

Written Testimony of

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before the

**The House Oversight and Government Reform Committee**  
**Subcommittee on Healthcare, Benefits, and Administrative Rules**  
**Subcommittee on Intergovernmental Affairs**

on

**“Benefits of a Deregulatory Agenda: Examples from Pioneering Governments”**

September 27, 2018



Mr. Chairmen and Members of the Committees,

Thank you for the opportunity to testify on regulatory policy issues. I am Amit Narang, Regulatory Policy Advocate at Public Citizen. Public Citizen is a national public interest organization with more than 500,000 members and supporters. For 45 years, we have advocated with some considerable success for stronger health, safety, consumer protection and other rules, as well as for a robust regulatory system that curtails corporate wrongdoing and advances the public interest.

Public Citizen chairs the Coalition for Sensible Safeguards (CSS). CSS is an alliance of more than 75 consumer, small business, labor, scientific, research, good government, faith, community, health and environmental organizations joined in the belief that our country's system of regulatory safeguards provides a stable framework that secures our quality of life and paves the way for a sound economy that benefits us all. Time constraints prevented the Coalition from reviewing my testimony in advance, and today I speak only on behalf of Public Citizen.

Over the last century, and up to the present, regulations have made our country stronger, better, safer, cleaner, healthier and more fair and just. Regulations have made our food supply safer; saved hundreds of thousands of lives by reducing smoking rates; improved air quality, saving hundreds of thousands of lives; protected children's brain development by phasing out leaded gasoline; saved consumers billions by facilitating price-lowering generic competition for pharmaceuticals; reduced toxic emissions into the air and water; empowered disabled persons by giving them improved access to public facilities and workplace opportunities; guaranteed a minimum wage, ended child labor and established limits on the length of the work week; saved the lives of thousands of workers every year; protected the elderly and vulnerable consumers from a wide array of unfair and deceptive advertising techniques; protected minorities and vulnerable populations from harassment and discrimination based on race, gender and sexual orientation and promoted equality under the law for such populations; ensured financial system stability (at least when appropriate rules were in place and enforced); made toys safer; saved tens of thousands of lives by making our cars safer; and much, much more.

In short, regulation is one of the greatest public policy success stories in terms of benefits to the public and is a testament to the power of Congress in protecting the public through passage of critical, foundational laws such as the Clean Air Act, the Clean Water Act, the Occupational Safety and Health Act, the Consumer Product Safety Act, the Civil Rights Act, various food safety laws, and many more. Strong and effective public health and safety regulations are a reflection of Congress' desire to protect everyday Americans through laws that are still among the most popular and cherished by the public.

Unfortunately, this Administration has sought to roll back regulatory safeguards in radical and unprecedented fashion. The centerpiece and primary impetus of the Administration's

deregulatory agenda is the issuance of Executive Order 13771 (EO 13771) on January 30, 2017.<sup>1</sup> EO 13771, however, exceeds the President's constitutional authority, violates his Article 2 duty to take care that the laws are faithfully executed, and directs federal agencies to engage in unlawful actions that harm members of the public, including members of Public Citizen. The requirements EO 13771 place on agencies are nowhere authorized by any statute, and in fact are in direct conflict with numerous laws passed by Congress which should be of utmost concern to members of Congress.

Indeed, EO 13771 is best viewed as a "supermandate" on Executive Branch agencies that essentially changes the numerous laws passed by Congress which were intended to protect the public by authorizing, and in many cases mandating, agencies to issue health, safety, environmental, and consumer protection regulations. None of these bedrock public protection laws incorporate the elements of EO 13771, namely the requirement to issue more deregulatory actions than regulatory actions, and the requirement that prevents agencies from issuing new regulations unless the costs of those regulations to corporate stakeholders is offset by the repeal of deregulatory actions that provide an equal amount of cost savings to corporate stakeholders. In short, EO 13771 flies in the face of congressional intent with respect to dozens of laws that Congress passed with the clear goal of protecting the public through issuance of new regulations.

President Trump's deregulatory agenda has resulted in an unprecedented corporate capture of our regulatory agencies and rulemaking process. While much of the attention has justifiably focused on the personnel that have been brought in through the "revolving door" to direct the deregulatory agenda at these agencies, despite many having clear conflicts of interest due to previous work on behalf of corporations, EO 13771 has significantly contributed to the corporate capture of our country's system of public protections. EO 13771 systematically reorients agencies away from the mission Congress set out for them to protect the public and towards a new deregulatory mission that requires agencies to issue more deregulatory actions than regulatory actions and to protect the public only to the point where no new costs are imposed on corporate stakeholders and no further. EO 13771 places pressure on agencies to ensure that any regulatory protections the agency seeks to adopt must be fashioned in a way that minimizes costs in order to comply with regulatory budgets adopted under the EO, rather than in a way that maximizes the effectiveness and benefits of the regulatory protection to the public. In other words, EO 13771 makes costs to corporations, not benefits to Americans and working families, the dispositive factor in agencies' regulatory or deregulatory decision-making.

The message EO 13771 sends to the public is this: it is more important for our government to boost corporate profits than it is for our government to ensure that Americans have the right to clean air and water, safe food, safe workplaces, civil rights protections, safe and non-toxic consumer products including children's products, safe cars, financial protections that hold Wall

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<sup>1</sup> Shortly thereafter, Public Citizen along with partner organizations sued the Administration to challenge EO 13771 on the basis that EO 13771 is unconstitutional and illegal.

Street accountable, and many more sensible safeguards. Agencies have already identified hundreds of crucial public protections as subject to EO 13771 and, thus, that cannot be implemented unless their costs are offset by eliminating two or more existing regulations. Among those are new lead in drinking water standards, new gun control measures, new vehicle, truck, and train safety standards, dozens of new environmental protections including restrictions on toxic chemicals, safety standards for new tobacco products like e-cigarettes, numerous workplace safety protections, and updates to energy efficiency standards.

