Committee on Oversight and Government Reform, U.S. House of Representatives

Testimony of Casey B. Mulligan

Hearing on "Death by a Thousand Regulations: The Biden Administration's Campaign to Bury America in Red Tape"

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Chairman Comer, Ranking Member Raskin, members of the committee: thank you for the opportunity and honor to discuss with you today how federal regulation and its economic effects have evolved over time.

I am a Professor of Economics at the University of Chicago, where I teach on various public-sector economics topics including central planning and the economics of regulation and taxes. I am also the director of the University of Chicago Initiative for Enabling Choice and Competition in Healthcare. In 2018 and 2019, I served as the Chief Economist of the White House Council of Economic Advisers and contributed to the preparation of the 2019-2021 *Economic Reports of the President*. The views and opinions expressed in this testimony are solely my own and do not necessarily represent or reflect the views, policies, or positions of my employer.

The federal executive branch alone issues thousands of new regulations each year that add to the 200,000 pages of federal rules already in place. My testimony today summarizes the types of new regulations since 2009, their time pattern, and the magnitude and character of their aggregate costs. One finding is that the rules finalized by the Biden administration through the end of 2022 impose costs of nearly $10,000 per household, which is $1,300 more than the burden of the Obama administration rules during the comparable timeframe.

Misconceptions about regulation

The most notorious cost of regulation is the paperwork, sometimes known as "red tape." I don't trivialize that cost, which is known to be in the billions of hours per year (Office of Management and Budget 2021). Nevertheless, clerical costs are less than ten percent of the overall cost of regulation (Mulligan 2023). Complying with a regulation also entails resource costs, often requiring more labor, capital and materials to be used to get the same results. Those extra inputs are all things that cannot be used for other purposes.

Regulation also has opportunity costs. The government order that shuts down a school or business – we saw a lot of those in the past few years – takes away valuable opportunities to learn, trade, innovate, and realize our full potential. The time it took to write and read the shutdown order or the cost of the paper it's written on are small costs by comparison to lost opportunities. This broader conception of regulatory costs has long been recognized by the Office of Management and Budget (2003), among others.

Another misconception is that regulation is primarily about keeping the air and water clean. Putting aside the fuel-economy rule that is issued every couple of years, well less than one-third of federal rules and of the costs of federal rules are environmental rules, as shown in the two tables included with my testimony. A lot more rules are business regulation: rules about employment contracts, telecommunication, consumer finance, or healthcare business, to name a few.

Table 1a. Regulatory costs by administration and category

Includes CRA disapprovals but not other statutes, guidance documents, antitrust cases, or Operation Warp Speed

	Regulatory Costs, billions of 2022 $ per year of rulemaking					
	Biden 2021-22		Trump		Obama 2009-10	
	Estimated by:		Estimated by:		Estimated by:	
Category	agency	this report	agency	this report	agency	this report
Big 4 agencies: HHS, FCC, Labor, CFPB	13.7	257.7	6.9	-272.6	11.9	200.4
Auto fuel economy/GHG standards	108.6	186.5	-55.8	-150.9	36.8	187.3
Other EPA	-2.8	1.2	-1.7	-2.8	8.4	13.9
Dept. of Energy	3.8	6.2	0.5	0.8	38.6	63.5
Airworthiness Directives (part of DOT)	0.3	0.3	0.5	0.5	0.8	0.8
All other	49.8	164.8	58.2	101.0	51.5	69.0
All regulations	173.4	616.7	8.6	-323.9	147.9	534.8

Table 1b. Regulatory counts by administration and category

Includes CRA disapprovals but not other statutes, guidance documents, antitrust cases, or Operation Warp Speed

	Numbers of regulations per year of rulemaking								
	Biden 2021-22			Trump			Obama 2009-10		
	Large rules			Large rules			Large rules		
Category	reg's	dereg's	Other	reg's	dereg's	Other	reg's	dereg's	Other
Big 4 agencies: HHS, FCC, Labor, CFPB	3.7	0.5	35.5	2.3	2.3	60.3	2.1	0	44.3
Auto fuel economy/GHG standards	1.0	0.0	0.0	0.0	0.3	0.3	1.0	0	1.0
Other EPA	0.0	0.5	11.5	0.5	0.8	20.8	2.6	0	25.0
Dept. of Energy	1.6	0.0	1.0	0.3	0.0	4.0	2.1	0	9.4
Airworthiness Directives (part of DOT)	0.0	0.0	113.7	0.0	0.0	110.3	0.0	0	159.1
All other	2.1	1.0	93.9	4.3	2.0	142.8	6.3	0	142.4
All regulations	8.3	2.1	255.7	7.3	5.3	338.3	14.1	0	381.4

Notes for Tables 1a and 1b: All table entries are expressed as a rate per year of rulemaking (e.g., President Trump had four years of rulemaking). A "large" rule involves a net present value cost or cost savings of at least $1 billion, as estimated by the agency. See Mulligan (2023) for additional details.

