks and warning labels on powered equipment is credited with preventing 50,000 injuries and 120 fatalities per year.⁴
- A rule on excavations at construction sites has reduced the fatality rate from cave-ins by 40 percent.⁵
- A grain-handling facilities standard has reduced the number of fatalities caused by dust-related explosions by 95 percent.⁶
- And a 1969 mine safety law led to a rapid 50 percent decrease in the coal mine fatality rate.⁷

² AFL-CIO, *Death on the Job: The Toll of Neglect*, 35 available at http://www.aflcio.org/issues/safety/memorial/upload/dotj_2011.pdf.

³ OCCUPATIONAL SAFETY & HEALTH ADMIN., OFFICE OF PROGRAM EVALUATION, REGULATORY REVIEW OF OSHA'S COTTON DUST STANDARD ii, 28-33 (2000), available at <http://www.osha.gov/dea/lookback/cottondustfinal2000.pdf>.

⁴ OSHA, Control of Hazardous Energy (Lockout/Tagout) available at <http://www.osha.gov/SLTC/controlhazardousenergy/index.html>.

⁵ OSHA, "Regulatory Review of 29 CFR 1926, Subpart P: Excavations" (2007) at 36 available at http://www.osha.gov/dea/lookback/excavation_lookback.html.

⁶ OSHA, "Regulatory Review of OSHA's Grain Handling Facilities Standard" (2003) at 31 available at <http://www.osha.gov/dea/lookback/grainhandlingfinalreport.html>.

2. Food and drug safety

- Improved regulation of slaughterhouses and meat-processing plants significantly decreased the incidence of food-borne illnesses caused by tainted beef between 1996 and 2001, including a 49 percent decrease traced to *Yersinia*, a 35 percent decrease traced to *Listeria*, a 27 percent decrease traced to *Campylobacter*, and a 15 percent decrease traced to *Salmonella*.⁸
- FDA's effective implementation of the Food, Drug, and Cosmetics Act blocked thalidomide from being marketed in the U.S., where it likely would have caused thousands of birth defects.⁹

3. Auto safety

- NHTSA's vehicle safety standards have reduced the traffic fatality rate from nearly 3.5 fatalities per 100 million vehicles traveled in 1980 to 1.41 fatalities per 100 million vehicles traveled in 2006.¹⁰

4. Environmental protections

- EPA regulation of pollution discharge into water bodies under the Clean Water Act nearly doubled the number of waters meeting statutory water quality goals from around 30–40 percent in 1972 to around 60–70 percent in 2007.¹¹
- Clean Air Act rules saved 164,300 adult lives in 2010. In February 2011, EPA estimated that by 2020 they will save 237,000 lives annually. EPA air pollution controls saved 13 million days of lost work and 3.2 million days of lost school in

⁷ Weeks and Maier, *Fatality Rates and Regulatory Efforts in Bituminous Coal Mining, United States, 1959-1981*. 12 *American Journal of Public Health* 1278-1280 (1983).

⁸ Ctrs. for Disease Control & Prevention, U.S. Dept. of Health & Human Servs., *Preliminary FoodNet Data on the Incidence of Foodborne Illnesses—Selected Sites, United States, 2001*, 51 *Morbidity & Mortality Wkly. Rep.* 325, 327 (2002), available at <http://www.cdc.gov/mmwr/PDF/wk/mm5115.pdf>. Officials from the Centers for Disease Control and Prevention (CDC) attribute much of this reduction in food borne illnesses to a new health and safety program for slaughterhouses and meat-processing plants called the Hazard Analysis and Critical Control Point (HACCP) program, which the Department of Agriculture's Food Safety and Inspection Service began implementing in 1996. Robert Roos, *Foodborne Bacterial Disease Rates Dropped 23% from 1996 to 2001, CDC Says*, *Ctr. for Infectious Disease Res. & Pol'y*, <http://www.cidrap.umn.edu/cidrap/content/fs/food-disease/news/foodnet.html>.

