Written by **Staff** on November 21, 2016
Published in the November 21, 2016 issue of the New American magazine. Vol. 32, No. 22

Regulatory Shackles vs. "Chains of the Constitution"

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Item: *The White House website reassures Americans that "President Obama has put in place a 21st-century regulatory system — one that protects public health and welfare while promoting economic growth, innovation, competitiveness, and job creation."*

The site quotes the president's comments in 2011, when he said: "We should have no more regulation than the health, safety, and security of the American people require. Every rule should meet that commonsense test."

Item: *A Capitol Hill publication noted this summer that "President Obama is putting the finishing touches on his regulatory legacy."*

The Obama administration, reported The Hill, recently "issued a flurry of new rules to expand overtime pay to millions of Americans, combat climate change with stronger standards for methane emissions and protect senior investors with new requirements for financial advisers."

The Hill continued: "Supporters of Obama have praised the 'pen and phone' approach, calling it a necessary response to obstruction in Congress. 'Congress has in fact been hostile and uncooperative and focused on rolling back vital public protections rather than taking on the nation's urgent challenges,' said Robert Weissman, president at Public Citizen."

Correction: President Barack Obama and his ideological devotees, both within and without the government, are at heart zealous reformers — activists who insist that their consciences be our guides.

They like to do their shepherding through the raw power of government, preferably the centralized federal government, often through unelected minions. We are, from their standpoint, the sheep.

They are protecting us, or so they say. They see that as their duty. And they inevitably overdo it.

While the Founders gave us three branches of government, the sad fact is that another branch has developed that is in some ways more powerful and insidious: the regulatory state.

The red-tape state is massive. The sheer numbers alone are staggering. Here's one summary, as cited by the Rare website, drawing from the extensive research found in the latest version of *Ten Thousand Commandments* published by the Competitive Enterprise Institute.

As of mid-October, President Obama was on track

to impose more regulations than any other American president. Yesterday, the Federal Register, which publishes the official rules and regulations of the federal government, crossed the 70,000-page mark for 2016. According to the [CEI's] Clyde Wayne Crews, it is the soonest in the year the register has ever hit that page mark.

Crews points out that the Obama administration has set numerous other rule-making records as well:

The all-time record-high Federal Register was 81,405 pages in 2010. In fact, six of the seven all-time high Federal Register page counts have happened under the Barack Obama administration.

Is there any American in his right mind who believes that all of these passed the commonsense test that the president promised?

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Some regulations have a broad impact, others are pointed. Both hurt.

As we write, the financial press has been taking note of the decision by MetLife to drop the "Peanuts" cartoon character Snoopy from its advertising as part of its recent decision to spin off its life-insurance business. A smaller firm named Brighthouse Financial is one result.

Why the change? Yes, rebranding in business is not unusual and part of the reason. But we talked with a person in the industry who deals with Brighthouse frequently. We were told, as has been reported elsewhere, that there is also a key regulatory basis. The move was deemed necessary so the new company could be small enough to avoid being considered "systemically important" to federal regulators, thus escaping certain stiff capital rules. In essence, as she said, "the feds killed Snoopy."

Decisions made by unelected paper-pushers in Washington, D.C., can even hit American troops on the other side of the world. How does this happen? Start with bureaucrats in the Food and Drug Administration who burn to make decisions for others.

The Wall Street Journal recently reported on an FDA move to forbid companies from donating cigars to U.S. soldiers. Danger is apparently acceptable if soldiers are needed to pull a trigger. Indeed, they could get shot and killed in the line of duty. But there are jokers in the FDA who stay up late at night worrying that someone might give a trooper a cigar.

The solution: Fire up a new rule. The FDA confirmed to the *Journal* that the long-time practice is being banned. In short, as the editors put it,

The Marine or soldier on the front lines who might otherwise enjoy the consolation of a free stogie has become a casualty in the FDA's long war to gain control over tobacco.

This is crazy, but it does have a perverse government logic. Since 2000 when the Supreme Court ruled that Congress had not given the FDA the power to regulate tobacco, the agency has been itching to reassert its authority.

In 2009 Congress provided it via the Family Smoking Prevention and Tobacco Control Act. President Obama hailed the law for protecting children from "the harmful effects of tobacco," but he added that the new law "will allow adults to make their own choices." And in August the FDA imposed its new sweeping rule over all tobacco products.

… Meanwhile, the ban on cigar donations takes away the ability of these adults to make their own choices, contrary to President Obama's explicit promise.

Now imagine such regulations being multiplied by the hundreds, thousands, and even tens of thousands. That may be the fervent dream of monomaniac "civil servants," but it is a nightmare for most coherent Americans.

Sure, many of the regulators and activists and their advocates are well-intentioned. However, that is how "liberals" usually pave their roads — and we know where that leads.

The bleeding hearts tell us they love Mother Gaia, but then come up with EPA regulations that kill the jobs of thousands of coal miners who live on and work in that Earth. Others profess to have the little guy in heart, but then impose regulations through the Consumer Financial Protection Bureau that slam the door on about 85 percent of legal small-dollar "payday" loans — often sending borrowers to much riskier, and perhaps illegal, loan sharks.

Who is behind the overreaching? Follow the money and vested interests. So argues Peter Klein, Carl Menger research fellow of the Mises Institute and professor of entrepreneurship at Baylor University's Hankamer School of Business. Klein made that point again not long ago on a blog for the Mises Institute. It is frequently, as he noted, the well-established firms that lobby for additional regulations, "give generously to politicians on all sides, and benefit from an environment in which government plays a large role in the economy."