President Trump has justified his deregulatory agenda as a means to create economic growth. After almost two years, the evidence is clear that there has been no such economic growth due to deregulation. Both GDP and jobs figures show that there has been no greater economic growth under this Administration than there was under the last Administration.<sup>2</sup> Goldman Sachs issued a report in January of 2018 that undermines any claims that deregulation under the Trump administration has led to job or economic growth. Goldman Sachs studied whether job growth and capital spending have been stronger in sectors and companies that were more highly regulated before the most recent election. According to Goldman Sachs, “[W]e find no evidence that employment or capital spending accelerated more after the election in areas where regulatory burdens are higher.”<sup>3</sup>

Further, a groundbreaking new study from a libertarian economist at George Mason’s Mercatus Center provides strong evidence that regulations have no impact on innovation in the marketplace or on the growth of startup businesses.<sup>4</sup> Professor Alex Tabarrok set out to study the impact of regulation on innovation with the expectation that he would find industry sectors that were more heavily regulated had lower rates of innovation and startup growth than industry sectors that were not as heavily regulated. In order to determine the level of regulation in a particular industry sector, Professor Tabarrok used data assembled by the Mercatus Center which notes the number of instances where regulations impose mandatory requirements on the public by searching the Code of Federal Regulations for keywords “shall” or “must.” Professor Tabarrok found that there was *no correlation* between industry sectors that had more regulatory obligations and lower rates of startup growth or innovation in those sectors according to the Mercatus Center data. Instead, Professor Tabarrok found that while innovation is certainly declining in this country, the decline is consistent and fairly uniform across industry sectors, whether or not they are heavily regulated. This research should put to bed any claims about regulation harming innovation or startups in this country.

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<sup>2</sup> [https://www.washingtonpost.com/blogs/right-turn/wp/2018/02/13/president-trumps-deregulation-flop/?utm\\_term=.a97ce3cff3ae](https://www.washingtonpost.com/blogs/right-turn/wp/2018/02/13/president-trumps-deregulation-flop/?utm_term=.a97ce3cff3ae)

<sup>3</sup> <http://www.aei.org/publication/whats-been-the-economic-impact-of-trumps-deregulation-push/>

<sup>4</sup> <https://washingtonmonthly.com/magazine/april-may-june-2018/null-hypothesis/>

## **The Basics of EO 13771**

President Trump's Executive Order on regulations, 13771,<sup>5</sup> is a key driver of deregulatory activity at all agencies. EO 13771 can be broken down into three component parts that place restrictions on agencies subject to the EO, all three of which are inter-related. First, the EO requires agencies to identify and eliminate a minimum of two existing regulations that impose costs on corporate stakeholders in order for that agency to promulgate a new regulation that imposes costs on corporate stakeholders. Second, and more consequentially, the EO imposes a "regulatory budget" which requires that agencies fully offset the costs to corporate stakeholders of any new regulations promulgated by an agency by providing equal cost savings to corporate stakeholders due to the repeal of existing regulations. Finally, the EO imposes an annual regulatory cap on incremental regulatory costs to be determined on an agency by agency basis and subject to approval by the Office of Management and Budget (OMB).

EO 13771 attempts to impose a simple framework on a highly complex rulemaking process across agencies despite the fact that federal agencies often have regulatory missions prescribed by statute that are drastically different. This includes rulemaking requirements that are specific to some agencies but not others and analytical requirements that reflect differences in how agencies value the costs and benefits of their rules, including for example stark differences in the monetary values agencies attach to lives saved by a regulation as well as other benefits to the public that a regulation provides. Thus, following the issuance of EO 13771, OMB put out guidance<sup>6</sup> which made several important clarifications and refinements regarding the terms and application of the EO in order to aid agency compliance with the EO. The guidance stipulates that the EO does not apply to all regulatory actions, but only to "significant regulatory actions" and "significant guidance documents" which are defined as having an annual effect on the economy of \$100 million or more. In contrast, deregulatory actions can include any action that provides cost savings, and not just those that are deemed to be "significant." This results in an "apples to oranges" comparison where agencies are able to claim far more deregulatory actions than regulatory actions for purposes of satisfying the first prong of the EO requiring a minimum of two deregulatory actions to offset a regulatory action.

## **The Deregulatory Results of EO 13771 Are Underwhelming**

So far, OMB has reported metrics on implementation of EO 13771 for fiscal year 2017 (FY17) and has projected cost caps for agencies for fiscal year 2018 (FY18) which is about to close. For FY17, OMB reported that agencies issued 67 deregulatory actions as compared to 3 regulatory actions under EO 13771, thus claiming a 22 to 1 ratio of deregulatory actions to regulatory actions. Yet, these numbers are highly misleading due to the "apples to oranges" comparison described above. Indeed, many of the 67 actions claimed to be deregulatory are minor in nature,

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<sup>5</sup> <https://www.federalregister.gov/documents/2017/02/03/2017-02451/reducing-regulation-and-controlling-regulatory-costs>

<sup>6</sup> <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf>

and include repeals of non-binding guidance documents that do not, as a technical or legal matter, impose costs on corporate stakeholders.<sup>7</sup>

Thus it is not surprising that with respect to cost savings under EO 13771 for FY17, the results have been underwhelming. OMB projected approximately \$570 million in annual cost savings for FY17. To put that in context, the most recent Gross Domestic Product (GDP) figures from the government indicate an increase in GDP of roughly \$371 billion for the second quarter of FY18.<sup>8</sup> Thus the annual costs savings under EO 13771 for FY17 equates to about .001% of the GDP growth in the most recent quarter of this fiscal year. This is certainly a drop in the bucket and a very small one at that. For FY18, OMB has projected a slight increase in cost savings of \$687 million per year under EO 13771.<sup>9</sup> This is likely due to OMB forcing agencies to propose negative cost caps for FY18, meaning that many agencies will not only have to offset the cost of new rules with cost savings from eliminating old rules, but must go further and meet “negative” cost cap goals by cutting existing regulations to provide cost savings on top of those necessary to offset new regulations.

### **EO 13771 Requires Agencies to Ignore the Benefits of Regulations**

EO 13771 has led to a wholesale change in how agencies weigh the costs and benefits of the regulations they promulgate by restricting agencies from considering how regulations benefit the public when analyzing the impacts of their regulations. In essence, EO 13771 has turned cost-benefit analysis into “cost-cost” analysis where the benefits of protecting the public play virtually no meaningful role in regulatory analysis and agencies will instead solely focus on the costs to corporate stakeholders when deciding whether to issue new regulations and how they will be fashioned.

