

Who REINS in Washington Anyway?



[Freedom In America Today](#)

Dear Friends,

I found this to be very interesting and insightful!

Robert



New Common Sense

Applying First Principles to the Issues of Today

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Who REINS in Washington Anyway?

Congress rarely considers a bill that would change the way Washington works. But this is exactly what the Regulations from the Executive In Need of Scrutiny (REINS) Act would do. In preparation for Congress's vote this week, **New Common Sense** sat down with Robert Moffit, Senior Fellow at the Center for Policy Innovation at The Heritage Foundation to discuss what the REINS Act means for the future of republican government.

NCS: Bob, what is the REINS Act, and why should Americans care?

Moffit: The REINS Act would require Congress to approve all “major” regulations—those costing \$100 million or more annually—before they take

effect. This bill would make Congress directly accountable for the biggest federal rules and regulations—such as health, energy, and environment—that affect the lives of all Americans. That is reason enough for ordinary Americans to care.

NCS: How would this act change the dynamics of the administrative state?

Moffit: It would derail those dynamics. Here is how the process currently works: Congress passes laws with overly broad, or intentionally vague, statutory language. That language empowers the Secretary of this department or the Administrator of that agency to promulgate regulations to fill in the missing details, clarify the various provisions, or, in some case, fulfill high-minded congressional aspirations. Then these administrators and their staffs write the regulations, post the draft rules for a notice and comment in *The Federal Register*, and review whatever comments come in to the mailroom over, say, a 60 or 90 day period. Special interest groups dominate this process, ensuring that the final rule preserves or advances their financial interests. Most ordinary Americans have little or no contact, let alone familiarity, with this byzantine process. They don't read *The Federal Register* with their morning coffee. The REINS Act, by making Congress vote on the rules *before* they go into effect, would therefore reverse these dynamics and restore democratic accountability to where it belongs: Congress.

NCS: This bill then tackles the bigger question of how we are to be governed?

Moffit: Exactly. Article I, Section 1 of the Constitution gives the House and Senate the legislative power. But Congress has abdicated that role over the years and delegated its legislative authority to the executive branch and independent agencies. Federal courts have routinely approved these delegations. The result: Americans are being increasingly governed as the subjects of a powerful administrative state, rather than as citizens of a democratic republic. If you take seriously the fundamental American proposition that government should be based on the consent of the governed, you must take seriously the REINS Act.

NCS: Why would Congress empower these administrative agencies to make the rules in the first place?

Moffit: Members of Congress delegate their power because (a) they do not know how to write the appropriate legislative language to accomplish their stated objectives; or (b) they do not want to make any of the tough decisions that law-making entails. Delegation enables Congressmen to escape the responsibility for law-making and blame the administrators for any bad outcomes.

NCS: Surely Members of Congress won't admit that they like evading responsibility. So, what are the typical arguments against the REINS Act?

Moffit: Some may argue that the REINS Act would undermine the efficiency of government. Congress's reviewing and approving the major federal rules will make the entire regulatory process more cumbersome and drawn out. This lost time, they say, is not worth the price of congressional consideration (or worse, rejection).

Ideologues, intent on using this process to advance an unpopular agenda, and those with great faith in central planning will oppose the REINS Act vigorously. At the risk of oversimplification, their ideological argument against the REINS Act is as follows: Modern society and its problems are increasingly complex, and the "progressive" resolution of its problem—doing "good" things—requires a deep understanding of that complexity. Elected representatives simply cannot have the knowledge and judgment to make competent decisions over those maddeningly mind-numbing details of public policy—such as health care, energy, environmental policy. We need experts. Therefore, democratic decision-making in a legislative body must give way to administrative decision-making, properly informed by scientific and technical expertise.

But here's the problem with this argument: The REINS Act will permit the provision of technical expertise in public policy, but it enables the elected representatives in Congress to balance whatever good is incorporated in that regulatory initiative with other goods such as job creation and a robust and growing economy. This is nothing less than the prudential balancing of other goods. At the end of the day, regulations have the force of law. In a free society, law-making is ultimately the responsibility of the elected representatives of the sovereign people.

NCS: What beyond the REINS Act should be done to restore limited government?

Moffit: One bill is not going to solve the problem. American politics is evolutionary, not revolutionary. The growth of the administrative state has been the product of several steps, some small, some large: New Deal regulatory initiatives of the 1930s were succeeded by Great Society programs of the 1960s, and the Republican Nixon administration advanced economic regulation beyond anything the Democratic Johnson administration ever contemplated.

Therefore Americans opposed to the growth of the administrative state [should embark on a multi-pronged offensive against it, taking discrete steps to reduce its power and restore accountability to elected officials](#), whether many of those elected officials want it or not. [Restoring the requirement of formal rule-making for major rules](#), with public testimony before an administrative law judge, and the presentation of evidence for and against a rule would help restore transparency to the federal regulatory system. That kind of sun light would make the entire process more equitable, and at least tame rent-seeking among Washington's power players.



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