The professor even quotes an interview given by the CEO of Goldman Sachs, Lloyd Blankfein, in which the chief granted that "it's very hard for outside entrants to come in, disrupt our business, simply because we're so regulated." The well-connected Goldman chief conceded the "burdens of regulation" in his industry. Yet Blankfein also admitted that often "the burdensome regulation acts as a bit of a moat around our business."

There have been many studies made about the cost of this protection racket. Regardless of the methodology, the answer is: far too much. Sam Batkins, who is the director of regulatory policy at the American Action Forum, has estimated that the price tag for the regulations in just the final several months of the Obama administration would run to perhaps another $113 billion.

A study by the Heritage Foundation released earlier this year covered major regulations, using the regulatory agencies' own numbers (and pointing out that the real costs were undoubtedly higher). In 2015, noted the study, there were more than $22 billion per year in new major regulatory costs imposed on Americans.

Some examples of the rulemaking, and their consequences, were cited by James Gattuso and Diane Katz in the Daily Signal. Among them: a) restricted access to credit under the hundreds of rules unleashed by the Dodd-Frank financial regulation statute; b) fewer healthcare choices and higher medical costs from the Affordable Care Act, aka ObamaCare; and c) reduced Internet investment and innovation under the network neutrality rules dictated by the Federal Communications Commission. These are, as they wrote in May, "just a few of the 2,353 regulations of 2015 — and there have been 20,642 since Obama took office in 2009."

The most costly last year was deemed to be the Environmental Protection Agency's "Clean Power Plan." This involves the direct regulation of greenhouse gas emissions from power plants, adding at least $7.2 billion a year (much more, according to others). "Despite the huge costs, the plan will do nothing to mitigate global warming," declared Katz and Gattuso, who are regulatory experts at Heritage.

Carbon dioxide emissions are rising exponentially faster elsewhere around the globe than in this country. As noted in a study by the Institute for Energy Research:

As time goes on, the United States will emit a smaller and smaller share of the world's total greenhouse gas emissions, which makes unilateral efforts — such as a domestic carbon tax — an ineffective way to influence climate. If the United States were to completely cease using fossil fuels, the increase from the rest of the world would replace U.S. emissions in less than eight years.

If we reduced the carbon dioxide emissions from the transportation sector to zero, the rest of the world would replace those emissions in less than two years. Increases in worldwide carbon dioxide emissions are driven by developing economies, not the United States.

A spokeswoman for the U.S. Chamber of Commerce has recalled that, between 2000 and 2015, there were 34 “major rules” issued by federal agencies (a definition encompassing compliance rules costing more than $1 billion). The EPA issued 20 of them. Last year alone, the EPA finalized three — the Clean Power Plan, the Waters of the United States rule, and a Revised National Ambient Air Quality (Ozone) Standard. They are more than regulations; they are also economy killers.

These rules have been summarized well by the Chamber’s Sarah Keller. The ozone rule, she notes, imposes

billions in costs on state and local governments, hampering development in local economies across the nation. Under the rule, businesses could be denied federal air permits, putting construction — and construction jobs — at risk.

Meanwhile, the Clean Power Plan, or CPP, upends the entire U.S. energy sector by requiring states to drastically cut emissions from traditional power plants. CPP would increase average electricity prices in 40 states, costing households up to $79 billion.… Thankfully, the Supreme Court stayed, or blocked, the rule from implementation until pending lawsuits play out in the judicial system.

And then there’s the Waters of the United States rule, or WOTUS, which expands federal jurisdiction over land features. Under the rule, a simple roadside ditch could become a federally regulated waterway. The rule has left landowners and businesses uncertain about what they can do with their own property, and it was finalized without the required regulatory impact analyses or consultations with states or affected stakeholders.

These, as noted, are among the many major regulations. Small ones add up as well. Consider the regulatory costs across this country, as Clyde Wayne Crews has illustrated in his annual “snapshot” of the federal regulatory state for CEI: “In 2015, the federal regulatory cost reached $1.885 trillion.”

The “hidden tax” of federal regulation amounts to almost $15,000 per U.S. household each year, noted Crews. This is more than what is spent on healthcare, food, transportation, entertainment, apparel and services, and savings.

There used to be a “rule” against such intrusive government. There still is, albeit one that is regularly ignored: the U.S. Constitution. In questions of power, as Thomas Jefferson put it, “let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.”

As a nation, we have come a long way — down — from the Jeffersonian maxim that the government is best which governs least.

— William P. Hoar

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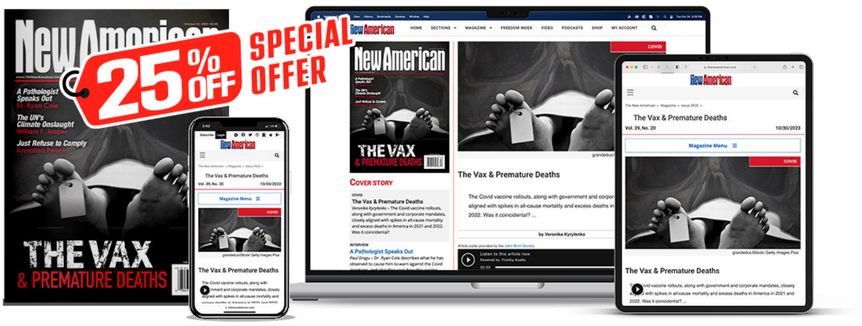

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