

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

The Honorable Hakeem Jeffries
Democratic Leader
U.S. House of Representatives
Washington, DC 20515

The Honorable John Thune
Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Chuck Schumer
Minority Leader
U.S. Senate
Washington, DC 20510

March 31, 2025

Dear Speaker Johnson, Democratic Leader Jeffries, Majority Leader Thune, and Minority Leader Schumer:

The undersigned groups urge you in the strongest possible terms to oppose any attempt to use the Congressional Review Act (CRA) in an unprecedented and improper fashion. This includes a resolution to aim to repeal waivers issued during the previous administration by the U.S. Environmental Protection Agency (EPA) to the state of California, which allow California to set protective pollution standards for certain vehicles under the Clean Air Act (CAA) without being preempted by national standards established by EPA.

Our groups are not taking a collective position on the merits of any of these resolutions, nor should this be interpreted as a defense of existing CRA procedures as they stand. Instead, we are warning that the CRA process is being flagrantly abused, resulting in a fundamental unsettling of existing filibuster rules.

According to its defenders, the CRA was enacted to provide Congress the ability to review, and potentially repeal, recently issued regulatory actions on an expedited basis that bypasses the filibuster in the Senate. Yet, in order for Congress to use the CRA's special set of parliamentary procedures to disapprove, and thus repeal, a particular regulatory action, that action must meet the explicitly defined criteria in the CRA that members of Congress agreed upon when they first enacted the CRA.

First, and most importantly, the regulatory action must be a "rule" as defined in the CRA, which largely adopts the definition of "rule" from the Administrative Procedure Act (APA). If a regulatory action is not a "rule" under the CRA, Congress cannot use the law to repeal it.

Second, the CRA establishes time periods for Congress to use the law to repeal "rules." Once those time periods expire, Congress cannot use the CRA to repeal those "rules."

These clear preconditions to using the CRA reflect congressional intent to ensure that use of the CRA to bypass the filibuster is limited and narrow.

Egregious misuse of the CRA, such as its application to agency actions that do not meet the CRA's own definition of a rule, would set a dangerous precedent that could lead to further abuses and non-compliance with the CRA. Ultimately, the ramifications of using the CRA in these specific instances could extend far beyond just the waivers themselves and open a "Pandora's box" that will lay the groundwork for future attempts to misuse, expand, and abuse the CRA.

For example, we would expect to see the CRA used to attack other "orders," potentially including energy infrastructure permit approvals, approvals of corporate mergers, or approvals of particular drugs. These examples likely only scratch the surface of the possible consequences of ignoring the CRA's procedures with impunity. This means open season on the commonsense safeguards that keep us safe and healthy.

To be sure, disputes among members of Congress regarding the CRA's applicability to agency actions have arisen. In such cases, members have turned to the Government Accountability Office (GAO) as a neutral third party for resolving these disputes. Consistent with this role, the GAO has twice determined¹ that the CA waiver is not a "rule." If Congress were to proceed with using the CRA against the CA waiver, it would also undermine the important role the GAO plays as a neutral third party. And it would rob Congress of a valuable resource for resolving internal disputes.

Most alarming of all, if Congress does violate the CRA by using it to repeal an agency action that is not subject to the CRA, it will open the door to Congress abusing the law in additional ways that are expressly prohibited under the CRA. It may also encourage agencies to consistently circumvent the CRA's requirements.

For example, Congress could simply refuse to follow the strictly defined time limits for introduction and passage of CRA resolutions, or the time limits on the "lookback" period that allows Congress to use the CRA on "rules" that were finalized at the end of the previous Congress. This would completely undermine the clear intent of the CRA to only apply to *recently* finalized "rules." Or Congress might ignore the plain language of how resolutions are supposed to be crafted and attempt to bundle several agency actions together into a single resolution, as called for in the Midnight Rules Relief Act.

Congress has a choice: it can either choose to follow the intent and plain language of the CRA as it has done since the law was passed, or it can take the unprecedented step of using the CRA on an agency action that is simply not subject to the law, which will stretch the CRA beyond its breaking point and inevitably lead to future attempts to abuse the law. And if Congress refuses to follow the CRA's rules, then perhaps it should consider repealing the law altogether. Until that happens, however, we urge you to follow the CRA's clear rules defining the scope of its applicability.

Sincerely,

AFL CIO

¹ See <https://www.gao.gov/products/b-337179>

AFT, AFL-CIO
Alliance of Nurses for Healthy Environments
American Bird Conservancy
American Council for an Energy-Efficient Economy
American Federation of State, County and Municipal Employees (AFSCME)
Americans for Financial Reform
Appliance Standards Awareness Project
Center for Biological Diversity
Center for Digital Democracy
Center for Economic Justice
Center for Food Safety
Center for Justice & Democracy
Center for LGBTQ Economic Advancement & Research (CLEAR)
Center for Media and Democracy
Center for Progressive Reform
Center for Science in the Public Interest
Change the Chamber
Check My Ads Institute
Clean Water Action
Climate Action Campaign
Climate Hawks Vote
Coalition for Sensible Safeguards
Communications Workers of America (CWA)
Consumer Action
Consumer Federation of America
Consumer Reports
Consumers for Auto Reliability and Safety
Demand Progress
Earthjustice
Ecology Center
EDF Action
Electric Transportation Community Development Corporation
Electric Vehicle Association
Endangered Species Coalition
Essential Information
FFRF Action Fund
Genesee Co-op Federal Credit Union
George Mason University Center for Climate Change Communication
Government Information Watch
GreenLatinos
Greenpeace USA
Health Care Without Harm
Informationtrust.org
Interfaith Center on Corporate Responsibility
International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)

Japanese American Citizens League
Jobs to Move America
Kettle Range Conservation Group
Latino Outdoors
Lawyers for Good Government
League of Conservation Voters
League of United Latin American Citizens (LULAC)
National Consumer Law Center (on behalf of its low-income clients)
National Employment Law Project
National Federation of Federal Employees
National Health Law Program
National Partnership for Women & Families
Natural Resources Defense Council
Next 100 Coalition
Ocean Conservation Research
Oceana
Oregon Consumer Justice
Partnership for Policy Integrity
People Power United
Physicians for Social Responsibility
Plastic Pollution Coalition
Plug In America
Preserve Montgomery County VA
Public Citizen
Rachel Carson Council
Rise Economy
Sierra Club
South Carolina Appleseed Legal Justice Center
Southern Environmental Law Center
The Restaurant Opportunities Centers United (ROC United)
Tzedek DC
Union of Concerned Scientists
Waterkeeper Alliance
Womxn From The Mountain

CC: Members of Senate Environment and Public Works Committee
Members of Senate Homeland Security and Government Affairs Committee
Members of House Energy and Commerce Committee
Members of House Judiciary Committee
Members of House Oversight Committee