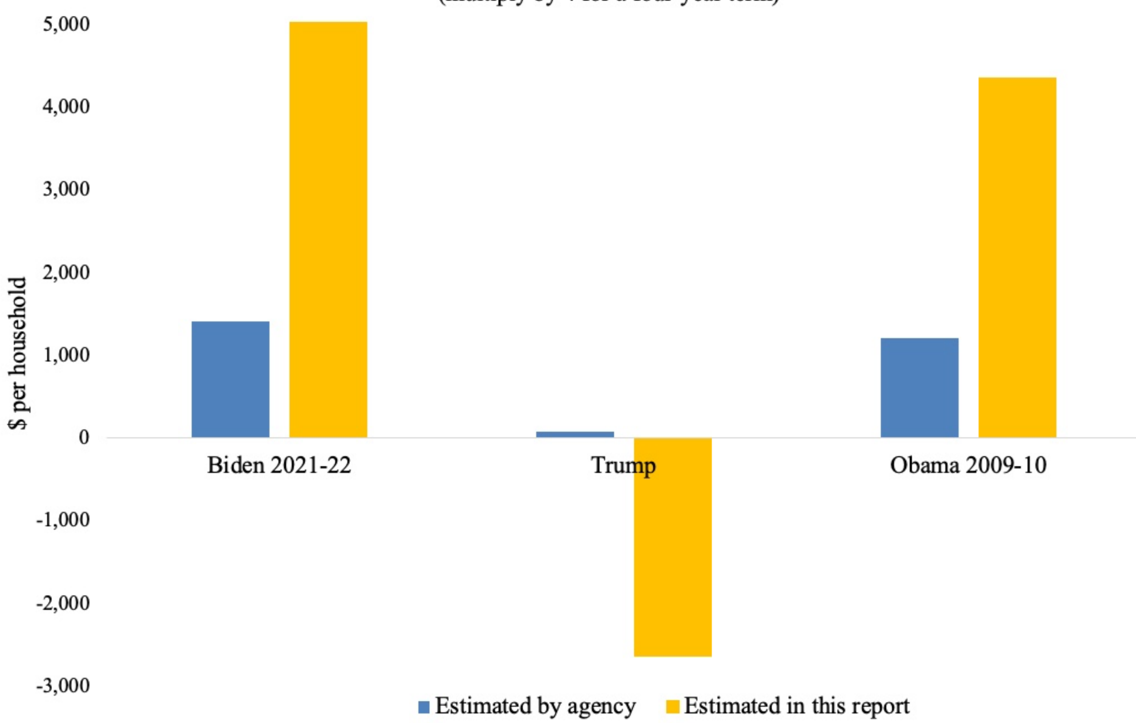
Many rules protect a type of business from competition, sometimes by erecting barriers to new market participants and other times by outright prohibiting competing goods and services. There have been, for example, federal rules protecting trial lawyers, large banks, pharmacists, and large health insurers from competition. These rules have nothing to do with the environment.

Even with the fuel-economy rules, the bigger debate across administrations has been whether car buyers anticipate how much they'll have to spend on gas. That debate is about consumer sovereignty rather than the environment.

Regulatory costs: aggregate amounts and changes across administrations

Figure 1 shows additions to regulatory costs by administrative rulemaking in the Biden administration (through 2022), the Trump administration, and the Obama administration. It also includes rule rescissions pursuant to the Congressional Review Act. The chart does not include regulatory costs created or saved by guidance documents, antitrust cases, Operation Warp Speed, or other statutes such as the 2022 Inflation Reduction Act.

Figure 1. Additions to Regulatory Costs, by Administration, per year of rulemaking
(multiply by 4 for a four-year term)



Each time frame includes the administration's first round of rules setting fuel-economy standards for light-duty vehicles, but not subsequent rules.

Source: Mulligan (2023).

The time patterns of the measures share some common features. First, President Trump either reversed or sharply slowed the additions to regulatory costs. Second, so far the Biden administration is adding costs again, in excess of what occurred during the comparable period under President Obama.