It is true that this Administration has not officially repealed EO 12866 which requires agencies to assess the costs and the benefits of the most important and beneficial regulations they promulgate. Yet, it is impossible to reconcile the goal of EO 12866, which is to maximize a regulation’s net benefits to the public, with the goal of EO 13771, which is to minimize the costs of regulations to corporate stakeholders.

Indeed, maximizing net benefits will have no place in the EO 13771’s regulatory budget model. By default, agencies will have a strong incentive to pick the rule that is least costly to corporate stakeholders in order to meet budget caps, even if the benefits of a slightly more costly rule would be substantially greater, thus increasing the total net benefits of the rule. The “cost-benefit” regulatory model that maximizes the public benefits of rules has turned into the “least costly to business” regulatory budget.

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<sup>7</sup> The full list of deregulatory and regulatory actions for FY17 can be found here:

[https://www.reginfo.gov/public/pdf/eo13771/FINAL\\_BU\\_20171207.pdf](https://www.reginfo.gov/public/pdf/eo13771/FINAL_BU_20171207.pdf)

<sup>8</sup> <https://www.bea.gov/data/gdp/gross-domestic-product>

<sup>9</sup> [https://www.reginfo.gov/public/pdf/eo13771/FINAL\\_TOPLINE\\_ALLOWANCES\\_20171207.pdf](https://www.reginfo.gov/public/pdf/eo13771/FINAL_TOPLINE_ALLOWANCES_20171207.pdf)

To be clear, Public Citizen is not enthusiastic<sup>10</sup> about cost-benefit analysis in the first place. It is based on inherently flawed methodology, and it plays an outsized and often dispositive role in agency decision-making. The methodology relies on subjective assumptions that tend to inflate cost figures and undercount the benefits.

For example, cost-benefit calculations do not account for dynamic and innovative responses<sup>11</sup> by industry to new regulations that lower compliance costs. In addition, many of the benefits of regulation—such as saving lives, reducing lead exposure, and preventing oil train derailments and explosions, to name just a few—are difficult or impossible to quantify in monetary terms.

Compounding this problem is the fact that cost-benefit analysis has become a test that agencies must meet before issuing regulations—even when Congress has set a mandatory deadline for a rule or has given the agency very little discretion in how to fashion the regulation.

Cost-benefit analysis is far more art than science and confers a false illusion of objectivity. It should never be the basis for rejecting a proposed regulation—especially one required by law. It has been a constant obstacle for public interest groups like Public Citizen that are pushing for stronger regulations aimed at enforcing our laws and protecting the public. If agencies must conduct cost-benefit analysis, the goal should be to maximize the net benefits.

As will be discussed later in the testimony, EO 13771 has already blocked agencies from issuing common-sense health, safety, environmental, and consumer protection regulations due to the inability to offset the costs of those regulations under EO 13771 despite the fact that these regulations will bring enormous benefits, ranging from tens to hundreds of billions of dollars per year, to Americans and working families. In short, EO 13771 is forcing agencies to ignore the benefits of health, safety, environmental, and consumer protection regulation to the public.

### **The Lost Benefits of President Trump’s Deregulatory Agenda due to EO 13771**

While EO 13771 has tied agency hands from considering the benefits that everyday Americans will lose due to the Trump Administration’s radical deregulatory agenda, both official government figures issued under this Administration, along with a new report that Public Citizen released yesterday entitled “Ignored Benefits” make clear that the regulatory budget model under EO 13771 is leading to the loss of hundreds of billions to trillions of dollars in regulatory benefits that would have accrued to the public.

#### **A. Office of Management and Budget Report to Congress on the Costs and Benefits of Federal Regulations**

Federal health, safety, and environmental regulations are one of the best investments that our government can make according to cost-benefit figures compiled by OMB on a yearly basis and

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<sup>10</sup> <https://judiciary.house.gov/wp-content/uploads/2016/05/HHRG-114-JU00-Wstate-NarangA-20160524.pdf>

<sup>11</sup> <https://www.citizen.org/our-work/government-reform/regulation-unsung-hero-american-innovation>

submitted to Congress under the “Regulatory Right to Know Act.” The report details the costs and benefits of those rules where agencies were able to fully monetize costs and benefits over the preceding ten fiscal years. Every year the report has been issued by OMB, the report has shown that the public health, safety, environmental, and consumer protection benefits of the regulations issued that fiscal year have substantially exceeded the costs to corporations.<sup>12</sup>

The OMB draft report for 2017,<sup>13</sup> which covers rules issued in fiscal year 2016, once again found benefits of those rules dramatically exceeding the costs. The draft report showed that rules with monetized costs and benefits issued under President Obama’s last year in office provided the public with 6 dollars of benefits for every one dollar in compliance costs for regulated entities. This is a rate of return on investment that more than fully justifies any compliance costs associated with health, safety, environmental, and consumer protection regulations.

According to the 2017 draft report, the benefits of regulations issued by the government over the past ten years have massively outweighed the costs, with benefits ranging from \$287 to \$911 billion as compared to costs of \$78 and \$115 billion. This report illustrates just how costly EO 13777 would have been to our country if it had been in place over the last ten years. In other words, if a regulatory budget had been in place, agencies would have been prevented from providing the public with up to \$911 billion in regulatory benefits in order to avoid imposing costs on corporations of up to \$115 billion. This kind of budget would make no economic sense for any private business owner and, likewise, it makes no economic sense for our government either.

The Committee should note that this year’s draft report missed the deadline for submission to Congress by approximately two months. While the report was supposed to be submitted to Congress, at least in draft form, by the end of the calendar year 2017, OMB ended up submitting the report at the end of February 2018. In addition, OMB released the report late on a Friday evening and without any accompanying statement or press release that would draw attention to the report. Public Citizen believes the report provides important information to the public and should be disseminated in a way that maximizes accessibility and awareness by the public.

Additionally, criticism of the report as being too narrow in scope is misleading and misplaced. While the report indicates that agencies have issued 36,225 federal rules over the last ten years, the vast majority of these rules are minor and technical in nature and relate to actions such as agency publishing of timetables to open drawbridges or schedules for cutting trees at airport runways. These actions rarely undergo economic analysis much less public notice and comment. Of the subset of most important rules that do undergo cost-benefit analysis, the most recent report indicates that only 4 of the 81 major rules covered by the report had no cost or benefit analysis to accompany the rules. As stated before, OMB’s report is pursuant to the Regulatory

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<sup>12</sup> <https://www.whitehouse.gov/omb/information-regulatory-affairs/reports/>

<sup>13</sup> [https://www.whitehouse.gov/wp-content/uploads/2017/12/draft\\_2017\\_cost\\_benefit\\_report.pdf](https://www.whitehouse.gov/wp-content/uploads/2017/12/draft_2017_cost_benefit_report.pdf)



Right to Know Act so any criticism of the scope of the report's coverage should be directed at the underlying statute, not OMB.