⁹ Maureen Rouhi, *The Top Pharmaceuticals That Changed the World: Thalidomide*, *Chem. & EngineeringNews*, June 20, 2005, available at <http://pubs.acs.org/cen/coverstory/83/8325/8325thalidomide.html>.

¹⁰ RENA STEINZOR & SIDNEY SHAPIRO, *THE PEOPLE'S AGENTS AND THE BATTLE TO PROTECT THE PUBLIC: SPECIAL INTERESTS, GOVERNMENT, AND THREATS TO HEALTH, SAFETY, AND THE ENVIRONMENT* 12 (2010).

¹¹ G. Tracy Mehan, *The Clean Water Act: An Effective Means To Achieve a Limited End*, *Water Environment & Technology*, Oct. 2007, available at http://www.wef.org/publications/page_wet.aspx?id=4692&page=ca§ion=CWA%2035th%20Anniversary.

2010, and EPA estimates that they will save 17 million work-loss days and 5.4 million school-loss days annually by 2020.¹²

- EPA regulations phasing out lead in gasoline helped reduce the average blood lead level in U.S. children ages 1 to 5. During the years 1976 to 1980, 88 percent of all U.S. children had blood levels in excess of 10µg/dL; during the years 1991 to 1994, only 4.4 percent of all U.S. children had blood levels in excess of that dangerous amount.¹³

This is only a small, selective list of some of the regulations that play a vital role in protecting American lives and the natural environment.

B. Even when viewed in narrow economic terms, the benefits of major regulations have vastly outweighed the costs.

Evaluating the costs and benefits of regulation through the narrow lens of money is difficult and controversial. Questions abound about the value of the most important regulatory benefits—things like cleaner air, and longer, healthier lives—and these benefits are often undercounted or even omitted entirely from economic analyses.¹⁴ Still, even when viewed in economic terms, the record of recent health, safety, and environmental regulations is stunningly positive. Studies consistently show that the benefits dwarf the costs.

The most authoritative analyses are annual reports that the White House's Office of Management and Budget (OMB) provides to the Congress. Under both president Obama and former president George W. Bush, the OMB has consistently found that the benefits of regulation overwhelmingly outweigh the costs. OMB's 2011 report found that regulations issued between October 1, 2000 and September 30, 2010 resulted in benefits ranging from \$132 billion to \$655 billion, compared to costs ranging from \$44 billion to \$62 billion.¹⁵ In other words, the benefits derived from major regulations have exceeded their costs by a factor of three to eleven—or using an average of the estimates, by a factor of seven. There are few places one can go for a 700% return on investment, but U.S. health, safety, and environmental regulation is one of them.

¹² See ENVTL. PROTECTION AGENCY, THE BENEFITS AND COSTS OF THE CLEAN AIR ACT FROM 1990 TO 2020 (Mar. 2011), available at <http://www.epa.gov/oar/sect812/feb11/fullreport.pdf>.

¹³ See ENVTL. PROTECTION AGENCY, BLOOD LEAD LEVEL, <http://cfpub.epa.gov/eroe/index.cfm?fuseaction=detail.viewInd&lv=list.listbyalpha&r=224030&subtop=208>.

¹⁴ See, e.g., SIDNEY A. SHAPIRO & ROBERT L. GLICKSMAN, RISK REGULATION AT RISK: RESTORING A PRAGMATIC APPROACH 92-120 (2003); FRANK ACKERMAN & LISA HEINZERLING, PRICELESS: ON KNOWING THE PRICE OF EVERYTHING AND THE VALUE OF NOTHING (2004).

