PACIFIC LEGAL FOUNDATION

March 10, 2025

Testimony of Pacific Legal Foundation before the Ohio House Government Oversight Committee in support of House Bill 11—Legislative Approval of Regulations

Chair Hall and members of the Committee:

My name is Jaimie, and I am Legal Policy Counsel at Pacific Legal Foundation (PLF). PLF is a nonprofit public interest law firm dedicated to defending Americans' liberties when threatened by government overreach and abuse. Since its founding more than 50 years ago, by members of then-Governor Reagan's staff, PLF has been helping Americans preserve their constitutional rights in courthouses and legislatures across the country. PLF has 18 wins at the United States Supreme Court, and has supported dozens of bills in legislatures across the country.

Separation of powers

Writing law and setting broad social and economic policy is the duty of elected officials. Administrative rules and regulations have the force and effect of law. They are supposed to fill gaps in statutory language and clarify procedures. Increasingly, however, administrative agencies are doing more than filling technical gaps in statutes. Instead, today's agencies write detailed rules with the force of law that have sweeping social and economic consequences Yet, they are never reviewed or approved by elected officials.

The legislative branch has the sole power to make laws and to delegate authority to administrative agencies. Therefore, all agency rulemaking authority comes from the legislature and can be defined or limited by the legislature. Your constituents deserve to have their elected officials review and approve agency rules and regulations, which often dramatically impact their lives.

Enter REINS-style reforms. REINS stands for Regulations from the Executive In Need of Scrutiny and has been introduced in most sessions of Congress since 2009. The federal government has not adopted REINS, but many states have adopted REINS-style bills and I will mention some of those reforms below.

The Problem

Despite Ohio's commitment to attracting and growing businesses, Ohio is the sixth most regulated state in the country.[1] This puts Ohio amongst the ranks of states like New York, New Jersey, and Illinois. This slows economic growth and discourages businesses from locating in Ohio. In fact, the Mercatus Center at George Mason University has found that regulatory accumulation stifles economic growth.[2] This research shows that increase in regulations of 10% results in an estimated decline in real GDP by a statistically significant .37 percentage points.

In 2023, Ohio's GDP was $873 billion.[3] An increase by .37 percentage points would equate to an additional $3.2 billion in economic growth. This is a meaningful amount of growth and important because Ohio's GDP growth has been slightly behind the national average since 2008.[4]

House Bill 11 Returns Lawmaking Authority to Elected Officials

PLF applauds this Committee's consideration of House Bill 11 as it contains the critical elements for a successful legislative oversight bill. First, it requires agencies to consider the economic effects of new regulations and creates a procedure allowing either chair of the Joint Committee on Agency Rule Review to request an independent fiscal analysis to verify that the agency's analysis is accurate. This bill also imposes a five-year expiration on rules unless they are reauthorized by the legislature, which is a valuable way to ensure that existing rules are only continued if they are providing a concrete benefit and not overly burdensome to the agencies or the regulated community.

Legislative oversight of rulemaking around the country

This Committee may be interested to know more about legislative oversight procedures in other states. West Virginia Code § 29A-3-9 requires a full bill and vote of the legislature to approve each and proposed agency rule. No new rule can be promulgated without express permission from the legislature, regardless of the estimated monetary threshold of the rule.

In 2010, Florida adopted its REINS-style state law (Laws of Florida, Chapter 2010-279). The Florida State Legislature had to override a veto from then-Republican Florida Governor Charlie Crist to enact their law that requires legislative approval of agency rules with associated economic costs of $1 million or more over five years before they can take effect.

In 2017, Wisconsin Act 57, was signed by Governor Scott Walker (R). This bill that requires the legislature to authorize rules that carry compliance and implementation costs of $10 million or more over a two-year period

Indiana Senate Bill 4 is a REINS-style state law signed by Governor Eric Holcomb (R) on March 13, 2024, that requires review of rules with implementation and compliance costs of $1 million or more over a two-year period by the Budget Committee.

Kansas House Bill 2648 is a REINS-style state law enacted by the Kansas State Legislature on April 29, 2024, over the veto of Kansas Governor Laura Kelly (D) that requires legislative approval of rules with implementation and compliance costs of $1 million or more over a five-year period.

House Bill 11 also requires a five-year review of regulations. This is known as sunset review. If adopted, Ohio would be joining eleven states that already utilize a sunset procedure, including Idaho, North Carolina, Tennessee, Virginia, and West Virginia.[5] Sunset review is a critical tool in eliminating out-of-date or overly burdensome rules. It will curb arbitrary regulatory power and ensure ensuring that Ohio residents are governed by laws enacted through a transparent, deliberative, democratic process. And sunset review strengthens constitutional governance by reaffirming the legislature's primary role in lawmaking.

PLF supports House Bill 11, because it is a good government bill that places important guardrails on the authority delegated by the legislature to state agencies, while still allowing agencies to fill practical or procedural gaps necessary to carry out statutory intent.

Thank you for the opportunity to testify. I am happy to answer questions; my contact information is listed below.

Respectfully,

JC

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[1] *See* Patrick McLaughlin and Dustin Chambers, "Snapshots of State Regulations," Mercatus Center (Aug. 6, 2024), https://www.mercatus.org/regsnapshots24.

[2] Patrick McLaughlin and Dustin Chambers, "The Causal Effect of Regulations on Economic Growth: Evidence from the US States," Mercatus Center (Dec. 20, 2024), https://www.mercatus.org/research/working-papers/causal-effect-regulations-economic-growth-evidence-us-states

[3] Ohio Legislative Budget Office, https://www.lsc.ohio.gov/assets/organizations/legislative-service-commission/files/current-ohio-facts-gross-domestic-product-september-2024.pdf

[4] *See* note 3.

[5] The eleven states with existing sunset procedures are Colorado, Idaho, Indiana, Kentucky, New Hampshire, New Jersey, North Carolina, Tennessee, Texas, Rhode Island, and West Virginia. *See* Map, https://ballotpedia.org/Agency_dynamics:_States_with_sunset_provisions_for_administrative_rules#Summary_of_findings. Florida, Georgia, and South Carolina have bills pending that would add sunset procedures for regulations.