## **B. Public Citizen's Report Finds 2 Trillion in Lost Benefits Due To Deregulatory Agenda**

Yesterday, Public Citizen released a report, attached in full at the end of this testimony, which reviews the most important health, safety, environmental, and consumer regulations that are currently being repealed or weakened by the Trump Administration. The report examines 13 rules that the Trump Administration has repealed, delayed, or targeted for repeal, and finds that these rules would provide the public with over \$2 trillion in regulatory benefits over the next two decades if they were allowed to be kept in place. This breaks down to about \$16,700 per every household over the next two decades and far outweighs any cost savings to corporations over the same period.

The rules examined in the report cover the spectrum of regulations that benefit the public, from bedrock safety regulations that combat air pollution and climate change to regulations that put money back in the pocketbook of working Americans by updating outdated overtime pay thresholds to ensuring that investment brokers are acting in the best interest of their clients and not themselves. The report did not include important and beneficial regulations such as the Clean Power Plan or the Mercury and Air Toxics regulation even though the Trump Administration has targeted both for potential repeal or weakening. In both cases, corporate stakeholders had sunk costs into complying with the rule, thereby realizing the benefits of the rule, or the rule has not been allowed to go into effect pending a legal challenge and thus the benefits of the rule have not yet kicked in. Thus, our estimate of the lost benefits is best viewed as a conservative estimate.

## **Hundreds of Public Protections Are Being Blocked or Delayed by EO 13771**

EO 13771 is already having significant and harmful real world impacts by blocking or delaying hundreds of new regulatory protections that directly protect and benefit hardworking Americans and their families. A review of the most recent Unified Regulatory Agenda, issued this past Spring, fully confirms this fact.

Before turning to the data, a brief explanation of the Unified Agenda may be helpful. The agenda is published twice a year by OMB, in the spring and in the fall traditionally, and lists all agencies upcoming rulemakings along with anticipated dates for the next action agencies will take on those rulemakings. It also lists rules that agencies have completed since the publication of the last Unified Agenda and lists rules that agencies consider to be "long-term actions" meaning that agencies do not anticipate taking any action on those rules in the near future. Thus, the Unified Agenda gives the public a snapshot of which rules agencies are working on, and those which agencies have either completed work on or do not anticipate working on in the near future. After EO 13771 was issued, agencies have begun listing their regulatory actions as either "regulatory," "deregulatory," or "other" for purposes of classifying rules under EO 13771. As the titles

indicate, “regulatory” actions are those where the costs must be offset, “deregulatory” actions are those that could provide cost savings to offset “regulatory” actions, and “other” means the action is not subject to EO 13771.

According to the Spring 2018 Unified Agenda, of the actions that agencies are currently working on, 133 are listed as regulatory and thus must be offset by deregulatory actions that provide cost savings equal to the cost of the regulatory action. By contrast, 498 actions that agencies are currently working on are listed as deregulatory. In other words, agencies are currently working on roughly four times the number of deregulatory actions as regulatory actions, reinforcing that EO 13771 has systematically bent our agencies in favor of deregulation.

The Spring Agenda also shows a clear link between actions classified as regulatory under EO 13771 and actions that agencies have blocked or delayed by classifying them as long term actions. Specifically, there are 87 regulatory actions that have been classified as both regulatory and long term on the Spring Agenda. In other words, about 40 percent of all rules classified as regulatory on the Spring Agenda will not be issued or acted upon by agencies in the near future and thus should be considered to have been blocked or delayed. This data makes clear that there is a strong correlation between rules that are identified as regulatory and thus must be offset under EO 13771, and rules that that agencies have blocked or delayed by virtue of being identified as “long term” actions. In short, agencies are blocking or delaying rules that benefit the public due to EO 13771.

By contrast, even though significantly more rules are classified as deregulatory under EO 13771, far fewer have been delayed or blocked by being classified as long term by agencies. According to the Spring Agenda, only 32 rules deemed as deregulatory were classified as long term actions. Further, agencies are completing deregulatory rules at a far faster clip than regulatory rules. Of the completed actions on the Spring Agenda, about 80 actions were deemed deregulatory whereas only 14 completed actions were deemed regulatory. This means that agencies are completing deregulatory actions at almost six times the rate as regulatory actions.

### **An Illustration of How Important New Protections Are Being Blocked by EO 13771**

The numbers from the most recent Unified Agenda certainly make clear that EO 13771 is forcing agencies to block or delay new regulations that protect the public. Yet, this should not be surprising given how the regulatory budget component of EO 13771 is supposed to operate. In order to illustrate how EO 13771 places agencies that are supposed to protect the public in an “arithmetic straightjacket” which prevents them from issuing regulations that protect the public, it is useful to consider the real world example of an auto safety regulation that would save over a thousand lives a year by introducing revolutionary safety technology into the marketplace, but is being blocked by EO 13771.

In January of 2017, The Department of Transportation’s National Highway Traffic Safety Administration (NHTSA) proposed an auto safety rule called Vehicle to Vehicle

Communications (V2V Rule)<sup>14</sup> that would require automakers to adopt new technology that avoids crashes and traffic fatalities by allowing cars to send basic safety messages to other cars in order to avert accidents. NHTSA claimed when it proposed the rule that V2V technology “has the potential to revolutionize motor vehicle safety ...and to reduce the number and severity of motor vehicle crashes.”<sup>15</sup> NHTSA projected in the proposed rule that it would prevent 424,901-594,569 crashes a year and save between 955 and 1,321 lives a year when fully adopted by automakers. NHTSA estimated those lives saved and crashes avoided would result in benefits of \$54.7 billion to \$73.9 billion annually while costing \$2.2 billion to \$5 billion per year.<sup>16</sup>

It will be virtually impossible for NHTSA to finalize the V2V rule while complying with EO 13771. The reason is simple: there are simply not enough cost savings from deregulatory actions to offset the costs of the V2V rule, despite the enormous benefits the rule would provide to our country. As noted above, the sum of the annual cost savings generated by all deregulatory actions across all agencies during FY17 resulted in only \$570 million in cost savings. Comparing the estimated costs of the V2V rule, \$2.2 billion to \$5 billion, with the costs savings from FY17 suggests that it will take two to three years to accumulate deregulatory cost savings *across the whole government* that are sufficient to offset even the most conservative estimated cost of *just this one* V2V rule.

