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Deregulatory Steamroller:
The White House Presidential Memorandum
"Directing the Repeal of Unlawful Regulations"

On April 9, the Trump administration issued a presidential memorandum directing broad regulatory repeal. The memo builds on an earlier DOGE-related regulatory review executive order but is much more aggressive. Citing 10 recent Supreme Court decisions, the memo directs all agencies to review existing rules and immediately repeal any and all rules purportedly out of compliance with those decisions, without using the notice-and-comment rulemaking required by law.

The memo is overtly hostile to regulatory protections: It asserts, "Unlawful, unnecessary, and onerous regulations impede these objectives and impose massive costs on American consumers and American businesses."

The memo's agency reach is exceedingly broad: It prepares the way for a broad rollback of regulatory protections across all government agencies ("all executive departments and agencies"), covering government departments and operations that may not traditionally be considered "regulatory" and certainly reaching back decades in time.

Weaponizing Supreme Court decisions: The theory of the memo is that many rules on the books are incompatible with a series of recent Supreme Court decisions and therefore unconstitutional. There is a fundamental illogic to this claim. The first decision listed in the memo, *Loper Bright*, does not make any regulation illegal or unconstitutional—as the Chief Justice stated in the decision itself; it merely holds that courts reviewing regulatory decisions should not defer to agency interpretations. The takeaway is that the memo aims not to apply the Supreme Court decisions directly, but to treat them as representations of anti-regulatory principles that will be applied to justify rule roll backs.

Environmental, consumer, health safety, worker protections at risk: The referenced cases include *Loper Bright* (deference to agency decisions), *West Virginia v. EPA* (major questions doctrine), *Jarkesy* (agency adjudications), *Cedar Point Nursery* (union access to workers), and three environmental cases (*Michigan v. EPA*, *Sackett v. EPA* and *Ohio v. EPA*). Again, the best way to interpret the impact of these referenced cases in the context of the

presidential memorandum is not to analyze their actual holdings, but to treat them as totems suggesting the reach of the memo's ambitions.

Civil rights rules at risk: The memo also references *Students for Fair Admissions v. Harvard* (affirmative action). Again, for purposes of understanding the memo, the case should be interpreted to suggest a review of civil rights rules broadly.

Weaponizing freedom of religion: The memo references two freedom of religion cases (*Carson v. Makin* and *Roman Catholic Diocese of Brooklyn*), which suggest broad review of regulations – especially in the health and education sectors – for rules that the administration may categorize as anti-religion.

Immediately repeal, no notice-and-comment: Agencies are instructed to repeal rules determined to be contradicted by these Supreme Court decisions immediately, with no notice-and-comment process. The stated justification for skipping notice-and-comment is a "good cause" exception in the Administrative Procedure Act (APA).

This is a bad-faith misinterpretation of the APA. Although the APA allows agencies to bypass notice and comment for "good cause," this exception is available in limited circumstances, such as when the usual rulemaking procedures would be impracticable or in the rare circumstance when those procedures would in fact harm that interest. The president's memorandum says nothing to suggest that those limited circumstances are present.

The memo's language on notice-and-comment makes clear how aggressive the administration aims to be: "Retaining and enforcing facially unlawful regulations is clearly contrary to the public interest. Furthermore, notice-and-comment proceedings are 'unnecessary' where repeal is required as a matter of law to ensure consistency with a ruling of the United States Supreme Court. Agencies thus have ample cause and the legal authority to immediately repeal unlawful regulations."

Opportunities for litigation: The presidential memo is itself probably not subject to legal challenge, because it is just a simple directive to agencies. But implementation actions pursuant to the memo will be, with an opportunity to challenge both a process that fails to follow the Administrative Procedure Act's requirement for notice-and-comment and for arbitrary and capricious regulatory rollbacks, based on a limited administrative record.