¹⁵ OFFICE OF MGMT. & BUDGET, 2011 REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND UNFUNDED MANDATES ON STATE, LOCAL, AND TRIBAL ENTITIES 13-14, available at http://www.whitehouse.gov/sites/default/files/omb/inforeg/2011_cb/2011_cba_report.pdf

Some regulations have performed better still. For example, the EPA has estimated that Clean Air Act regulations have resulted in annual benefits of \$1.3 trillion as of 2010, compared to annual compliance costs of just \$53 billion.¹⁶ This means that for every one dollar spent in compliance costs, the American public realizes over 30 dollars in benefits, much of it in the form of avoided health costs. This ratio is projected to increase, with EPA estimating in April 2011 that by 2020, Clean Air Act regulations will provide \$2 trillion in annual benefits compared to compliance costs of just \$65 billion.¹⁷ Major EPA rules issued during the first two years of the Obama administration produced total annualized benefits of between \$44 billion and \$148 billion with total annualized costs of between just \$6.7 billion and \$12.5 billion.¹⁸

C. Regulations can drive innovation.

Debates on regulation often ignore the role that government standards can play in driving innovation, spurring the creation of new products that are safer, more efficient, or both. A recent Public Citizen report¹⁹ identifies five examples of regulation spurring innovation. In each instance, industry fiercely resisted the proposed rule. But when it took effect, industry met the new standard, and in the process developed a better system or product:

- *Increasing Light Bulb Efficiency.* In 2007, The Energy Independence and Security Act (EISA) increased the efficiency standard for traditional incandescent light bulbs. In response, Philip's Lighting invented a new halogen incandescent that emits light that is almost indistinguishable from traditional bulbs, is 30 percent more efficient, and lasts three times longer.²⁰
- *Removal of CFCs from Aerosol.* After the scientific discovery that chlorofluorocarbons (CFCs) harm the Earth's ozone layer, government agencies implemented a ban on all non-essential CFC aerosol propellants. A day after the EPA officially implemented the regulation, the inventor of the original aerosol announced the invention of a cheaper aerosol propellant that didn't pose a threat to the ozone layer.²¹

¹⁶ See ENVTL. PROTECTION AGENCY, THE BENEFITS AND COSTS OF THE CLEAN AIR ACT FROM 1990 TO 2020 (Mar. 2011), available at <http://www.epa.gov/oar/sect812/feb11/fullreport.pdf>.

¹⁷ *Id.*

¹⁸ Isaac Shapiro, *Tallying Up the Impact of New EPA Rules: Combined Costs of Obama EPA Rules Represent a Sliver of the Economy and are Far Outweighed by Cumulative Benefits* (Econ. Pol'y Inst., Briefing Paper No. 311, 2011), available at <http://w3.epi-data.org/temp2011/BriefingPaper311.pdf>.

¹⁹ Negah Mouzoon & Taylor Lincoln, *Regulation: The Unsung Hero in American Innovation*, Public Citizen, Sept 13, 2011, <http://www.citizen.org/documents/regulation-innovation.pdf>

²⁰ *Id.*

²¹ *Id.*

- *Removing Vinyl Chloride from the Workplace.* To protect plastic manufacturing workers, OSHA in 1974 banned emissions of the carcinogen vinyl chloride in the manufacturing of polyvinyl chloride (PVC) plastic. Three months later, B.F. Goodrich, the largest PVC manufacturer, invented a new process that shielded workers from vinyl chloride exposure.²²
- *Reducing of Sulfur Dioxide Emissions.* The Clean Air Act requires coal plants to reduce emissions of sulfur dioxide, a major air pollutant that causes acid rain and smog. Industry responded to the EPA regulations by improving the efficiency of post-combustion sulfur dioxide removal, otherwise known as “scrubbing,” providing massive health benefits at costs far lower than anticipated. A 2003 OMB analysis of emissions reductions of SO₂ and NO_x (another pollutant) found the ratio of benefits to costs to be more than 40-to-1.²³
- *Increasing the Efficiency of Home Appliances.* During the energy crisis of the 1970’s, Congress enacted tough efficiency standards for consumer appliances being used in residential and commercial buildings. The standards prompted manufacturers to improve the efficiency of their products. These improvements are projected to save American consumers more than \$240 billion in lower energy bills by 2030.²⁴

D. Regulations can spur job growth.

Another little-noticed benefit of regulation is that it can spur job growth—the principal type of assistance the U.S. economy needs right now. The main problem in the U.S. economy at present is a lack of consumer demand. Companies are holding record amounts of cash, unwilling to use it for productive purposes because there is too little demand for their goods and services.²⁵ In this economic situation, regulations that require companies to upgrade or buy new equipment would help boost the economy by requiring companies to spend their idle cash in ways that create demand for goods and services.²⁶

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ See Bruce Bartlett, *It's the Aggregate Demand, Stupid*, N.Y. TIMES (Aug. 16, 2011), available at <http://economix.blogs.nytimes.com/2011/08/16/its-the-aggregate-demand-stupid/>; Paul Krugman, *It's Demand, Stupid*, N.Y. TIMES (Sept. 15, 2010), available at <http://krugman.blogs.nytimes.com/2010/09/15/its-demand-stupid/>.