The first measure of regulatory costs comes from the agencies that promulgate the rules. Despite executive orders and guidance from the Office of Management and Budget mandating a cost-benefit analysis for important new regulations, the agencies neglect major categories of costs – or fail to quantify any costs – of their rules (McLaughlin and Mulligan 2022). With some notable exceptions, typically it is assumed that red tape is the only type of regulatory cost.

That is why I prepared a second measure of regulatory costs, based especially on audits that the Council of Economic Advisers did of important rules and a database of almost 5,000 rules finalized between 2009 and 2022 (Mulligan 2023). The Council particularly watched for opportunity costs, resource costs, and how the regulation fits into the wider economy.

The Biden administration has so far been adding regulatory costs at a rate of $617 billion per year of rulemaking, not counting regulatory costs created by statutes and other non-rule regulatory actions. The equivalent amount shown in Figure 1 is $5,000 per household per year for the rules finalized in 2021 and 2022. These costs include negatives for deregulations and are spread over time rather than concentrated in the first year that the rule takes effect.

If the 2021-22 pace continued for eight years, that would be more than $40,000 of added regulatory costs. If the pace accelerated as it did during the Obama years, the eight-year total would be almost $60,000.

President Trump's approach not only avoided adding costs, but subtracted them. The cost savings from eight years of President Trump's approach compared to President Biden's is up to $80,000 per household.[1]

Economic effects of regulatory costs

Aggregate Effects

What happens in an industry very much reflects what is happening in the rest of the economy. A nice example is the wages of barbers, which far outpaced inflation for a century. During that same time, their productivity, on the basic haircutting at least, hardly changed from 1890 to 1990. At both times many of the shops featured chair, scissors, and sink. Barbers' real wages increased almost entirely due to what was happening outside their industry, which often was a lot of technological change and capital investment.

That's why it's a mistake to think that people are not affected by a regulation if it doesn't apply to their company or restricts a product they don't buy.[2] Ultimately, we are all affected

[1] This total for the Trump administration does not reflect the expedited regulatory procedures under Operation Warp Speed.

[2] Gould and Williams (2003) show how a regulation can create costs outside the regulated industry that are an order of magnitude greater than those incurred in the industry.

through higher prices, reduced incomes, wages, and job opportunities. For the same reason, the best measure of a regulation's effect is not whether the regulated industry loses jobs by itself but whether the economy as a whole loses jobs or productivity.

Timothy Fitzgerald, Kevin Hassett, Cody Kallen and I estimated that Candidate Biden's regulatory agenda by itself would reduce real wages by 2.5 percent relative to what they would be with Trump's regulatory policy (Fitzgerald, et al. 2020). The Biden administration's executive orders and proposed rules indicate its intention to impose rules at the pace it promised during the campaign (National Archives 2023).

Sometimes one regulation moves the national aggregates by itself. In early 2017, Janet Yellen's Federal Reserve was a bit puzzled how the economy was growing at the same time that something was dragging down inflation. Her statisticians dug into it and found "a large decline in telecommunication service prices," which Ms. Yellen dismissed as an "idiosyncratic shift" (Yellen 2017). Actually, it was the 115th Congress and President Trump who used the Congressional Review Act to overturn a regulation by the Federal Communications Commission that was encouraging both wireless and wired internet service providers to charge high subscriber fees. Immediately prices fell about $40 per subscriber (Council of Economic Advisers 2020), which can exceed $100 in households with a couple of members with smartphones. Figure 2 shows the price series from the *2020 Economic Report of the President*.

