

2011

Elected Lawmakers Accountable for the Laws — Gasp! The House

David Schoenbrod

New York Law School, david.schoenbrod@nyls.edu

Follow this and additional works at: https://digitalcommons.nyls.edu/fac_other_pubs

 Part of the [Environmental Law Commons](#), and the [Law and Politics Commons](#)

Recommended Citation

https://www.huffingtonpost.com/david-schoenbrod/elected-lawmakers-account_b_1128986.html

This Article is brought to you for free and open access by the Faculty Scholarship at DigitalCommons@NYLS. It has been accepted for inclusion in Other Publications by an authorized administrator of DigitalCommons@NYLS.

Contributor

Trustee Professor Of Law, New York Law School

Elected Lawmakers Accountable for the Laws — Gasp!

The House of Representatives is scheduled to vote this coming Wednesday on a bill that would bring the big bucks right back to Congress. H.R. 10 requires Congress to approve or disapprove major agency regulations.

12/05/2011 03:23 pm ET Updated Feb 04, 2012



If Congress could not in 1970 have passed the buck on lead in gasoline by giving the EPA a vague mandate to regulate it, Congress itself would have issued a rule that would have gotten the lead out far faster than the fifteen years it took the EPA. The delay caused more deaths and permanent disabilities than American casualties in the Vietnam War.

The House of Representatives is scheduled to vote this coming Wednesday on a bill that would bring the big bucks right back to Congress. [H.R. 10](#) requires Congress to approve or disapprove major agency regulations. Legislators would have to vote on the rules — that is, the laws — which unelected agency officials issue under vague mandates from Congress.

The idea of elected lawmakers being accountable for such laws gives fits to consumer and environmental groups whose power comes from their relationship with agencies. One consumer advocate [warned](#) that a “single member of Congress, at the behest of some powerful special interest or campaign contributor, could block” a regulation. This is an outright misrepresentation. The bill requires the House and Senate to vote on major regulations within 70 legislative days and with no filibuster.

Another advocate, this one from the Cry Wolf Project (I am not making this up) [opines](#) that the bill is a ploy to further delay an administrative process that is already too slow to get rid of such dangers as “lead in gasoline.” This claim is strange to me. It was my experience as the lawyer heading the environmental campaign back in the 1970s to force EPA to treat lead in gasoline as a health hazard that forced me to conclude that Congress taking responsibility would have resulted in far better health protection, as I showed in [a book](#) published by Yale University Press.

Congress will undoubtedly reject some regulations, but this does not necessarily mean less regulatory protection. Congressional responsibility would turn the tables on opportunistic legislators who vote for statutes mandating agencies to regulate, thereby claiming credit for the benefits of regulation, and then turn around and scold the agency for the cost of regulations, thereby claiming credit for protecting hometown industries. This pass-the-buck-and-point-the-finger tactic is a recipe for regulatory stalemate. As James Landis, the New Deal’s sage of administrative law and later dean of the Harvard Law School, argued, “it is an act of political wisdom to put back upon the shoulders of Congress” responsibility for “controversial choices.”

The legislators are, of course, less knowledgeable than agency experts, but the agency would, as Landis put it, continue to be “the technical agent in the initiation of rules of conduct, yet at the same time... have [the elected lawmakers] share in the responsibility for their adoption.”

In a representative democracy, the right way to find out which regulations the voters desire is for their elected representatives to vote on them. The upshot would be that agencies would talk to centrist legislators before promulgating regulations. That is how we should get to sensible outcomes in a democracy, not by elected lawmakers hiding behind unelected agency officials.