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and Rollback Efforts on Small Businesses"

Mr. Chairman and Members of the Committee, thank you for giving me the opportunity to testify before you today.

President Trump has made deregulation a central goal of his domestic policy. Through executive orders aimed at particular regulatory programs, President Trump has directed agencies to take an axe to existing regulations. Through the so-called "2-for-1" order on regulatory costs, President Trump has also placed strict limits on the development of new regulations.

Agencies have responded by delaying, suspending, and revoking existing regulations.* All across the government, rules and policies that took years to develop have been put off or wiped out. These rules and policies address issues as important and diverse as climate change, consumer deception, airline safety, chemical accidents, food safety, sexual assault, and more. In a great many cases, the rules and policies have been put off or rejected with little of the legally required attention to statutory constraints, factual records, or procedural frameworks. As a consequence, federal courts have rejected

* Attached as an appendix to this testimony is my forthcoming article analyzing the first phase of the Trump administration's deregulatory surge: Lisa Heinzerling, *Unreasonable Delays: The Legal Problems (So Far) of Trump's Deregulatory Binge*, Harvard Law & Policy Review (forthcoming March 2018).

the administration's attempts to delay or suspend existing rules on such matters as lead paint, energy efficiency, and methane emissions from oil and gas facilities. Two weeks ago, for example, a federal district court in California granted a preliminary injunction against the Department of the Interior's suspension of a rule intended to reduce waste of natural gas from oil and gas facilities on public lands. Particularly pertinent to today's hearing, the court found that the Department's attempt to justify the suspension based on the rule's purported effects on small businesses was not supported by the factual evidence. Other, similar challenges to the administration's deregulatory activities remain pending and may suffer similar fates due to the administration's apparently indifferent attitude toward law, facts, and process.

Agencies have also responded to the President's deregulatory agenda by putting off or canceling new regulatory initiatives. Under the 2-for-1 executive order, the Office of Management and Budget (OMB) is empowered to set regulatory budgets for the executive agencies. These are not ordinary budgets, in which agencies have a limit on the amounts they can spend to do their work. With regulatory budgets, agencies have a limit on what they can require private parties to spend to alleviate the problems the agencies are charged with addressing. For fiscal year 2018, OMB has given the agencies regulatory budgets that are in every case zero or negative. Agencies may not, in other words, issue any new regulations without offsetting the new rules' costs by at least, and in most cases by more than, a 1:1 ratio. As the federal district court hearing a legal challenge to the 2-for-1 executive order found last week, at the current rate of annual cost savings from *all* deregulatory efforts across *all* agencies, "it would take the Executive Branch as a whole *two or three years* to accumulate cost savings sufficient to offset even

the most conservative estimated cost" of just one rule from just one agency (a Department of Transportation rule related to motor vehicle safety). The court observed: "the Executive Order curtails the ability of agencies to adopt significant new rules, even when the benefits of the new rules would vastly outweigh the costs."

Indeed, it appears to be the official policy of this administration that regulatory benefits do not count when one is evaluating the wisdom of regulatory policy. Under the 2-for-1 executive order, a reduction in regulatory costs is considered a success no matter how dearly we all pay for it in benefits forgone. Consider again the regulatory budgets OMB has set for this fiscal year. The Department of Energy takes one of the biggest hits in OMB's regulatory budget; it must find \$80 million in savings from discarded rules before it may spend a single dollar on new regulation, at which point it must still offset each dollar spent with reductions elsewhere. However, according to OMB's own draft report on the costs and benefits of federal regulation, the Department of Energy is one of the star performers in the government when one compares the regulatory costs it imposes to the benefits it reaps for the public. OMB reports that the Department's regulations on energy efficiency from 2006 to 2016 produced net benefits ranging from \$12 billion to \$31 billion. And yet these are the programs OMB has slated for especially deep cuts. It makes no sense, if one cares about the public benefits of regulation.

In this regard, consider, too, the example of the Environmental Protection Agency. No agency in this administration has taken a bigger axe to existing regulatory programs than the EPA. Yet OMB has also reported that EPA rules outperform the rules of all other agencies combined in terms of producing net monetized benefits. OMB estimates that from 2006 to 2016, EPA regulations provided as much as \$706 billion in

benefits – measured in such terms as lives saved, illnesses averted, and environmental degradation reduced – while imposing no more than \$65 billion in costs. However, the gargantuan benefits of EPA rules, particularly rules related to air pollution, disappear in the administration's regulatory budget for EPA.

A question for today's hearing is whether the costs of this deregulatory surge to the public at large are at least mitigated by substantial benefits to small businesses. The answer is that this war on regulation is not designed to deliver benefits to small businesses. Recent cases rejecting the Trump administration's deregulatory moves are relevant here as well. The court hearing the case on Interior's rule on waste of natural gas on public lands found that the blanket suspension of the rule was not tailored to address the concerns of small entities. Similarly revealing is EPA's most recent regulatory plan. This plan is full of deregulatory initiatives the agency intends to undertake, but EPA highlights only two of the rules slated for revocation or relaxation as affecting small entities.

Make no mistake: the war on regulation is being conducted at the behest of some of the largest corporations in this country, and its benefits are being delivered primarily to them. In fact, many of the administration's deregulatory actions not only fail to target their savings to small businesses, but they affirmatively harm small entities by withdrawing regulatory protections that would have benefited them. Consider, for example, the Department of Agriculture's withdrawal of a rule intended to address anti-competitive behavior in the meat industry. In this matter pitting small farmers against big agribusiness, the administration planted its flag on the side of big business. In evaluating

the deregulatory initiatives of this administration, one cannot simply assume that small entities are benefited when regulations are withdrawn.