Making matters worse, EO 13771 generally restricts agencies from using cost offsets that originate from other agencies, meaning that NHTSA would need to offset the costs of the V2V rule with cost savings that come from deregulatory actions taken by the Department of Transportation alone. In FY17, the Department generated cost savings of just \$21.8 million. At this rate, the Department would need *seven decades* to accumulate the necessary cost savings to offset just this one V2V rule. As this example illustrates, EO 13771 is blocking agencies from issuing regulations that provide enormous benefits to the public which massively outweigh the costs of the regulation to corporate stakeholders, making clear that the regulatory budget model is preventing agencies from protecting the public and will continue to do so.

### **Examples of Protections that Are Being Blocked and Delayed by EO 13771**

As noted above, there are currently 220 regulations that have been classified as regulatory on the most recent Unified Agenda. Those regulations include common-sense health, safety, environmental, and consumer protection regulations from across government agencies. Examples of the public protections that are being blocked and delayed by EO 13771 include:

- Updates to outdated lead exposure standards:
  - Lead in Drinking Water Rule (2040-AF15)<sup>17</sup>

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<sup>14</sup> 82 Fed. Reg. 3854 (Jan 12, 2017)

<sup>15</sup> *Id.* At 3855

<sup>16</sup> *Id.* At 3981

<sup>17</sup> Regulatory Identification Numbers (RINs) in Parentheses

- Lead in Paint and Residential Dust Rule (2070-AJ82)
  - Lead Standards for Renovation and Repair of Commercial Buildings (2070-AJ56)
- Protections from Toxic Chemicals under TSCA:
  - Paint Stripper (Methylene Chloride) Rule (2070-AK07)
  - Tricchloroethylene (TCE) Rules (2070-AK03, 2070-AK11)
- Worker Safety Protections:
  - Exposure To Infectious Diseases Rule (1218-AC46)
  - Prevention of Workplace Violence in Health Care Facilities (1218-AD08)
  - Injury and Illness Recordkeeping and Reporting Rule (1218-AC45)
- Mine Worker Safety Rules:
  - Proximity Detection Systems for Mobile Machines (1219-AB78)
  - Exposure of Underground Miners to Diesel Exhaust (1219-AB86)
- Energy Efficiency Standards and Updates
  - Efficiency Standards for Residential Conventional Cooking Products (1904-AD15)
  - Efficiency Standards for Gas Furnaces (1904-AD20)
- Airline Baggage Fees:
  - Transparency of Airline Baggage and Other Fees (Withdrawn) (2105-AE56)
- Auto Safety Protections:
  - Vehicle to Vehicle Communication (2127-AL55)
  - Heavy Vehicle (Trucks) Speed Limiter Rule (2126-AB63)
  - Rear Seat Belt Reminder System (2127-AL37)
  - Child Passenger Safety Protections (2127-AL20, 2127-AL34)
- Anti-Smoking Protections for Children:
  - Nicotine Exposure Warnings and Child Resistant Packaging for Liquid Nicotine (0910-AH24)
- Gun Safety Protections
  - Bump Stock Device Rule (1140-AA52)

## **Regulatory Budget Models from Other Countries Have Harmed the Public**

When other countries have experimented with regulatory budget models similar to EO 13771, the results have ranged from underwhelming to downright dangerous. For example, the U.K. instituted a “one-in, one-out” regulatory budget which has evolved to a “one-in, three-out” regulatory budget that requires the removal of three existing regulations before a new regulation can be put in place. UK safety officials have pointed to the regulatory budget as playing a key role leading to the tragic Grenfell Tower fire in London last year.<sup>18</sup> Fire safety officials have

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<sup>18</sup> <https://www.nytimes.com/2017/06/22/opinion/london-fire-grenfell-tower.html>

claimed that new regulations to require retrofitting of buildings to install fire sprinklers were not put in place due to the requirement to offset those fire safety regulations with three deregulatory actions.

Canada has also instituted a version of the regulatory budget, although it only applies to “administrative burdens,” which are best equated in our country to paperwork burdens stemming from regulatory compliance, rather than the underlying regulatory requirements as is the case with EO 13771. The most recent cost savings reported by Canada due to the regulatory budget are far from substantial. In fiscal year 2017, Canada’s regulatory budget resulted in administrative burden reductions of \$455,692.<sup>19</sup>

## **Conclusion**

Public Citizen encourages this committee and members of Congress to conduct vigorous oversight over the continuing implementation of EO 13771 to ensure that federal agencies are continuing to protect the public through issuance of new health, safety, environmental, and consumer protection regulations as Congress intended. As this testimony demonstrates, EO 13771 is frustrating the agencies from performing their congressionally mandated missions to protect the public. Public Citizen also encourages members of Congress to be mindful of the need to explicitly exempt agencies from complying with EO 13771 when drafting and enacting new legislation designed to protect the public by requiring agencies to issue new regulations. New legislation that seeks to protect the public is likely to be subject to EO 13771 unless Congress makes clear that agencies are exempt from compliance with EO 13771.

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<sup>19</sup> <https://www.canada.ca/en/treasury-board-secretariat/corporate/reports/annual-report-parliament-2016-2017-fiscal-year-implementation-one-for-one-rule.html#s5>

## Appendix A

# Ignored Benefits: Trump Nixing \$2.1 Trillion in Benefits Via Regulatory Cuts

### ***Trump's Anti-Regulation Zealots Ignore Benefits of Health, Safety, Worker, Consumer and Environmental Protections***

By Alan Zibel, Research Director, Public Citizen's Corporate Presidency Project<sup>20</sup>

September 26, 2018 -- The Trump administration wants to deprive Americans of more than \$2.1 trillion in benefits to American consumers, workers and the U.S. economy over the next two decades by enacting reckless deregulatory rollbacks, a Public Citizen analysis finds. If Trump achieves this misguided goal, the potential loss would amount to about \$16,700 per household, far exceed any cost savings for businesses. The research highlights how Trump's crusade against regulations is the product of special-interest lobbying rather than a serious effort to promote economic growth.