²⁶ See, e.g., Paul Krugman, *Broken Windows, Ozone, and Jobs*, NY TIMES (Sept. 3, 2011), available at <http://krugman.blogs.nytimes.com/2011/09/03/broken-windows-ozone-and-jobs/> (“[T]ighter ozone regulation would actually have created jobs: it would have forced firms to spend on upgrading or replacing equipment, helping to boost demand. Yes, it would have cost money—but that’s the point! And with corporations sitting on lots of idle cash, the money spent would not, to any significant extent, come at the expense of other investment.”).

Multiple studies have shown that new EPA air pollution standards will lead to increased job growth and investment in the pollution abatement and control sector,²⁷ with one studying finding that up to 1.5 million jobs will be created by the new EPA rules over the next five years.²⁸ In short, health, safety, and environmental regulations could help lift the U.S. economy out of the Great Recession.

II. AN EVALUATION OF REGULATIONS MUST CONSIDER BENEFITS AS WELL AS COSTS.

One frequently mentioned problem regarding our regulatory system is its cost. The principal source of this claim is a study commissioned by the Small Business Administration's Office of Advocacy, which purported to find that the annual costs of significant regulations amount to \$1.75 trillion dollars a year.²⁹ This study used a deeply flawed methodology and faulty data,³⁰ and has been discredited by experts and peer reviewers from across the political spectrum. Current OIRA administrator Cass Sunstein has previously stated that the study "should be considered nothing more than an urban legend"³¹ while John Graham, OIRA administrator under George W. Bush, has stated that a prior iteration of the study "might not pass OMB information quality guidelines."³² The Congressional Research Service found severe flaws in the study and noted that its own authors state that it "was not meant to be a decision-making tool for lawmakers or federal regulatory agencies to use in choosing the 'right' level of regulation."³³ Indeed the study

²⁷ See e.g., Isaac Shapiro & John Irons, *Regulation, Employment & and the Economy: Fears of Job Loss Are Overblown* (Econ. Pol'y Inst., Briefing Paper No. 305, 2011) available at http://epi.3cdn.net/961032cb78e895dfd5_k6m6bh42p.pdf; Richard D. Morgenstern, William A. Pizer, & Jhih-Shyang Shih, *Jobs versus the Environment: An Industry-level Perspective* (Resources for the Future, Discussion Paper 99-01-REV, 2000), available at http://www.globalurban.org/jobs_vs_the_environment.pdf; James Heinz, Heidi Garrett-Peltier & Ben Zipperer, *New Jobs – Cleaner Air: Employment Effect Under Planned Changes to the EPA's Air Pollution Rules* (Ceres & University of Mass. Political Economy Research Institute, 2011) available at <http://www.ceres.org/resources/reports/new-jobs-cleaner-air>.

²⁸ Heinz, Garrett-Peltier & Zipperer, *supra* note 27, at 8.

²⁹ Nicole V. Crain and W. Mark Crain, *The Impact of Regulatory Costs on Small Firms* (2010) available at <http://www.sba.gov/sites/default/files/rs371tot.pdf>.

³⁰ John Irons and Andrew Green, *Flaws Call for Rejecting Crain and Crain Model*, Economic Policy Institute Issue Brief #308 (July 19, 2011), available at http://docs.google.com/viewer?url=http://www.epi.org/page/-/EPI_IssueBrief308.pdf&hl=en_US&embedded=true.

