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## Holding Congress Accountable

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*A New Deal-era proposal would produce more effective, less burdensome regulation.*

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President Donald J. Trump is wrong to try to rescind President Barack Obama's climate change plan without congressional approval in 2018, just as President Obama was wrong to adopt it without congressional approval in 2015.

Both presidents base their authority to change climate regulations on the [Clean Air Act](#). In it, Congress [commanded](#) the [U.S. Environmental Protection Agency](#) (EPA) to protect us from air pollution. Yet, Congress commanded EPA to achieve that goal without specifically directing how, leaving EPA with the job of imposing the unpopular regulatory burdens needed to achieve the goal. This formula—Congress sets a popular goal, but avoids responsibility for the devilish details—has bad side effects.

Members of Congress have an incentive to issue a slew of commands because such commands let members of Congress take credit but avoid blame. In the Clean Air Act, Congress [issued](#) to the EPA Administrator an astounding 940 commands, most to be performed repeatedly, aimed at various popular goals. The multitude of commands has unsurprisingly produced complicated regulation. Even President Obama's EPA Administrator, Gina McCarthy, was reportedly [exasperated](#): "I hate that each sector has 17 to 20 rules that govern each piece of equipment and you've got to be a neuroscientist to figure it out."

More extreme positions are encouraged when Congress commands goals without accepting responsibility for the resulting regulations. Benefits and burdens are treated separately. In the Clean Air Act of 1970, for example, Democratic and Republican legislators [commanded](#) EPA and the states to protect health without regard to feasibility. When courts ordered EPA and the states to do just what Congress had commanded in the 1970s, both liberal and conservative legislators blamed EPA and the states for imposing the very devilish regulatory details that they themselves required with Congress's earlier broad commands.

Statutory commands often make less sense in a swiftly changing world, leading to wasteful burdens and embarrassing failures to achieve goals. For example, Clean Air Act commands dating from 1970 [prevented](#) President Obama's EPA from adopting less expensive ways to cut particulate and ozone pollution. The result was a smaller reduction than might have been achieved which, according to EPA's health analysis, will [shorten](#) the lives of Americans by an average of a quarter of a year.

Absent responsibility for regulations, members of Congress lack incentives to update statutes, correct statutory mistakes, or seriously consider serious proposals to improve regulation such as, for example, those of the [Breaking the Logjam](#) project or a recent book, [Achieving Regulatory Excellence](#).

It does not have to be this way. Although members of Congress may lack the expertise to draft regulations, they can take responsibility for the regulations that agencies write by voting to approve or disapprove them. Were members of Congress personally responsible in this manner, they would want statutes that did not impose unnecessary costs or harms on us.

New Deal regulatory expert James Landis [proposed](#) exactly this in 1938—that members of Congress vote on regulations proposed by the executive branch and then present the approvals of regulations to the President for signature or veto. In January 2017, House Republicans passed a bill with such a requirement, the [Regulations from the Executive in Need of Scrutiny Act](#). The bill—commonly called the REINS Act—[calls](#) for Congress to vote on major agency regulations. Unfortunately, the bill contains many other [features](#) designed to deter sensible regulation. As a result, it was dead on arrival in the [U.S. Senate](#).

But the idea of congressional review of regulations has gained traction outside the halls of Congress. The Landis proposal recently [polled](#) very strongly. Voters, by more than a two-to-one margin, want Congress to vote on whether to approve EPA regulations.

Congressional approval of regulations can work despite Congress's procedures. In 1984, then-Judge Stephen Breyer [explained](#) how Congress could adopt rules that would force prompt votes on agency regulations. The agency would provide the expertise needed to write regulations; Congress would then review the regulation for economic and political acceptability. Breyer further ensured prompt legislative action by barring legislators from amending the proposed regulation before taking an up-or-down vote.

Under a Landis-type procedure, legislators would have to take responsibility for the levels of both protection and burdens. It would then matter to many Democrats that there are less burdensome ways of [achieving](#) the protection promised by President Obama's climate change plan and to many Republicans that the overwhelming majority of voters [want](#) that protection. At a recent congressional [hearing](#) on legislative review of agency regulations at the state level, state legislators testified that such a procedure works without exacerbating polarization.

The Landis proposal got it right in 1938. Nearly 80 years later, we recommend calling it the [Responsibility for Regulation Act](#). It is the way to achieve effective, efficient,

accountable regulation.



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