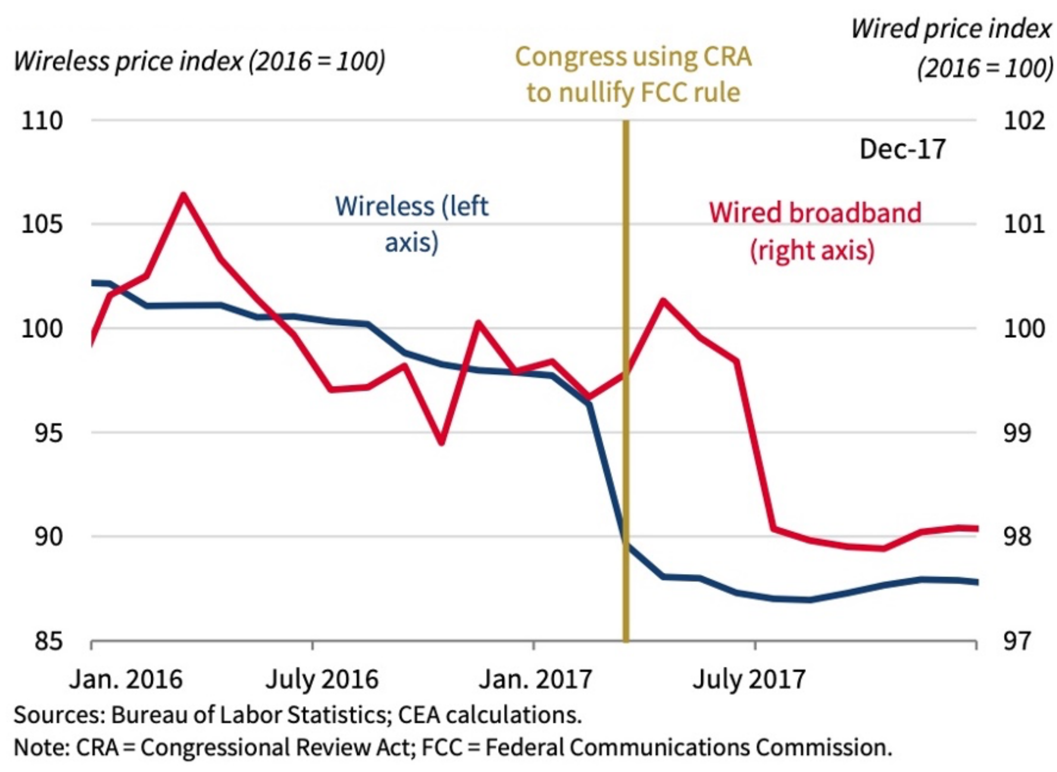


Figure 2. Wireless and Wired Internet Service Provider Price Cuts Close to Congressional Review Act Nullification of Federal Communications Commission Rule, 2016–17

Source: The *2020 Economic Report of the President*

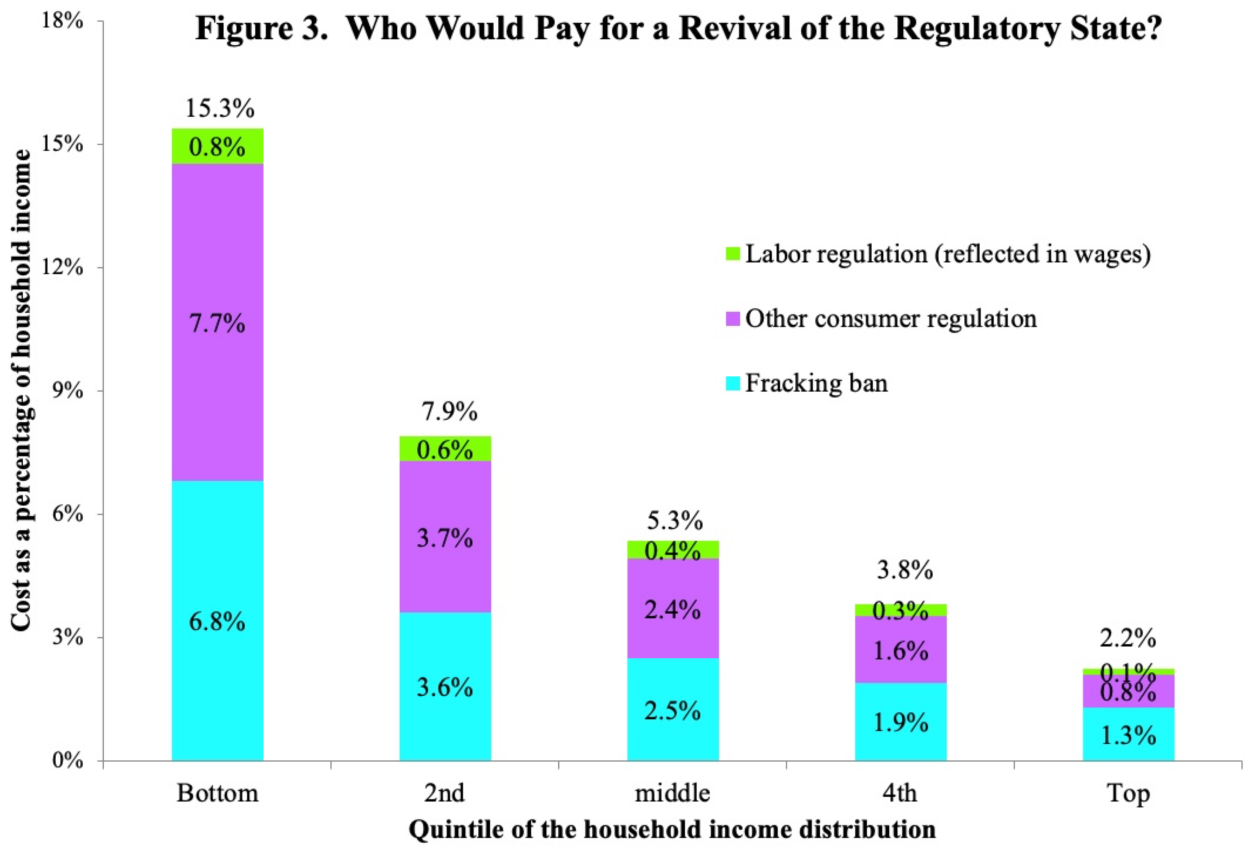
A second example also occurred in 2017 when FDA commissioner Scott Gottlieb began facilitating generic drug approvals. The agency's actions were followed by increases in the number of manufacturers and the first reduction in the consumer price index for prescription drugs in 46 calendar years (Mulligan 2022). A third instance was the expedited regulatory procedures under Operation Warp Speed, which allowed vaccines for Covid-19 to become available to the public before the end of 2020 – many months, if not years, ahead of experts' predictions. Warp Speed reduced the opportunity costs of regulation – months without a vaccination opportunity – by a trillion dollars or more.