³¹ Mark Drajem, *Rules Study Backed by Republicans 'Deeply Flawed,' Sunstein Says* (BLOOMBERG, June 3, 2011) available at <http://www.bloomberg.com/news/2011-06-03/rules-study-backed-by-republicans-deeply-flawed-sunstein-says.html>.

³² Hearing on H.R. 2432, 7/22/03, Tr. 21 (statement of John Graham).

³³ CONGRESSIONAL RESEARCH SERVICE, ANALYSIS OF AN ESTIMATE OF THE TOTAL COSTS OF FEDERAL REGULATIONS (Apr. 6, 2011).

was so poor that when different researchers fixed flaws in the data set and reapplied the original methodology, instead of \$1.75 trillion in economic impact, they found *none*.³⁴

Of all the study's flaws, the greatest is that it examined the costs of regulation without considering their benefits. By that methodology, the U.S. should not spend money on national defense or law enforcement, and families should not spend money on food or health care. These things cost a great deal.

III. THE COSTS OF UNDER-REGULATION CANNOT BE IGNORED.

Finally, an evaluation of the merits of regulation should not ignore the costs of under-regulation. Recent events such as the economic crisis, the BP oil spill, the disaster at Massey Energy's Upper Big Branch mine, and a number of food and product recalls all share one common feature: weak or nonexistent regulations. In each case, the U.S. spent far more money responding to disaster than it would have spent on preventive measures. The most significant of these examples is the current financial crisis. When the financial sector was deregulated, it soon imploded under the weight of its own reckless and predatory practices. This collapse, and the ensuing Great Recession, have cost the U.S. economy 11 million jobs,³⁵ causing untold misery. There have been other costs as well, such as \$237 billion in bailouts³⁶ and trillions of dollars in investment losses that have put retirement out of reach for millions of people.³⁷ The recent faith in Wall Street's ability to police itself cost America—and the world—dearly.

IV. CONGRESS SHOULD REMOVE BARRIERS TO COMMON-SENSE RULES.

In light of the strong record of regulatory successes in the U.S., and the devastating consequences of poor oversight, it is surprising that U.S. health, safety, and environmental protection agencies are some of the most heavily regulated entities in the country. In the past three decades, federal agencies have been knotted in red tape and burdensome, duplicative requirements, making difficult for them to do their job of protecting the American public.

³⁴ *Id.* at 2 (“We find that in this more complete data set there is no statistically significant relationship between regulatory quality and GDP.”).

³⁵ Rebecca Thiess, *The Great Recession's Long Tail*, Economic Policy Institute Briefing Paper #294 (Feb 2, 2011), available at <http://www.epi.org/page/-/old/briefingpapers/BriefingPaper294.pdf>.

³⁶ ProPublica *The State of the Bailout*, available at <http://projects.propublica.org/bailout/main/summary> (last visited Sept. 12, 2011).

³⁷ See, e.g., Barbara Butrica, Karen E. Smith, & Eric Toder, *How Will the Stock Market Collapse Affect Retirement Incomes?* 1 (The Urban Institute, Older Americans' Economic Security Report No. 20, 2009), available at http://www.urban.org/uploadedpdf/411914_retirement_incomes.pdf.

To the relatively simple rules of the 1946 Administrative Procedure Act, the White House has added analytic requirements through multiple executive orders, and Congress has added numerous procedural and analytic requirements in laws such as the Paperwork Reduction Act, the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and the Unfunded Mandates Reform Act. As a result, rule-writing by a U.S. agency can now involve as many as 110 requirements.³⁸

Agency budgets have not kept pace with their statutory missions or the burdens placed on them; instead their budgets have been drastically reduced.³⁹ The combination of budget shortfalls and burdensome, duplicative requirements has resulted in unacceptably long delays for public safeguards. Even common-sense, noncontroversial rules that would save many lives and injuries can take many years to complete. For example, a 2011 Public Citizen report reviews the creation of OSHA's cranes and derricks rule, which took 10 years to complete even though public interest groups, unions, and construction firms had all agreed on the need for it.⁴⁰ While the rule was winding its way through the regulatory process, 220 construction workers lost their lives due to faulty cranes.⁴¹ Unfortunately, lengthy rulemakings are the rule rather than the exception.

