

SECURING OHIO'S FUTURE



REGULATIONS POLICY PAPER

Every year, the federal government produces thousands of pages of regulations that impact almost every facet of daily life for Ohioans. Some of these regulations, such as rules to ensure the foods we eat and the medicines we take are safe are absolutely needed. However many others stifle innovation, increase operating costs, and require thousands of hours and billions of dollars merely to ensure compliance with unwanted rules implemented by unelected bureaucrats in Washington. The National Association of Manufacturers and other groups have pegged the cost of federal regulations at over \$2 trillion per year, larger than the combined corporate and individual tax revenue collected by the IRS annually.

While unnecessary regulation hurts all Americans, the cost is felt particularly hard by small businesses and consumers: regulatory compliance is a relatively fixed cost, meaning larger firms can spread this fixed cost over larger revenues, leading to a lower per unit cost as compared to smaller firms with smaller revenue, a concept known as economies of scale. According to the annual National Federation of Independent Business “Problems and Priorities” survey, small business owners cited “unreasonable government regulations” as the second most critical problem they face, behind only the rising cost of health insurance. Consumers meanwhile are hit hard by regulations because they often operate as a hidden tax: as the cost of regulatory compliance rises for companies, they will simply seek to shift that burden onto consumers in the form of higher prices on goods. The same general principal impacts the wages Ohioans earn as well: as regulatory costs skyrocket, businesses will seek to contain costs elsewhere, which can result in wage stagnation and in some cases, layoffs.

Finally, excessive federal regulation has one more insidious effect: as the federal regulatory state expands, the ability of states to govern their own affairs, as guaranteed to them by the Constitution’s establishment of a limited set of enumerated powers for the federal government, begins to erode. The framers of the Constitution, knowing full well the threat posed by an unchecked centralized government, provided a set list of powers for the federal government. Everything outside the scope of those limited powers was left for the states to govern on their own. This system makes sense: while a one size fits all federal regulatory regime may work in some instances, in most cases, each state is a unique circumstance. It makes sense then that state officials, being more closely attuned to the needs of their state, are better equipped to determine the appropriate ways to govern their own affairs.

When the federal government enacts regulations beyond the scope of its enumerated powers, not only are a state's residents harmed by the costs of the regulation as outlined above, but if the regulation is left unchallenged, the state's power to govern their own affairs diminishes. In these instances, it is the job of the state's Attorney General to challenge these regulations in federal court. As the regulatory state rapidly expanded during the Obama Administration, Ohio's Attorney General Mike DeWine was on the front line fighting many of these needless intrusions into the lives and businesses of Ohioans. DeWine has filed or joined numerous lawsuits challenging federal regulations and in many cases, those rules and regulations have since been repealed or dropped before they could be implemented this year, as part of the Trump Administration's pledge to cut regulations by 75 percent.

Among the regulations Attorney General DeWine has fought are several relating to the Affordable Care Act. When first passed by Congress, AG DeWine joined more than half the country's Attorneys General in challenging the constitutionality of the individual mandate. The underlying argument of the law's opponents was simple: the federal government cannot require individuals to buy a product, nowhere in the Constitution provides the federal government with that power. While yes, individuals must purchase car insurance in order to drive a car, driving a car is not a mandatory activity. Simply by virtue of being alive however, the Affordable Care Act requires individuals to purchase health insurance or pay a penalty. After years of contentious court battles, Supreme Court ruled that the individual mandate was merely a tax and therefore was fully within Congress' power to levy taxes, a decision which greatly disappointed opponents of the law and the federal overreach it represents.

This was not the only lawsuit challenging portions of the Affordable Care Act. In another case, Attorney General DeWine joined several state universities and state agencies in challenging yet another fee levied by the ACA on all employers, even state agencies, that provide group healthcare to their employees. In doing so, DeWine argued the Affordable Care Act was requiring state agencies to be the federal government's tax collectors, and it would be far better for the state of Ohio to keep the \$6.25 million in fees for other issues in the state, such as roads, schools, or public safety. The lawsuit was recently rejected on appeal to the 6th circuit, however the plaintiffs have requested further review by the full circuit court.

The final two lawsuits challenging the ACA supported by Ohio's Attorney General touched on a more sensitive subject: the right to religious liberty and the need to fight provisions within the ACA and the rules associated with it to force employers to pay for healthcare services that violate their religious beliefs. The two cases in question touch on the same subject: can the federal government force an organization to provide healthcare that includes contraceptive coverage over the religious objections of the employer? Attorney General DeWine joined both cases, supporting the rights of organizations to refuse to provide contraceptive coverage in contravention of their beliefs. Although the Obama Administration proposed several changes to the rules in an attempt to satisfy religious groups, ultimately the case reached the Supreme Court last year, at which time they sent the case back to the lower court. While the issue is still somewhat unsettled, the Trump Administration drafted a rule this spring to roll back the ACA's contraceptives mandate that, if finalized, will end the attack on religious liberty caused by the law.

While there are numerous other lawsuits challenging Obama-era rules and regulations, there two final non-ACA rules worth mentioning here that have been challenged by AG DeWine because of their potentially devastating impacts on Ohio. The first is the so-called “Waters of the United States” or WOTUS rule. This proposal would expand the definition of waters that fall under the federal government’s purview via the Clean Water Act to include virtually any body of water, regardless of size. In the original law, the federal government was given authority over “navigable waters” but if the Obama Administration’s rule were to be implemented, any stream, pond, creek, or even adjacent dry land anywhere in the country would fall under the EPA’s jurisdiction. This rule would particularly harm the agricultural industry, a key part of Ohio’s economy. While the legal case challenging the rule was ongoing, the Trump Administration announced they would repeal the rule and return to the prior definition of waters under the EPA’s oversight. The second such rule is the Obama Administration’s “Clean Power Plan,” a proposal to drastically limit carbon emissions that many from coal producing states like Ohio saw as a “war on coal” that would lead to skyrocketing energy costs. Under the plan, states would have to drastically curtail the percentage of coal consumed over the next 15 years, a proposal that the Attorney General’s office stated would add \$25 billion per year in energy costs for Ohioans. Earlier this year, the Trump Administration requested and was granted a suspension in lawsuits against the rule, ahead of an Executive Order to begin dismantling the rule.

In each of these instances the same dynamic was at play: an aggressive federal government was seeking to extend its power over the states and individuals in a way that the Constitution never intended. As outlined above, this regulatory overreach increases costs to businesses which in turn take one of two actions: they pass these cost increases on to consumers as a hidden tax, or they simply relocate to greener pastures, taking jobs with them. This is not to say all regulations are without merit, but the government must strive to create a sensible, predictable regulatory framework that works within the established boundaries set by the Constitution. Businesses cannot invest and grow if they must spend thousands of hours and billions of dollars merely on regulatory compliance, and religious organizations should remain free to practice without having to choose between following their faith or following unconstitutional federal mandates.