Effects on Small Businesses and Low-Income Households

With fewer resources and specialized personnel to comply, small businesses are especially burdened. Moreover, regulators often see the small business sector as a supervisor's nightmare, introducing additional regulations to try to force more economic activity into big corporations that are easier for Washington to monitor and mold. Examples include the joint employer rules from the Department of Labor and National Labor Relations Board that "pose a direct threat to the franchise business model" that is ubiquitous in retail and other sectors (International Franchise Association 2022).

New federal regulations disproportionately reduce the incomes of households whose incomes are already low, especially because a number of the rules "indulge[] the preferences of the wealthy" (Thomas 2019). The "whole of government approach" to climate policy is an example, where lower-income cities such as El Paso, TX vote overwhelmingly against the types of green policies that are popular in wealthy cities like Palo Alto, CA (Mendoza-Moyers 2023).

Dividing American households into five income groups from lowest to highest, my 2020 study (Mulligan 2020) estimated each group's regulatory costs and expressed them as a percentage of its average income. Figure 3 shows the results. The costs to the bottom quintile amount to 15.3 percent of their total income—representing as high a burden as all the taxes they currently pay. This group would experience part of the cost as lower wages, but the biggest bite would come in the form of diminished purchasing power due to higher prices for energy, cars, and other consumer goods. The top quintile, by contrast, would suffer the least from regulatory restoration, with labor, energy, and other consumer rules amounting to only a 2.2 percent implicit tax on the highest earners.



Sources: CEA, Census, BLS, author's calculations.
Note: Reviving the Regulatory state = reverse 10 leading deregulatory actions of the Trump Administration (5 labor, 5 consumer) + return to the 2000-2016 regulatory growth path in these areas + ban fracking. Returning to the growth path is less than 1/5 of the costs shown above.

In order to distribute costs across income groups, I used data from ten key regulatory actions—five of which involve employment regulations such as employer mandates.[3] These employment regulations held down productivity and wages and reduced job opportunities, especially for less-skilled workers. The ten also relate to regulations that outlawed more affordable alternatives for Internet services, prescription drugs, and financial products, thus expanding consumer choice. Another is the Obama administration's minimum fuel-efficiency standards that added about $3,000 to the price of an average car, and even more to the price of cars that did not meet these standards. This environmental tax on driving is a significant burden for lower-income households (Levinson 2015).

Did the economic regulations have any benefits? Certainly—to large banks, trial lawyers, major health-insurance companies, big tech companies, and foreign drug manufacturers that profit when consumers must buy their expensive products because affordable alternatives are not available.

[3] Related results are reported in Council of Economic Advisers (2020, Figure 4-10, 2021, Figure 6-4).

Controlling regulatory costs

It doesn't have to be this way. President Trump's approach to slowing the pace of regulation included regulatory budgeting, the first such budget in U.S. history. Just like the chief executives of private companies don't give their managers blank checks, President Trump limited the rulemaking authority of the Cabinet members who ran rulemaking agencies. Agency heads had to pull out old rules as needed to make room for worthy new ones. The regulatory budget coincided with a historic reversal in the trend for regulatory costs.