When it takes an entire decade to produce a common sense rule that virtually everyone agrees is necessary, the regulatory process is broken. Congress should get to work on reducing the unnecessary burdens placed on the agencies that protect our health and environment.

³⁸ Mark Seidenfeld, *A Table of Requirements for Federal Administrative Rulemaking*, 27 FLA. ST. U. L. REV. 533, 536-37 (2000).

³⁹ See, e.g., Rena Steinzor & Sidney A. Shapiro, *Capture, Accountability, and Regulatory Metrics*, 86 TEX. L. REV. 1741, 1757-59 (2008).

⁴⁰ Taylor Lincoln & Negah Mouzoon, *Cranes & Derricks: OSHA's Prolonged Creation of a Key Public Safety Rule*, Public Citizen, Apr. 14, 2011, <http://www.citizen.org/Page.aspx?pid=4884>.

⁴¹ *Id.* at 4.

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EXPERIENCE

Public Citizen's Congress Watch division, Washington, DC 2008–present
Director. Manage a 12-person advocacy division of a national non-profit organization with over 225,000 members and supporters. Work includes legislative and regulatory advocacy, strategic research, organizing, and communications in the areas of financial services regulation, consumer protection, government reform, occupational safety and health, and access to justice.

Public Justice, Washington, DC 2007
Staff Attorney. Litigated a range of public interest cases, primarily concerning consumer law.

Appellate Litigation Clinic

Georgetown University Law Center, Washington, DC 2005–2007
Teaching Fellow and Supervising Attorney. Supervised students litigating in U.S. Courts of Appeals for the Fourth and D.C. Circuits, Board of Immigration Appeals, and D.C. Court of Appeals. Assisted teaching seminar on appellate law and practice.

Public Citizen Litigation Group, Washington, DC 2004–2005
Fuchsberg Fellow. Litigated cases concerning open government, Internet free speech, medical damages caps, and the due process rights of absent class-action plaintiffs.

U.S. Court of Appeals for the Eleventh Circuit, Atlanta, GA 2003–2004
Law Clerk to the Honorable R. Lanier Anderson, III.

SELECTED PUBLICATIONS

Wall Street's "Two Cents" on Pay Rule: Self-Preservation, Not Principle, July 21, 2011 (with Taylor Lincoln & Negah Mouzoon).

Defensive Medicine: The Doctored Crisis, Mar. 30, 2011 (with Taylor Lincoln).

12 Months After: The Effects of Citizens United on Elections and the Integrity of the Legislative Process, Jan. 2011 (editor).

Bad Idea to Rein in Regulators, POLITICO, Feb. 14, 2011.

Banking on Connections: Financial Services Sector Has Dispatched Nearly 1,500 "Revolving Door" Lobbyists Since 2009, June 3, 2010 (with Center for Responsive Politics, editor).

Liability Limits in Texas Fail to Curb Medical Costs, Dec. 2009 (with Peter Gosselar, Christine Hines & Taylor Lincoln).

Back to Basics: Ten Steps to Save 85,000 Lives and \$35 Billion a Year in Health Care Delivery, Aug. 6, 2009 (editor).

Forced Arbitration: Unfair and Everywhere, Sept. 14, 2009 (with Zackary Gima & Taylor Lincoln).

Situating Emotion: A Critical Realist View of Emotion and Nonconscious Cognitive Processes for the Law, 2008 B.Y.U. L. REV. 1275 (2008).

The Consumer Product Safety Improvement Act of 2008: A Summary and Analysis, 36 PRODUCT SAFETY & LIABILITY REP. 940 (2008) (with Graham Steele).

The Arbitration (Debate) Trap, July 2008 (with Taylor Lincoln).

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Held Back: Unfinished Consumer Product Safety Commission Rules, Mar. 2008 (editor).

Hazardous Waits: CPSC Lets Crucial Time Pass Before Warning Public About Dangerous Products, Jan. 2008 (editor).

