



## **Public Citizen v. Donald J. Trump**

### **What is the Trump Executive Order on regulations?**

On January 30, President Donald Trump issued an Executive Order called “Reducing Regulation and Controlling Regulatory Costs.” The Executive Order requires that an agency issuing a new rule must identify two existing regulations for repeal. It also mandates that the costs of new rules – without regard to their benefits – be offset by eliminating at least two other rules. In practice, this Executive Order will block government agencies from issuing, or force them to repeal, new health, safety, environmental, consumer finance, and worker rights protections.

### **What is the rationale for the Executive Order?**

President Trump and his top regulatory adviser, the financial mogul Carl Icahn, have untruthfully claimed that regulations are choking the American economy, citing fanciful claims that regulations cost \$2 trillion a year. President Trump says he will cut regulations by 75-80 percent. The Executive Order aims to slow the issuance of new rules, eliminate many rules, and prevent the imposition of any new regulatory costs on corporations.

The Executive Order does not take into account the benefits of new rules, which in almost every case vastly exceed the purported costs.

### **What does the Executive Order cover?**

The regulatory Executive Order covers all new “significant” rules or guidance documents issued by executive agencies. “Significant” generally means an impact on the economy of \$100 million or a matter otherwise of major national importance. Executive agencies include the departments in the cabinet and agencies within departments, such as the National Highway Traffic Safety Administration, which issues car safety standards.

The Executive Order does not cover rules from independent agencies – which do not answer to the President – such as the Federal Communications Commission, the Federal Trade Commission, and the Consumer Financial Protection Bureau.

### **Who are the parties in the lawsuit?**

The organizations filing the lawsuit are Public Citizen, Natural Resources Defense Council (NRDC) and the Communication Workers of America (CWA). These plaintiffs are represented by lawyers at Public Citizen Litigation Group, NRDC, CWA and Earthjustice.

Defendants in the case are President Trump, the United States of America, the acting director of the Office of Management and Budget, and the current or acting secretaries and directors of numerous executive departments and agencies.

### **Why are you suing?**

The regulatory Executive Order will make it almost impossible for agencies to adopt new rules to protect consumers, workers and the environment. And if a new rule is adopted, two existing protections would have to be repealed. For example, before the worker safety agency, the Occupational Safety and Health Administration, can issue a new rule to protect workers from exposure to a dangerous chemical, it will have to identify two existing health rules to repeal. And those existing rules must impose costs comparable to the new rule, relying on an accounting system that treats already adopted rules as much less costly than new ones. With these requirements, agencies may just give up on rulemaking.

Regulatory protections, however, are crucial for protecting the public and stopping corporate abuse. Without new rules to address new business practices, new technologies and new scientific evidence, Dirty Energy companies will be able to pollute more, Wall Street banks will be better positioned to rip off consumers, chemical corporations will expose their workers to more poisons, drug companies will better be able to continue price gouging, auto makers will sell dangerous cars, and on and on.

The Wall Street crash, the BP oil disaster, the Volkswagen emissions cheating scandal, the GM ignition switch failure that killed at least 174 people, numerous mining disasters, contaminated food outbreaks, the West Texas fertilizer factory explosion, the coal ash poisoning of the Dan River, the Wells Fargo fake account scandal – all of these extraordinary abuses are examples of regulatory failure and why we need stronger regulatory protections.

Regulatory protections do impose costs on regulated industry, but almost never as much as industry alleges. More importantly, regulatory benefits vastly exceed costs, even using accounting systems that are heavily biased to favor corporations. The monetary benefits of major regulations issued since 2000, under Republican and Democratic administrations alike, exceed costs by at least 2-1 and as much as 14-1, according to the most careful governmental analysis.

The Trump regulatory Executive Order irrationally excludes consideration of these benefits, permitting consideration of cost to business only.

### **What are examples of rules that might be affected by the Executive Order?**

Any significant regulatory protection that might be adopted in the future would be covered by the Executive Order (excluding those issued by independent agencies or the Defense Department). The complaint in *Public Citizen v. Trump* – the initial filing in the case – lists numerous currently planned rules that would be affected. These include:

- An auto safety standard to require that cars be equipped with devices enabling them to communicate with each other, expected to save 1,000 lives a year;

- New limits on workplace exposures to the hazardous chemical styrene;
- New standards to prevent health workers from exposed to infectious diseases;
- A rule to prevent mining equipment from crushing miners;
- Implementation of the newly amended Toxic Substances Control Act, under which the Environmental Protection Agency had authority to make progress in regulating toxic chemicals;
- A measure to avert oil-train derailments and explosions;
- Energy efficiency standards that would save consumers billions of dollars;
- Endangered species protections; and
- New clean air standards.

### **What is the basis for the lawsuit?**

There are several grounds (“causes of action”) for the lawsuit. By requiring agencies to consider factors that are not permitted under the law, the Executive Order usurps congressional power and violates constitutional separation of powers principles. It also violates the Take Care Clause of the Constitution, which directs the President to take care that the laws be faithfully executed.

Implementation of the Executive Order would require federal agencies to violate numerous statutes. No federal statute authorizes an agency to consider, when deciding whether to issue a regulation intended to address identified harms to public safety, health, or other statutory objectives, whether it can offset the costs of the new rules by repealing two or more existing rules. The agencies cannot implement the Executive Order without violating the statutes from which they derive their rulemaking authority and the Administrative Procedure Act, which prohibits regulation that is arbitrary or in violation of the law.

### **What sort of relief are the plaintiffs seeking?**

The plaintiffs ask that the federal court issue a declaratory judgment that the Executive Order is invalid because it violates the Constitution and cannot be lawfully implemented. They also seek an injunction preventing agencies from implementing the Executive Order.

How will the case be decided?

The Trump administration will reply to the complaint filed in U.S. district court. Eventually, the parties will make legal arguments before the judge, who is likely to decide the case on motion papers, without a trial. After the judge issues a ruling, the losing party may choose to appeal the decision to the U.S. Court of Appeals for the District of Columbia Circuit.