



COMPETITIVE ENTERPRISE INSTITUTE

1310 L Street NW, 7th Floor Washington, DC 20005 ☎ 202.331.1010 🌐 www.cei.org

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Mr. John Venrick
20561 Wild Horse Ranch Rd
Rollins, MT 59931

Dear Mr. Venrick,

The new Trump administration has a historic opportunity to dismantle the corrosive regulatory state.

The regulatory state has infiltrated every aspect of our lives, stifling innovation, burdening businesses, and eroding the freedoms and opportunities that define the American dream.

But all of Trump's success will be for naught if they don't outlive his administration. The nature of bureaucracies and the nature of government is to grow. You only need to look at the federal budget to know that is true. We need to make sure this doesn't happen again. We must ensure these changes will last long past his administration. They must last for generations.

As you know, CEI has been fighting the regulatory state for four decades. We've had tremendous victories, but few people are familiar with them. That's because, until recently, most people didn't understand the nature of this problem or care. There was no media coverage for it, and politicians weren't interested in talking about it.

Times have changed, which is magnificent. CEI is ready to bring everything we know to this battle. We're going to make sure President Trump's changes are long-term. CEI is the only organization that can do this. We're the only organization that knows how the regulatory state is built, so we're the only organization that knows how to knock it down—for good.

Mr. Venrick, CEI can continue our fight to roll back the regulatory state because of your past support of our mission. You can take credit for bringing the problem of the regulatory state to the fore and forcing politicians to take it on. And you trusted CEI to be your voice. I am incredibly grateful to you. Thank you.

The greatest challenge to this effort is the nature of the regulatory state itself. Much as I wish it were true, you cannot change its nature by firing people, consolidating departments, or eliminating agencies. These things may be necessary but are not sufficient. Again, a bureaucracy's nature is to grow. Its nature is what needs to change.

A crucial step is to amend the Administrative Procedures Act of 1946. The APA governs

the entire regulatory process. It is the linchpin of the regulatory state.

The APA is why the bureaucracy has so much power. It is how Congress gets away with delegating its work to the agencies. It's why untangling the mess of regulations is so difficult. It's why the Trump administration's changes may not outlast his administration—unless we fix it.

When we pull out this linchpin, the regulatory state will crumble into a heap, and it'll stay that way.

More than this, amending the APA now will accelerate efforts to roll back the regulatory state and prevent countless lawsuits and legal challenges from the left.

Here's why: As the law stands now, changing or appealing a regulation counts as rulemaking. This means the very act of eliminating regulations causes more regulatory headaches! It is maddening!

If eliminating rules is rulemaking under current law, the Trump administration's changes must be open to the regulatory process. That's a process that'll make your head spin. The agency must publish notices, and getting people to agree on the text of those notices is almost impossible. It's done by committee, as are so many things in government.

Once that is done, there is typically a comment period during which anyone can challenge the new rule. You know the left will use these comment periods to fight every single change. Every single one. And when they don't get their way, they'll sue.

This process will take ages, and Americans will continue to suffer under stifling and expensive regulations in the meantime.

We have to stop this, and this problem needs a long-term solution.

CEI is the only organization that can call on Congress to amend the APA because no other organization knows the regulatory state as well as we do. No one even thought to look at this. Very few know that much of the regulatory state is held together by this one law.

There have been no meaningful reforms to the APA since it was signed into law 78 years ago. Yes, the same law has been on the books for 78 years.

The APA was supposed to be a "bill of rights" for the hundreds of thousands of Americans whose affairs are controlled or regulated by federal government agencies. To put it mildly, it has not achieved that objective.

Here's our plan to amend the APA.

To start, we need to take on one of the regulatory state's core principles. Agency bureaucrats argue that they should write rules and regulations because they are the experts in the subject matter. As the argument goes, Congress doesn't know the day-in and day-out work of managing these matters, so Congress needs agencies with expertise to address these matters.

This has gotten wildly out of control. Biden's so-called "whole-of-government" approach

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to climate change was a good example. The effort to regulate the climate went far beyond the EPA and touched every single federal agency. President Trump has wisely rolled back many of Biden's regulations, but we must ensure the next president cannot simply reenact everything Biden did.

Our plan to amend the APA says that if an agency lacks the expertise to make a rule or if that rule is outside the agency's mission, which has been established by Congress, then we can be sure Congress didn't authorize the agency to issue the rule. The same is true if another agency is the expert on the issue.

