



December 12, 2019

Senate Committee on Intergovernmental Operations

Regulatory Reform, Red Tape Reduction and Transparency

Thank you, Chairman Mastriano, Minority Chair Fontana, and members of the Committee. It is a great pleasure to be here with you today.

I want to start by thanking this committee and the full Senate for the passage of the S.B.398 and the very thoughtful improvements to the Regulatory Review Act contained in that legislation. We applaud your efforts to improve regulatory efficiency and bring more transparency to the regulatory process.

Today's topic is very timely and is one that affects all residents of the Keystone state. From the outset, it is important to point out the distinction between regulations that support a legitimate government function and red tape, which are rules that do not serve the public interest because their cost outweighs their benefits. In many cases, red tape is especially damaging for the least fortunate.

For example, research by the Mercatus Center at George Mason University found that the least fortunate households tend to spend a larger share of their limited budgets on goods and services that are highly regulated such as energy, food, drugs, and medical supplies.¹

For these reasons I encourage everyone to keep this in mind when we talk about red tape and its consequences.

Today I would like to focus my remarks on three points:

1. Criteria for identifying red tape
2. Pennsylvania's regulatory accumulation and why it is essential to address red tape.
3. Addressing common objections to red tape reduction programs.

¹ Dustin Chambers and Courtney Collins, "[How Do Federal Regulations Affect Consumer Prices? An Analysis of the Regressive Effects of Regulation](#)", Mercatus Center at George Mason University, February 23, 2016.

Criteria for Identifying Rep Tape²

1. The regulation does not address a legitimate economic or social problem.
2. The regulation addresses a legitimate economic or social problem but does not effectively mitigate the problem.
3. The legitimate economic or social problem can be addressed in a less costly manner than the current regulation, including strengthening the role of the market.
4. The legitimate economic or social problem is addressed by another law or regulation at the same or different level of government.
5. The regulation contradicts another law or regulation, which makes legal compliance with the regulation infeasible without violating some other rule.

Pennsylvania's regulatory accumulation and why it is essential to address red tape

The Mercatus Center State Reg Data project has quantified the level of regulations in all 50 states, identifying which industries are the most regulated and how each state regulatory burden fares in comparison with other states.

The latest numbers available for Pennsylvania show that as of 2017, the Commonwealth had 153,661 regulatory restrictions in its administrative code, and that number is probably much higher today.³ For contrast, Pennsylvania's regulatory code is 140 percent larger than Arizona's code and 40 percent larger than Missouri's code in terms of regulatory restrictions.⁴

To illustrate how regulatory accumulation and red tape can get out of control, consider that today in Pennsylvania there are 208 restrictions and regulating the design and use of ladders⁵ and 190 rules governing standards for consumer packages and containers.⁶

² [Strategies for Deregulation: Concepts and Evidence](#), Fraser Institute, 2018.

³ James Broughel, Oliver Sherouse, and Daniel Francis, "[A Snapshot of Pennsylvania Regulation in 2017](#)" Mercatus Center at George Mason University, April 2017.

⁴ James Broughel, "[The Regulatory Landscape in Pennsylvania](#)", Mercatus Center at George Mason University, June 6, 2017.

⁵ Pennsylvania Code, Title 34, Chapter 21 in James Broughel, "[The Regulatory Landscape in Pennsylvania](#)", Mercatus Center at George Mason University, June 6, 2017.

⁶ Pennsylvania Code, Title 70, Chapter 23 in James Broughel, "[The Regulatory Landscape in Pennsylvania](#)", Mercatus Center at George Mason University, June 6, 2017.

Naturally, some rules are necessary to ensure consumer safety. However, like the examples above illustrate, sometimes regulations can hardly be justified.

In this sense, we respectfully urge this committee to move forward with S.B.251 and the establishment of the Independent Office of the Repealer. This institutional and non-partisan office has the potential to strengthen the regulatory quality of the Commonwealth by rigorously reevaluating the effectiveness of rules that were enacted decades ago but were never revisited to assess their efficiency in light of their stated goals.

We believe the successful passage of this legislation can open up a path to significantly reduce red tape and compliance costs by allowing both regulators and the regulated community to focus on legitimate rules that protect the public.

Additionally, we would like to express our strong support for H.B. 806. We believe that amending the Regulatory Review Act by introducing provisions modeled after the federal REINS Act is critical to empower the representative of the people to make decisions on regulations that often fail to consider secondary consequences. We think that adding transparency and democratic accountability to the rulemaking process will improve the regulatory quality in the Commonwealth.

Consider the findings of a 2016 study by Professor Jerry Elling from George Washington University. The paper found that often, agency expertise fails to contemplate critical questions that should be answered in order to design effective regulations. Specifically, the study found that half of the economically significant federal rules enacted between 2008 and 2013 were not accompanied by significant evidence demonstrating the existence, size, or cause of the problem the regulation sought to solve. Furthermore, Elling found that less than one-fourth of the regulations evaluated were accompanied by reasonably strong evidence that the rule would actually achieve the benefits the agency sought to achieve.⁷

Therefore, we believe that by reasserting control over agency rulemaking is the General Assembly will be able to improve regulatory quality in the Commonwealth without negatively impacting public health and safety.

Addressing Common Objections

Opponents of these reforms frequently argue that there are not in the public interest and that they have the potential to jeopardize public health and safety. However, this is not accurate. Red tape reduction programs aim to repeal harmful and unnecessary rules; regulations that are in the public interest are never considered for repeal because they do not meet the criteria to qualify as red tape.

⁷ Jerry Elling, "[Evaluating the Quality and Use of Regulatory Impact Analysis](#)" Mercatus Center at George Mason University, June 6,2016.

Another common objection is that regulations only affect big business. However, that is also misleading. In fact, the burdens of regulation fall more heavily on smaller firms for three reasons. First, there are fixed costs of regulatory compliance. Whether a firm has one employee or one thousand, they must comply with the same rules. Second, there are one-time costs of learning the relevant regulations, developing compliance systems, and establishing relationships with regulators. Newer businesses have had less time to develop the knowledge and internal processes required for compliance. Third, compared to smaller, newer, and would-be competitors, larger and incumbent firms have higher capacity and incentive to lobby for legislative exemptions, administrative waivers, and favorable regulatory treatment.⁸

Conclusions

Jurisdictions that have adopted red tape reduction programs in the U.S and Canada have not experienced diminished protection for public health and safety or the adverse effects that critics claim. Instead, many have experienced resounding success in cutting red tape. For example, the Canadian province of British Columbia reduced its regulatory requirement count by almost 50 percent, from 330,812 in 2001 to just 166,919 in 2019, in a little over 18 years.⁹

The success in cutting red tape translated into an economic success story. British Columbia went from being one of the worst-performing provinces in Canada to being among the best economic performers. Figures show that economic growth increased from 1.9 percent below the Canadian average between 1994 and 2001 to 1.1 percent above the average between 2002 and 2006, and GDP grew faster in British Columbia than in Canada every year between 2002 and 2008.¹⁰

We thank you for the opportunity to testify today, and we look forward to working together to achieve these sensible reforms that will boost productivity and open economic opportunities for all residents of the Keystone State, but especially for the least fortunate.

Respectfully,

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⁸ Steven J. Davis, "[Regulatory Complexity and Policy Uncertainty: Headwinds of Our Own Making](#)", University of Chicago, April 29, 2019.

⁹ Canadian Federation of Independent Business, "[2019 Red Tape Report Card](#)".

¹⁰ Laura Jones, "Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?" Mercatus Center at George Mason University, November 2015.