Cost-benefit analysis has been part of federal rulemaking since the 1980s. Under an order signed by President Reagan [in 1981](#), federal agencies must analyze whether the potential societal benefits of regulations outweigh the potential costs. This sort of analysis is routinely used by business groups to derail life-saving regulations despite valid concerns about the difficulty of assigning dollar values to hard-to-quantify benefits such as clean air and human life. But federal agencies have devoted exhaustive study in recent years demonstrating the economic benefits of those rules.

Public Citizen's examination of 13 rules repealed, delayed or targeted for repeal by the Trump administration found that more than \$105 billion in benefits, on average, will be lost every year from 2020 through 2040 if the Trump administration erases these rules or enacts toothless replacements. These at-risk benefits which would cost each household about \$836 per year, vastly exceeding the rules' average annual costs of nearly \$21 billion. The benefits are also far higher than the administration's claimed savings of [at least \\$570 million](#) per year through regulatory rollbacks.

Public Citizen's analysis primarily uses economic cost-benefit numbers developed when these rules were proposed or enacted during the Obama administration rather than misleading numbers published by the Trump administration to justify their repeal. In some cases, as noted in Table 3, we use numbers from expert sources that calculate the benefit to consumers or workers, rather than to the entire economy.

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<sup>20</sup> This report was completed with assistance from Public Citizen Regulatory Policy Advocate Amit Narang ,with editing from Public Citizen President Robert Weissman as well as Public Citizen Research Director Taylor Lincoln. Dan Becker of the Safe Climate Campaign, Dave Cooke of Union of Concerned Scientists, Lauren Urbanek and John Walke of Natural Resources Defense Council and Andrew deLaski of the Appliance Standards Awareness Project provided input.

**Table 1: Benefits of Targeted or Eliminated Rules, 2020-2040 (\$ Billions)**

Rule	Agency	Annual Benefit (Low)	Annual Benefit (High)	Average Yearly Benefit
Clean Car Standards	EPA/NHTSA	\$8.55	\$119.40	\$63.98
Fiduciary	Labor	\$17.00	\$17.00	\$17.00
Glider' truck pollution*	EPA	\$6.00	\$14.00	\$10.00
Energy efficient light bulbs	Energy	\$3.60	\$14.20	\$8.90
Ozone	EPA	\$1.50	\$3.50	\$2.50
Overtime	Labor	\$1.20	\$1.20	\$1.20
Methane	EPA	\$0.50	\$0.60	\$0.55
Battery backup efficiency	Energy	\$0.26	\$0.46	\$0.36
Public lands methane	Interior	\$0.21	\$0.40	\$0.31
Air conditioner efficiency	Energy	\$0.21	\$0.33	\$0.27
Packaged Boiler efficiency	Energy	\$0.09	\$0.30	\$0.20
Oil rig safety	Interior	\$0.16	\$0.16	\$0.16
Air compressor efficiency	Energy	\$0.03	\$0.07	\$0.05
<b>TOTALS</b>		<b>\$39.31</b>	<b>\$171.63</b>	<b>\$105.47</b>

**Table 2: Costs of Targeted or Eliminated Rules, 2020-2040 (\$ Billions)**

Rule	Agency	Annual Cost (Low)	Annual Cost (High)	Average Yearly Cost
Clean Car Standards	EPA/NHTSA	\$9.19	\$22.60	\$15.90
Fiduciary	Labor	\$1.00	\$3.20	\$2.10
Glider' truck pollution*	EPA	n/a	n/a	n/a
Energy efficient light bulbs	Energy	\$0.00	\$1.80	\$0.90
Ozone	EPA	\$0.70	\$0.70	\$0.70
Methane	EPA	\$0.40	\$0.50	\$0.45
Overtime	Labor	\$0.30	\$0.30	\$0.30
Public lands methane	Interior	\$0.11	\$0.28	\$0.19
Battery backup efficiency	Energy	\$0.12	\$0.16	\$0.14
Oil rig safety	Interior	\$0.09	\$0.10	\$0.10
Air conditioner efficiency	Energy	\$0.05	\$0.06	\$0.06
Packaged Boiler efficiency	Energy	\$0.03	\$0.04	\$0.04
Air compressor efficiency	Energy	\$0.01	\$0.01	\$0.01
<b>TOTALS</b>		<b>\$11.99</b>	<b>\$29.70</b>	<b>\$20.83</b>

*\*Note: Acting EPA Administrator Andrew Wheeler has reversed the Trump's administration's decision to not enforce this truck-engine rule but still may go ahead with a rollback. The EPA has estimated benefits, but not costs, for this glider truck regulation, which is a piece of a broader rulemaking on truck emissions.*

Public Citizen's analysis excludes some important rules. For example, it does not include the impact of replacing Obama-era rules regulating carbon dioxide emissions from power plants. Though that rule was initially expected to bring large economic benefits, many of those benefits have been achieved far earlier than expected as inexpensive natural gas forces the retirement of coal power plants. Additionally, the Obama-era carbon rules were not allowed to go into effect due to an unfavorable Supreme Court decision. Furthermore, Public Citizen's analysis also does not include [the rollback](#) of a rule curtailing mercury pollution from power plants, as power plant owners have already made the necessary upgrades to implement the rule, and several states might still require the use of such equipment. If we had included the benefits from those rules, our \$2.1 trillion lost benefit figure would be far higher.

Under [an executive order signed](#) by President Clinton in 1993 and a [similar order](#) signed by President Obama, federal regulators almost always proceed only with new regulations when [monetized benefits](#) outweigh the costs. This kind of calculation tends to overstate the costs of rules, primarily based on information provided by industry, and underestimate benefits. Often missing from these calculations are benefits such as privacy, averted pain and suffering, democracy, equality and fairness. Often, the benefits of new regulations are immense, such as efforts to mitigate global climate change, and far greater than just those benefits that agencies can calculate. In many cases, particularly for pollution and energy efficiency standards, the economic benefits of regulation often dramatically exceed the costs.

