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At a gala last month celebrating its 50th anniversary and its membership of three million, the Natural Resources Defense Council listed some of its major environmental protection accomplishments. The first listed was pushing Washington to ban lead additives to gasoline. As the staff attorney who headed this campaign, I felt proud. Yet, I also felt sad because our courtroom victories sped the ban far less than Congress had delayed it by faking responsibility. The resulting deaths and brain damage illustrate why President Biden should insist Congress force itself to vote on major regulations.

When drafting the Clean Air Act in 1970, Congress knew that cars starting with the 1975 models must not use leaded gasoline because it would ruin the equipment needed to comply with limits on other pollutants. The tough choice was whether to cut the lead in the gas burnt by pre-1975 cars, 100 million of which would still be on the road in 1975. In opposition, gasoline refiners and lead additive makers argued that cuts would increase motorists' costs and were unnecessary to protect health. Instead of deciding, Congress required the Environment Protection Agency to "protect health" by 1976. That way, the legislators got credit for protecting health but shifted responsibility to the EPA for any costs or the failure to protect health.

History of Congress ducking on responsibility

The agency recognized the health harm but hesitated to act, as I testified in a hearing in 1974 before a junior senator named Joe Biden. He urged me to condemn the leaders of EPA. I refused, believing that President Nixon and Congress members had privately used their power over the agency to prevent it from protecting health. I asked Senator Biden to investigate. He claimed to lack authority but promised to ask other senators to do so. They didn't and not surprisingly: legislators didn't want to undercut the credit they got for protecting health. We now know that the White House and legislators of both parties pressured the agency to leave the lead in.

Our courtroom victories did prompt the EPA under Presidents Nixon, Ford and Carter to modestly cut the lead per gallon in the gas used by the old cars — but it did not act decisively until the mid-1980s. By then, the large refiners had changed sides. They urged the Reagan administration to ban leaded gasoline because, with few pre-1975 cars still on the road, selling both leaded and unleaded gas had become unprofitable.

If Congress could not have ducked responsibility in 1970, it would have cut the lead in the gas used by the pre-1975 cars significantly, and lead emissions would have dropped much faster. This I show in an open letter to President Biden. Based on EPA health data, the delay in getting the lead out resulted in about as many American deaths as in the Vietnam War, and left some hundred thousand children so permanently brain-damaged their IQs dropped below 70.

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Congress often ducks the hard choices, which is why the rules on immigration, healthcare, the environment, and much more change radically when a president of a different party gets elected. So, we suffer from an erratic law. Moreover, to mask their failure to make hard choices, legislators write detailed statutes designed to maximize their credit and minimize their blame rather than benefit their constituents.

Voters want Congress to be involved in approving regulations

A recent poll shows that 82% of voters want Congress to vote on the regulations agencies write. Thus, many lawmakers in Congress say they want to do so. Yet, as Rep. Tom Cole of Oklahoma, the ranking Republican on the House Rules Committee stated at a recent hearing, “I have a lot of colleagues on both sides [of the aisle] that like to rail against the administrative state, but they certainly wouldn't want to have to vote on all those rules and regulations, because they are high risk votes.”

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To serve the public that elected him, President Biden should, as my letter urges, insist that Congress enact a statute that forces votes on major regulations and the president to sign off on them personally. Justice Breyer has shown how Congress could create a fast-track legislative process to promptly force its members to vote on agency actions despite gridlock and filibusters. The statute could set a future date to take effect to show that its purpose is

to empower voters to hold elected officials accountable rather than disempower a particular president. That way, both legislators and the president would have to take personal responsibility for decisions on major regulations.

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