

January 18, 2017

Leader Mitch McConnell
317 Russell Senate Office Building
Washington, DC 20510

Leader Charles Schumer
322 Hart Senate Office Building
Washington, DC 20510

Re: H.R. 21 (Midnight Rules Review Act), H.R. 26 (Regulation from the Executive in Need of Scrutiny Act) and H.R. 5 (Regulatory Accountability Act)

To Leader McConnell and Leader Schumer:

We, the undersigned public interest groups, urge you to oppose H.R. 21, H.R. 26, and H.R. 5. These bills constitute a radical assault on essential consumer safeguards in the digital age. Each bill would upend longstanding and fundamental structures of federal administrative law. Taken together, they would paralyze expert agencies' ability to enforce the law. Nowhere is this more dangerous than in the media and communications sector. Americans have watched as over the past two decades this sector has increasingly become consolidated under a few dominant oligopolistic companies who chose not to compete with each other and dominate media and speech in the country. Paralyzing the consumer protection agencies in this sector would likely increase the prices consumers pay, undermine citizens' health and safety, and bring enormous legal and regulatory uncertainty to one of our country's most critical pieces of infrastructure: the nation's communications network.

First, H.R. 21, the Midnight Rules Review Act (MRRA), would transform the Congressional Review Act from a scalpel into a sledgehammer. Currently, the Congressional Review Act requires that each rule be considered for disapproval separately. H.R. 21 would turn this selective and deliberative process on its head, allowing the careless bundling of disparate and unrelated rules from multiple agencies into one massive repeal measure. This would be deeply harmful to communications policymaking. The FCC's rules are the result of months if not years of detailed technical, economic, and legal analysis with many different stakeholders at the table. But under H.R. 21, broadband and communications industry safeguards that have nothing in common with environmental, energy, banking, health care and other consumer protections could be combined for a single up or down vote, without the ability to offer amendments or have detailed debate. This would be a giant step backwards in careful, evidence-based governance that ensures the participation and voices of all stakeholders.

H.R. 26, the REINS Act, would have an even more devastating impact on basic regulatory authority. Where the MRRRA would merely facilitate the reversal of consumer protections, the REINS Act eliminates delegation to expert agencies and places rulemaking back under the auspices of the Congress. The bill would require that rules of the executive can have no force or effect until Congress approves them. This would unduly encumber agencies' ability to pursue their obligation to serve the public interest, effectively hamstringing meaningful consumer protection, since rulemaking would be contingent upon Congress' appetite to vote the item.

Administrative agencies exist to provide subject-matter expertise and ongoing oversight which Congress is not best equipped to provide. In communications policy, this is critical as the pace of innovation and technological change continues to speed along. If the FCC had to wait for the political landscape to fully form a consensus to match its technical analysis, we might still be waiting on such important rulemakings such as incentive auction rules, guidelines for the tech transition to all internet protocol networks, rural call completion enforcements, open internet rules, and basic broadband privacy.

More importantly, the REINS Act raises serious Constitutional questions about the separation of powers. The separation between legislative and executive decisionmaking is a foundational principle of our democracy. A law that would directly undermine so fundamental a pillar of our Constitution should be unthinkable, and warrants vehement opposition.

Finally, H.R. 5, the Regulatory Accountability Act (RAA) complicates and lengthens the rulemaking process. The RAA would add a litany of new procedural requirements and standards to existing rulemaking procedures, increasing the demands on agency staff. The public interest standard has long been central to the charge of the FCC. Internet access is the essential gateway by which Americans then access nearly all other basic parts of daily life: emergency communications, jobs and employment, education, health care, civic engagement, and basic commerce, entrepreneurship, and economic development. Watering down the key analytical standards for consumer protection in communications policy therefore threatens all of the rest of daily life in turn.

Perhaps the greatest danger of the RAA is that it "repeals" the *Chevron* Doctrine. For decades, *Chevron* deference has been a fundamental tenet of administrative law. It is, as Prof. William Buzbee of Georgetown Law put it, "a collectively generated body of logical doctrine," constructed by judges of diverse viewpoints, guided by Congress. *Chevron* doctrine embodies the acknowledgement that Congress created administrative agencies specifically to serve as subject matter experts who are in the best position to put the policies delegated to them by

Congress into practice. The RAA represents yet another attempt to stymie agency efficacy and prevent them from doing their jobs for the American people.

Any one of these bills, in isolation, could strip federal agencies of critical powers to protect consumers from corporate abuse, especially in the increasingly consolidated media and communications sector. Taken together, they would take a blunt hatchet to fundamental safeguards upon which we all rely in our daily lives, leaving consumers to the mercy of dominant, monopolistic industry interests to exploit them as they see fit.

For these reasons, we urge all Members of Congress to vote no on H.R. 21, H.R. 26, and H.R. 5. These bills are rapidly moving from the House to the Senate. It is imperative that each Senator stand up to these efforts to sideline consumer protections. We urge you to oppose these bills and block them through whatever means at your disposal.

Sincerely,

Common Cause

Fight For The Future

Media Mobilizing Project

National Hispanic Media Coalition

OpenMedia

Public Knowledge

United Church of Christ, OC Inc.