A case in point is Trump's recent proposal to roll back automotive fuel economy and greenhouse gas standards. Despite [objections](#) from career EPA officials, the administration implausibly claimed that the rollback would result in increased safety as consumers would be more likely to buy new cars without the added cost of fuel economy technology. In fact, improved fuel economy can motivate consumers to buy newer car models. Meanwhile, an analysis by Trump's own EPA backs up this point, acknowledging that the Trump rollback plan would increase emissions of air pollutants both from vehicle tailpipes and from fuel refining at a societal cost of [\\$800 million to \\$1.2 billion through 2026](#). Meanwhile, one analysis [finds](#) that freezing federal vehicle standards at 2020 levels would boost consumer spending on gasoline by \$20 billion in 2025, lead to 60,000 fewer jobs and an \$8 billion decline in gross domestic product in 2025.

Still, the Trump administration as well as corporate-allied critics, focus obsessively and exclusively on regulatory costs without acknowledging or taking into account regulatory benefits. One of the Trump administration's early actions was an executive order that conveniently ignored the "benefit" side of the cost-benefit equation by [directing](#) federal agencies to repeal at least two federal regulations for every new rule they issue. (Public Citizen is suing the Trump administration over the legality and constitutionality of the deregulatory executive order) This sort of approach would be better described as [cost-cost analysis](#). In the Trump administration's view, regulatory benefits are not even part of the picture.

The Trump administration also has put key rules on ice despite the considerable net benefits. For example, the administration has refused to publish in the Federal Register four beneficial energy



efficiency rules, and even [appealed](#) a federal judge's [ruling](#) that it must do so. Trump officials have also worked to undermine the regulatory process, particularly by [cooking the books](#) and lowering or eliminating consideration of [benefits that are lost](#) when rules are repealed.

When trying to repeal rules its industry allies dislike, the Trump administration often employs logic that is sloppy at best. For example, under former EPA Administrator Scott Pruitt, the agency last year proposed to [repeal](#) pollution requirements for super-polluting diesel freight trucks created by dropping old engines into new truck bodies. This "glider truck" proposal was virtually devoid of any evidence or analysis of why the repeal was necessary, ignoring the agency's legal responsibility to demonstrate its rules are the product of [reasoned decision-making](#) based on sound science and economics. Given that a glider truck can emit up to 450 times the particulate matter and up 43 times the nitrous oxide of new trucks, these issues deserve a serious, professional review. The repeal would cost Americans \$6 billion to \$14 billion in benefits every single year. More recently, the EPA's acting administrator, Andrew Wheeler, [has backed down](#) on Pruitt's plan to not enforce the glider rule but still appears likely to proceed with a repeal.

The Trump administration has even failed to consider the possibility that federal rules may benefit the public. In a proposal to roll back offshore drilling safety standards, the Interior Department neglected to mention any benefit to society that would be forgone if the rule were to be repealed. The benefits, including natural resource damage, personal injuries, the cost of spill containment and impact to commercial fishing, could add up to \$163 million per year, according to government [calculations](#). Yet, the Interior Department only calculated the safety rule's costs to oil and gas companies. As Sen. Bill Nelson (D.-Fla.) [wrote in a letter](#) to the Interior Department, the proposal "places its entire justification on oil company profits and completely ignores potential economic costs to the lives and safety" of oil industry workers and coastal communities.

Trump officials also are undermining [efforts](#) to incorporate forecasts of [the economic damage](#) caused by climate change into government rule-writing. The Obama administration calculated that, based on the global damages from climate change, each ton of carbon emissions would cost the world economy \$54 in 2030. But the Trump administration [lowered this figure](#) to \$7 a ton, a move that artificially diminishes the climate change impact of the administration's deregulatory agenda.

In a similar vein, the EPA has proposed [eliminating](#) ancillary benefits, known as co-benefits, from its cost-benefit calculations. For example, [power plant regulations](#) intended to reduce mercury levels in the air can also have the extra benefit of curbing soot in the air. And rules designed to lower carbon emissions also reduce other kinds of pollution. Just as the Trump administration wishes to study the impact of regulatory changes on employers and jobs, it should take the impacts on [public health just as seriously](#).

Although pro-corporate think tanks and analysts have developed a cottage industry of generating fanciful estimates of the cost of regulation, overall costs are not consequential compared with the size of the U.S. economy. Thus, analysts at Goldman Sachs studied whether job growth and capital spending have been stronger in sectors and companies that were more highly regulated before the most recent election and [found](#) "no evidence that employment or capital spending accelerated more

after the election in areas where regulatory burdens are higher.” They found the results “not surprising,” partly because [“the estimated costs of regulation are not that high.”](#) Relatedly, a study by a libertarian economist at George Mason University found [no correlation](#) between increased federal regulation and the formation of startups or tendency of workers to switch jobs or move for new jobs.

Americans have seen firsthand that cutting regulations can lead to economic devastation. The deregulation of Wall Street in the 1990s and 2000s led to the financial crisis of 2008 and the Great Recession, cost Americans up to \$14 trillion, destroyed 8.7 million jobs and caused workers’ pension funds to lose nearly a third of their value. The Trump administration’s deregulatory obsession is costing America, massively. The [“deconstruction of the administrative state”](#) may sound appealing in abstract terms, but in blocking and rolling back key rules, the administration is inflicting needless pain on Americans every single day.