Let a Hundred Cases Wither, LEGAL TIMES, May 9, 2005 (with Brian Wolfman).

Preserving 'Catalyst' Attorneys' Fees Under FOIA in the Wake of Buckhannon Board and Care Home v. West Virginia, 37 HARV. C.R. -C.L. L. REV. 131 (2002).

MEDIA APPEARANCES

Quoted in *The New York Times*, *The Wall Street Journal*, *The Washington Post*, the Associated Press, *The L.A. Times*, *The Chicago Tribune*, *TIME*, *The Huffington Post*, *Politico*, *Roll Call*, and *The Hill*.

Interviewed by CNN, CBS, ABC, CNBC, NPR, and C-SPAN.

CONGRESSIONAL BRIEFINGS & TESTIMONY

Patient Safety and Medical Liability, Briefing, Committee on Energy and Commerce, U.S. House of Representatives, Washington, DC, April 4, 2011.

The Regulations from the Executive in Need of Scrutiny Act, Briefing, U.S. House of Representatives, Washington, DC, Feb. 3, 2011.

Real Financial Services Reform, Briefing, U.S. House of Representatives, Washington, DC, Dec. 4, 2009.

Forced Arbitration and the Consumer Financial Protection Agency, Briefing, Financial Services Committee, U.S. House of Representatives, Washington, DC, July 14, 2009.

Federal Arbitration Act: Is the Credit Card Industry Using It to Quash Legal Claims? Testimony Before the Subcommittee on Commercial and Administrative Law, Judiciary Committee, U.S. House of Representatives, Washington, DC, May 5, 2009.

Civil Rights as a Bargained-for Exchange, Briefing, Congressional Black Caucus, U.S. House of Representatives, Washington, DC, Apr. 16, 2008.

OTHER PANELS & PRESENTATIONS

The New Consumer Financial Protection Bureau, Panel, District of Columbia Bar, George Washington University Law School, Washington, DC, Oct. 20, 2010.

Is the Proposed Consumer Financial Protection Agency the Appropriate Remedy for Consumers of Financial Products?, Panel, District of Columbia Bar, George Washington University Law School, Washington, DC, Oct. 27, 2009.

Fighting for Consumer Justice: Challenges in a Changing Economy, Panel, Equal Justice Works Conference, Washington, DC, Oct. 25, 2009.

The Consumer Product Safety Improvement Act of 2008: The New World of Regulation and Enforcement, Panel, Bureau of National Affairs, Washington, DC, Oct. 30, 2008.

How Corporations and the Politicians They Fund Are Fighting to Take Away Our Legal Rights, Panel, Netroots Nation, Austin, TX, July 18 2008.

Implied Preemption by Safety Agency Regulation: Recent Developments, Panel, International Consumer Product Health and Safety Organization, Washington DC, Feb. 20, 2008.

Fighting Unnecessary Court Secrecy, Maryland Association for Justice, Baltimore, MD, Nov. 9, 2007.

EDUCATION

Georgetown University Law Center

LL.M. (Advocacy), *with distinction*, 2007

Harvard Law School

J.D., *cum laude*, 2003

Managing Editor, *Harvard Civil Rights–Civil Liberties Law Review*

Skirnick Fellowship for Public Service (one of two awarded to graduating students)

Irving R. Kaufman Fellowship for Public Service

Washington University, St. Louis

A.B., *magna cum laude*, 1999

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HONORS

Elected Member, American Law Institute, 2010

BAR ADMISSIONS

District of Columbia

U.S. Courts of Appeals for the Third, Fourth, and D.C. Circuits

State of Indiana

U.S. District Court for the District of Columbia

U.S. Supreme Court

ORGANIZATIONAL AFFILIATIONS

American Constitution Society

National Association of Consumer Advocates

Committee on Oversight and Government Reform
Witness Disclosure Requirement – “Truth in Testimony”
Required by House Rule XI, Clause 2(g)(5)

Name:

David Arkush

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2008. Include the source and amount of each grant or contract.

None.

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

Public Citizen.

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2008, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

None.

I certify that the above information is true and correct.

Signature:



Date:

9/12/11