#1
Lacks the
expertise

Next, we must address the rules that would reshape or change the nature of one or more industries—think energy!—or other broad areas of the American economy. This includes rules that ban or severely limit the supply of a type of good or service or shut down a type of business.

#2
Rules that
Reshape

These actions directly assault freedom for businesses and consumers and cripple our economy. Yet agencies have aggressively used their regulatory power to change the marketplace itself.

If Congress wanted an agency to directly or indirectly reshape an individual industry, such as banning a type of good—a type of energy automobile regulators don't like, or the gas stove in your kitchen—it would pass legislation to do so.

The third component of our plan to amend the APA kicks in if an agency issues a rule that has resulted in or is likely to result in annual costs of \$300 million or more or a total cost of \$3 billion or more.

#3
Rules that
Cost too
much

This is intended to provide an objective means to identify rules with a significant economic effect. It would cover rules where agencies are asserting an unusual amount of power. The dollar threshold provides a compelling case that if Congress is genuinely concerned with reasserting its lawmaking authority and wants to make significant policy decisions, it would do so. Agencies would need explicit authorization to impose such costly rules.

Our amend the APA plan also would protect the states from federal intervention. This applies especially to zoning and land use issues.

By adding this amendment to the APA, Congress would make it clear that if there is any reasonable basis to conclude that an agency's asserted power would intrude on state powers, the agency could not impose the rule without a clear statement of authority. This would strengthen protections for the states against federal intrusions.

Under our plan, an agency could still issue rules, but only if it has a "clear statement of authority" from Congress. We have laid out a clear definition of "clear statement of authority," so there will be no way for agencies to escape the bounds of that authority.

Our plan to amend the APA is very straightforward. It will establish boundaries for agencies in the exercise of their regulatory power. It will stop agencies from asserting power that Congress never authorized. It will also ensure that Congress reasserts its lawmaking power.

More than this, our plan will help restore the representative government to this country.

Elected officials will no longer be able to do nothing as agencies usurp their lawmaking power.

Our plan calls on Congress to amend the APA because that's how representative democracy is supposed to work. We cannot depend on executive orders or other presidential actions. Amending the APA will help secure the successes of this administration through force of law. This is a long-term solution. This change will outlast the Trump administration and persist for generations.

Only CEI has identified the Administrative Procedure Act of 1946 as the linchpin of the regulatory state. We're the only organization that could because we're the only organization that knows the ins and outs, how regulations are made, the roadblocks bureaucrats and leftists like to create, and how to bust through them.

We have seen firsthand that the nature of the regulatory state, and the nature of government itself, is to grow. That's what we need to change. We need to change its nature. For good.

Our plan to amend the APA will change the rules of the game and the nature of the beast. Pull out the linchpin—the APA—and the regulatory state will crumble into a heap, and it'll stay that way.

I need your help to get this done. Your support of CEI is crucial.

First, please share this letter with your family and friends so we can get more attention for our plan. Everyone knows that President Trump is doing great work to roll back the regulatory state, but we need citizens to know there is more work to be done so President Trump's reforms last long after his administration ends.

And then please send the most generous contribution you can back to me at CEI today. An additional donation from you today will help us continue our work to roll back the regulatory state. Remember, our plan will help end:

- Rules that are outside an agency's statutory mission or regulatory expertise;
- Rules that would reshape or change the nature of an industry;
- Rules that would cost \$300 million annually or \$3 billion in total cost;
- Rules that would intrude on a traditional state power; and
- Rules that resolve an issue Congress has not declined to address itself.

I know you understand how powerful this plan is, how important it is that we do this, and that it will stop the regulatory state from imposing its will on the American people without authority and accountability—and it is a long-term solution.

Mr. Venrick, please help us again by sending an additional contribution of \$25, \$50, or even \$75 or more back to me at CEI today. I've included a pre-addressed and pre-stamped envelope for you.

CEI is successful because we are optimistic. Even on our darkest days, we know that the world can be better and that smart, curious, imaginative, and innovative people will make it so—if they are free.

Please let me hear from you right away.

Sincerely,



Kent Lassman
President and CEO

PS: President Trump is already smashing the regulatory state. This is welcome and necessary. But, at the moment, these changes aren't set up to last for the long-term. We need to ensure that they are.

CEI is calling on Congress to amend the Administrative Procedure Act of 1946. The APA is the linchpin holding the regulatory state together. If we pull out the linchpin, the whole thing will collapse for good.

Mr. Venrick, I need your help to ensure that our plan to amend the APA will be a success. Please send a contribution of \$25, \$50, or even \$75 or more back to me at CEI today.

Thank you very much for your past support of CEI!