**Table 3: Details of Rules Targeted or Eliminated by Trump Administration**

Rule	Agency	Description	Status	Annual benefit	Costs
<b>Clean car standards</b>	EPA /NHTSA	Fuel economy and greenhouse gas emissions rules for new vehicles.	Replacement rule proposed	Source: Public Citizen tally of costs from EPA’s 2012 <a href="#">regulatory impact analysis</a> of 2017-2025 light duty vehicle standards (page vi, table 2) and 2016 <a href="#">midterm evaluation</a> of 2022-2025 light duty vehicle standards. (page A-183, table C.87)	Source: Public Citizen tally of costs from EPA’s 2012 <a href="#">regulatory impact analysis</a> of 2017-2025 light duty vehicle standards (page vi, table 2) and 2016 <a href="#">midterm evaluation</a> of 2022-2025 light duty vehicle standards. (page A-183, table C.87)
<b>Fiduciary (investor protection)</b>	Labor	Financial advisers must put clients’ interests above their own.	Overturned in court decision, Labor Dept did not appeal, and rule died.	Aggregate annual cost of conflicted advice is about \$17 billion each year, per Obama administration <a href="#">analysis</a> .	<a href="#">\$1B-\$3.2B annually over 10 years.</a>
<b>Energy efficient light bulbs</b>	Energy	Stricter standards for light bulbs.	<a href="#">Energy Department may withdraw</a>	\$3.6 billion in consumer savings on electricity bills in 2020, rising to \$14.2 billion in 2025, then falling to \$10 billion by 2040. Source: Andrew DeLaski, Appliance Standards Awareness Project	\$1.8 billion in increased consumer spending on light bulbs, falling below zero by 2025 due to less-frequent bulb changes <a href="#">Source: Appliance Standards Awareness Project /American Council for an Energy-Efficient Economy</a>
<b>“Glider” engine emission requirements</b>	EPAA	Used engines installed in new truck bodies must meet same emission standards as new engines.	Acting EPA Administrator Wheeler reversed decision to not enforce glider rule, but may go ahead with rollback.	<a href="#">Removal of all unrestricted glider vehicle emissions from the atmosphere would yield between \$6B to \$14B in annual benefits.</a>	N/A: The EPA has estimated benefits but not costs, for this which is a part of a broader rulemaking on truck emissions.

<b>Ozone</b>	EPA	Ground-level ozone standards	<a href="#">Delayed, under review</a>	<a href="#">\$1.5B/year to \$3.5B/year Source: 2016 OIRA report (page 23)</a>	<a href="#">\$700M/year Source: 2016 OIRA report (page 23)</a>
<b>Overtime pay</b>	Labor	Requires overtime pay for workers making up to \$47,476 year.	<a href="#">Struck down by court after challenge from business groups.</a>	<a href="#">\$1.2B/year for workers , per rule.</a>	<a href="#">\$295.1M/year in direct costs to employers</a>
<b>Methane emissions from oil and gas sector</b>	EPA	Methane leaks at oil well sites	<a href="#">Rollback proposed.</a>	\$500M/year- \$600M/year Source: <a href="#">2017 OIRA report</a> (page 24)	\$400M/year- \$500M/year Source: <a href="#">2017 OIRA report</a> (page 24)
<b>Battery backup/ uninterruptible power Supplies</b>	Energy	Energy efficiency standards for battery backup systems	Delayed, lawsuit pending	<a href="#">\$260M to \$666M Source: Final rule (Page 15)</a>	<a href="#">\$118 to \$157M Source: Final rule (Page 15)</a>
<b>Public lands methane</b>	Interior	Regulation of methane leaks on public lands	<a href="#">Rollback finalized.</a>	Source: Page 5-6 of Interior Department Regulatory Impact Analysis  <a href="https://www.regulations.gov/document?D=BLM-2016-0001-9127">https://www.regulations.gov/document?D=BLM-2016-0001-9127</a>	Source: Page 5-6 of Interior Department Regulatory Impact Analysis'  <a href="https://www.regulations.gov/document?D=BLM-2016-0001-9127">https://www.regulations.gov/document?D=BLM-2016-0001-9127</a>
<b>Portable Air Conditioners</b>	Energy	Energy efficiency standards for portable air conditioners	Delayed, lawsuit pending	<a href="#">\$213M to \$448M Source: Final rule (Page 16)</a>	<a href="#">\$53.3M to \$61 M (higher consumer prices) Source: Final rule (Page 16)</a>
<b>Commercial Packaged Boilers</b>	Energy	Energy efficiency standards for commercial packaged boilers	Delayed, lawsuit pending	<a href="#">\$90M-\$261M Source: Final rule (Page 17)</a>	<a href="#">\$31M to \$37M Source: Final rule (Page 17)</a>
<b>Oil rig safety</b>	Interior	Safety valve for offshore oil rigs	<a href="#">Rollback proposed</a>	<a href="#">\$157.2M-\$163.3M/year</a>	<a href="#">\$92.7M-\$97.7M/year</a>
<b>Air Compressors</b>	Energy	Energy efficiency standards for air compressors	Delayed, lawsuit pending	<a href="#">\$30M to \$113M Source : Final rule (Page 16)</a>	<a href="#">\$8.8M to \$12M Source Final rule (Page 16)</a>

**Committee on Oversight and Government Reform  
Witness Disclosure Requirement — “Truth in Testimony”**

Pursuant to House Rule XI, clause 2(g)(5) and Committee Rule 16(a), non-governmental witnesses are required to provide the Committee with the information requested below in advance of testifying before the Committee. You may attach additional sheets if you need more space.

Name: AMIT NARANG

1. Please list any entity you are representing in your testimony before the Committee and briefly describe your relationship with each entity.					
Name of Entity	Your relationship with the entity				
PUBLIC CITIZEN	EMPLOYEE IN THE POSITION OF REGULATORY POLICY ADVOCATE				
2. Please list any federal grants or contracts (including subgrants or subcontracts) you or the entity or entities listed above have received since January 1, 2015, that are related to the subject of the hearing.					
Recipient of the grant or contact (you or entity above)	Grant or Contract Name	Agency	Program	Source	Amount
N/A					
3. Please list any payments or contracts (including subcontracts) you or the entity or entities listed above have received since January 1, 2015 from a foreign government, that are related to the subject of the hearing.					
Recipient of the grant or contact (you or entity above)	Grant or Contract Name	Agency	Program	Source	Amount
N/A					

I certify that the information above and attached is true and correct to the best of my knowledge.

Signature 

Date: 9/26/18

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Amit Narang is Regulatory Policy Advocate for Public Citizen's Congress Watch division. He is an expert on the federal regulatory process, and has testified before Congress on legislation and issues relating to Executive Branch administration of the rule-making process and Congressional oversight of federal agencies. He has been quoted in various media outlets including the *New York Times*, *National Journal*, *NPR*, *The Hill*, *Bloomberg*, *Reuters*, *Huffington Post* and has appeared on television and radio broadcasts including *NBC News* and *On Point with Tom Ashbrook*. Amit earned his B.A. from the University of Pennsylvania and a J.D. from the American University-Washington College of Law where he was an editor of the *Administrative Law Review* and is currently a member of the *Administrative Law Review's* Advisory Board.