House Republicans have other proposals. The Guidance Out of Darkness Act seeks to reduce regulatory burdens and increase Congressional oversight by limited the use of subregulatory actions when rulemaking would be appropriate. Congress could also keep its own regulatory budget, much like the Congressional Budget Office does for taxes and expenditure. Some of the most consequential and long-lasting deregulations in history – including trucking, railroads, airlines, and natural gas – were initiated by Congress (Winston 1993).

As anticipated by various *Economic Reports of the President*, today's resurgence of regulatory costs coincides with productivity growth that turned negative and real wages that have fallen for the longest time on record. Industries like oil and gas no longer produce like they did only four years ago (Moore and Mulligan 2022). Regulatory reform would promote economic growth and widely-shared prosperity.

Bibliography

Council of Economic Advisers. 2020. *Economic Report of the President.* Executive Office of the President.

Council of Economic Advisers. 2021. *Economic Report of the President.* Executive Office of the President.

Fitzgerald, Timothy, Kevin Hassett, Cody Kallen, and Casey B. Mulligan. 2020. "An Analysis of Vice President Biden's Economic Agenda: The Long Run Impacts of Its Regulation, Taxes, and Spending." *bfi.uchicago.edu.* October. https://bfi.uchicago.edu/working-paper/an-analysis-of-vice-president-bidens-economic-agenda-the-long-run-impacts-of-its-regulation-taxes-and-spending/.

Goulder, Lawrence H., and Roberton C. Williams III. 2003. "The substantial bias from ignoring general equilibrium effects in estimating excess burden, and a practical solution." *Journal of political Economy* 111: 898–927.

International Franchise Association. 2022. "IFA Statement on NLRB Proposed Joint Employer Rule." *franchise.org.* September 6. https://www.franchise.org/media-center/press-releases/ifa-statement-on-nlrb-proposed-joint-employer-rule.

Levinson, Brian. 2015. "Cost Benefit Analysis of Cafe Standards compared to the Alternative Fuel/Carbon Tax." *Journal of Environmental and Resource Economics at Colby* 2: 126.

McLaughlin, Patrick A., and Casey B. Mulligan. 2022. "Three Misconceptions about Federal Regulation." *Journal of Benefit-Cost Analysis* 13: 287–309.

Mendoza-Moyers, Diego. 2023. "El Paso voters soundly reject Proposition K Climate Charter." *elpasomatters.org.* May 6. https://elpasomatters.org/2023/05/06/proposition-k-election-results-el-paso-climate-charter-may-6/.

Moore, Stephen, and Casey B. Mulligan. 2022. "The Cost of Biden's War on Oil and Gas: Nearly $100 Billion a Year in Lost Output." *committeetounleashprosperity.com.* October. https://committeetounleashprosperity.com/wp-content/uploads/2022/10/221004_CTUP_TheCostOfBidensWarOnOilAndGas.pdf.

Mulligan, Casey B. 2023. "Burden is Back: Comparing Regulatory Costs between Biden, Trump, and Obama." *committeetounleashprosperity.com.* June.

Mulligan, Casey B. 2022. "Peltzman Revisited: Quantifying 21st-Century Opportunity Costs of Food and Drug Administration Regulation." *The Journal of Law and Economics* 65: S355–S387.

—. 2020. "Trumping Poverty." *city-journal.org.* April 23. https://www.city-journal.org/article/trumping-poverty.

National Archives. 2023. "Executive Orders: Joseph R. Biden Jr." *federalregister.gov.* https://www.federalregister.gov/presidential-documents/executive-orders.

Office of Management and Budget. 2003. "Circular A-4: Regulatory Analysis." (OMB, Office of Information and Regulatory Affairs).

—. 2021. "Information Collection Budget of the United States Government: 2018-2021." *whitehouse.gov.* https://www.whitehouse.gov/wp-content/uploads/2023/05/2018-2021-ICB.pdf.

Thomas, Diana W. 2019. "Regressive effects of regulation." *Public Choice* 180 (1-2): 1-10.

Winston, Clifford. 1993. "Economic deregulation: Days of reckoning for microeconomists." *Journal of economic literature* 31: 1263–1289.

Yellen, Janet L. 2017. "Speech." *federalreserve.gov.* September 26. https://www.federalreserve.gov/newsevents/speech/yellen20170926a.htm.