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A FUNDAMENTAL REFORM OF GOVERNMENT REGULATION

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May 23, 1977



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A FUNDAMENTAL REFORM OF GOVERNMENT REGULATION

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Testimony on The Regulatory Reform Act of 1977 (S.600) before the
Committee on Governmental Affairs, U.S. Senate, Washington, D. C.,
May 23, 1977

It is a real pleasure to be asked to testify on a proposal which may result in the most fundamental reform of government regulation since the federal government embarked on the process of regulating private activity in 1887 (with the establishment of the Interstate Commerce Commission). In my judgment, by applying the "sunset" approach to government regulation, the proposed Regulatory Reform Act of 1977 provides the Congress with an unparalleled opportunity to improve, to modernize, and truly to reform the entire regulatory process.

As I will point out in the course of my remarks, however, that basic improvement will not automatically come about should S.600 be approved, but the passage of the bill will make achieving that improvement a real possibility.

Reasons to Support the Bill

The reasons for supporting the Regulatory Reform Act are well known and do not need to be repeated in detail. In the last few years, the American public has come to understand that the process of government regulation of business does not work well; it often fails to achieve the intended purpose; it frequently does more harm than good; and it is far more costly to the taxpayer and to the consumer than it should be.^{1/}

^{1/} For detail, see various publications of the Center for the Study of American Business, especially The Costs of Government Regulation, 1977.

The adverse effects of regulation are numerous: higher taxes, higher prices to the consumer, loss of productivity and jobs, delay in getting new products, and reduction of capital formation and economic growth. But it is not inevitable that every regulatory activity should generate these undesirable side effects. Regulation is useful in those instances where it provides social benefits (such as a healthier and more productive work force) in excess of the social costs it imposes. With some care and effort, the regulatory process can be revised so as to derive at lower costs much of the same benefits as are now achieved -- and that of course is the primary motivation for supporting legislation such as S.600.

A new way of looking at the effects of regulatory programs is needed. A parallel can be drawn to macroeconomic policy making, where important and at times conflicting objectives are recognized and attempts at reconciliation or trade-off are made (for example, as between reducing unemployment and curbing inflation). A cleaner environment, to cite an instance, is a high priority national objective, but not the only high priority goal. And society has no stake in selecting the most costly and disruptive methods of achieving a cleaner environment.

Overregulation -- which can be defined as regulation for which the costs exceed the benefits -- should be avoided. Government officials also need to realize that each addition of regulatory power reduces the extent of individual freedom and of private sector discretion.

We all must understand that government regulation is a potent and expensive medicine. It needs to be taken very carefully, in limited doses, and with full regard for all the adverse side effects. Public policy must

avoid unwittingly overdosing the patient. The bottom line in all of the regulatory fields is this -- overregulation of business is not in the public interest because it is the consumer who ultimately bears the costs.

A Critique of S.600

S.600 has been carefully drafted: Over an eight-year cycle, the bill provides for the President submitting reform proposals for each major regulatory agency and for Congress reviewing those proposals. These proposals are to include recommendations for increasing competition, and for procedural, functional, administrative, and structural reforms. The Congressional review is to be assisted by detailed studies by the General Accounting Office and the Congressional Budget Office. The timetables inserted in the bill are highly desirable for many reasons.

First of all, sensible priorities are set; key regulatory areas are designated for early review -- notably energy, environment, housing, and occupational health and safety. Secondly, congressional reform proposals are automatically triggered by failure of the President to submit regulatory reforms. Thirdly, the "sunset" mechanism (automatic termination of the regulatory agency) is provided over a period of time should Congress fail to enact reform legislation. In my view, the basic structure of S.600 is sound and its specific provisions should be strongly supported.

I would, however, raise a note of caution. Substantial improvements in the regulatory process are not likely to flow automatically from the operation of the statute. We should acknowledge that the sunset mechanism has been in operation in other legislative areas for many years, although not known by that name. The authorization for foreign aid, for example,

automatically expires each year. The program must be reviewed and re-enacted by the Congress annually. At best, perhaps the periodic reviews have reduced some of the shortcomings of that program but they have not eliminated them.

I am concerned over the lack of specific statutory criteria to guide the President in preparing and the Congress in reviewing proposed reforms of regulatory programs. In contrast, the mandates to GAO and CBO are detailed and correctly raise some of the basic questions: Is the regulatory program appropriate to current needs? Is it achieving its purposes? What is the net impact of the agency? Are its operations cost-effective? Are there more practical and more efficient approaches which can be substituted? But the bill includes no directive to Congress either to use these reports as the basis for its review or to address these same questions independently.

It would be highly desirable for the Executive Branch to be charged with examining and responding to these basic concerns in preparing proposals for Congressional consideration. Likewise, the Congress should consider these questions in reviewing and revising those proposals.

Otherwise, the review process of S.600 -- although designed with the best of intentions -- could deteriorate to a routine activity in which a new stamp of approval is given to the existing array of outmoded, inefficient, and ineffective regulatory activities.

A firm and clear expression of legislative intent along these lines would be most useful in guiding the actual activities to be performed under the proposed law: Government regulation should be limited to those areas where the benefits to the nation exceed the costs. Simultaneously,

each regulatory agency should be required to utilize the least costly and most effective means of achieving those benefits.

Prognostication

During the past few years, the American public has been alerted to the problems and shortcomings of government regulatory activities. Of the many reform proposals which have been submitted, none provides a panacea. However, S.600, "The Regulatory Reform Act of 1977" appears at the present time to be the most effective vehicle for improvement: it is comprehensive; the required changes are phased over a sensible period of time; the executive and legislative branches are both involved in the reform process; and a forcing mechanism (the "sunset" approach) is used to trigger actions in this difficult and controversial area.

The enactment of S.600 is not necessarily going to result in eliminating government regulation or in expanding it. Rather, it provides the opportunity and mechanism for modernizing and improving an aspect of government activities which has profound repercussions on the entire society. Thus, S.600 merits widespread support and should be enacted promptly.

Note: The views expressed are personal.