The Deregulation Deception

Cary Coglianese[*]
Natasha Sarin[**]
Stuart Shapiro[***]

Abstract

President Donald Trump and members of his Administration repeatedly asserted that they had delivered substantial deregulation that fueled positive trends in the U.S. economy prior to the COVID pandemic. Drawing on an original analysis of data on federal regulation from across the Trump Administration's four years, we show that the Trump Administration actually accomplished much less by way of deregulation than it repeatedly claimed—and much less than many commentators and scholars have believed. In addition, and also contrary to the Administration's claims, overall economic trends in the pre-pandemic Trump years tended simply to follow economic trends that began years earlier. Why the Trump Administration failed to deliver on its deregulatory goals, notwithstanding the power that U.S. Presidents can exert over the regulatory state, may seem puzzling. The explanation cannot rest merely with the widely held ossification theory that regulatory procedures and judicial review impede attempts to make regulatory change, for the Trump Administration completed many more significant regulatory actions than it did deregulatory ones. We suggest that substantial deregulation is more challenging to achieve than it might seem, demanding strong managerial competencies on the part of a political administration. Furthermore, political leaders do not need to accomplish major deregulation to make it seem as if they have done so. The Trump Administration's ability to exploit even modest deregulatory actions for symbolic effect provides a case study of a political strategy that we call the deregulation deception—and to which the regulatory state anywhere in the world can be vulnerable. What matters most to some political leaders will be the creation of a *perception* of dramatic deregulatory change that can be used to claim credit for positive economic trends, just as claims of excessive regulation can be used by politicians to shift blame during periods of economic distress.

The Deregulation Deception

After an early January 2021 mob assaulted the U.S. Capitol, triggering events that would lead to his unprecedented second impeachment, President Donald J. Trump turned to a narrative he had used throughout his presidency, boasting of the purported economic gains his deregulatory agenda had delivered. In remarks delivered just moments before he boarded Air Force One for the last time, the soon-to-be former President bragged that "if you look at … the regulation cuts … that's why we … have had such good job numbers" (Trump 2021a). Likewise, just the previous day, in a pre-recorded farewell address to the nation, Trump claimed that "[w]e slashed more job-killing regulations than any administration had ever done before" (Trump 2021b). Even in his infamous speech to protesters assembled in Washington, D.C. on January 6, 2021, before they stormed the Capitol Building, Trump bragged that "[w]e got you the biggest regulation cuts. There's no President, whether it's four years, eight years, or in one case more, got anywhere near the regulation cuts" (Trump 2021c).

Trump's emphasis on deregulation in his final hours as President mirrored claims about regulatory policy he repeated throughout his years in office, especially during his 2020 bid for reelection. Throughout his unsuccessful reelection campaign—as well as in the months that followed the election—deregulation consistently and conspicuously figured into his pitch to the American public (Pramuk 2019). His White House website listed a "record number of regulations eliminated" in a prominent section devoted to Administration accomplishments (Trump 2018a). In a speech accepting the Republican nomination in 2020, Trump boasted about "record-setting" cuts in agency rules (Trump 2020a). These sorts of statements were not merely off-the-cuff or ad lib boasts but part of an explicit messaging strategy. Even statements emanating from White House and campaign staff made similar claims. The White House Council of Economic Advisors (CEA), for example, proclaimed that "[t]he Trump Administration's deregulatory actions across a vast array of American industries are the most significant in U.S. history" (CEA 2019a).

President Trump, of course, made many boasts about himself and his Administration. He was also hardly the first president to brag. But Trump's boasts about deregulation were "a defining theme of his presidency" (Appelbaum & Tankersley 2018). They were also one of his few conceits that won widespread acceptance across the political spectrum. A range of mainstream media sources reinforced the claim. A *Vox* podcast reviewing the Trump Administration's accomplishments, for example, began with an episode entitled "the deregulator in chief," replete with a description that declared regulatory reform to have been President Trump's "biggest accomplishment" (Rameswaram & Katz 2020). Similarly, when a member of the *New York Times*' editorial board conducted a fact check of the Trump Administration's accomplishments in the lead-up to the 2020 presidential election, the editor considered as "true" the claim that the Administration achieved a "[r]ecord number of regulations eliminated that hurt small businesses" (Stockman 2020). Another *New York Times* story characterized the Trump era as "four years marked by an extensive deregulatory push" (Lipton 2020). A *USA Today* news story framed the November 2020 presidential election as a stark "decision between deregulation or re-regulation" (Burger 2020).

Meanwhile, conservative commentators celebrated the belief that the Trump Administration "promoted the most far-reaching deregulation in modern times" (*Wall Street*

Journal 2021) and that it accomplished "[t]he largest deregulatory effort since—well, ever" (Strassel 2021). Progressive organizations, at the same time, deplored that "[t]he Trump administration, more than any other in U.S. history, aggressively pursued the rollback of federal regulations, particularly the ones put in place by President Barack Obama" (Kleiner 2020). Voters on both sides of the political spectrum found reason to accept the Trump Administration's deregulatory claims—either because these claims affirmed their support of President Trump or confirmed their reservations.[1]

The widespread belief that President Trump had delivered dramatic deregulatory changes took root from the earliest days of his Administration. As early as January 2017, for example, the non-partisan PolitiFact organization had rated Trump's pledge to "slash federal regulations" as a "promise kept" (Valverde 2017). Trump and his supporters perpetuated this belief through repetition over the years. As Heminway (2019) noted, "Trump's presidency has been characterized by significant public appearances that aggressively promote his proposed and actual deregulatory policies." President Trump held annual media events touting his purported deregulatory achievements and claiming that they provided a major boost to the economy (Trump 2017a; Trump 2018b; Trump 2019a; Trump 2020b). With the resulting media coverage and repetition of claims, the impression took hold so firmly that—notwithstanding the nation's severe economic downturn and record job losses associated with the COVID crisis—a considerable portion of the public continued throughout the 2020 presidential campaign to view President Trump as the more effective steward of the economy than then-candidate Joseph Biden (Santhanam 2020).[2]

As historians, social scientists, and legal scholars study the Trump presidency for decades to come, much study will undoubtedly focus on President Trump's divisiveness and populist appeals (Montgomery 2020; Siegel 2018; Lieberman et al. 2018). Against the more turbulent aspects of Trump's presidency, though, scholars and the public may scrutinize less closely the claims the Trump Administration made about deregulation, especially since relatively few contemporaneous accounts have questioned the significance of the deregulatory changes made during the Trump years.[3] Yet the centrality of deregulation in the Trump Administration's account of its policy achievements makes this narrative an important facet of study in its own right for anyone interested in regulatory politics and policymaking.

In this article, we interrogate the claims that Trump and other officials made about the Trump Administration's deregulatory record.[4] Drawing on an original analysis of data submitted by federal agencies documenting their regulatory actions, we demonstrate that the Administration accomplished markedly little compared to what it claimed. Both the extent and impact of the

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[1] Belief in the Trump Administration's deregulatory claims also fits comfortably with ideological attitudes toward regulation, with a strong majority of Republicans believing that regulation "does more harm than good," while an overwhelming majority of Democrats believe that regulation is "necessary to protect the public interest" (Pew Research Center 2019).

[2] Even after leaving office, President Trump and his supporters have continued to reinforce the impression of Trump as a historic deregulator. For example, Trump (2021d) reminded his audience of "[r]ecord regulation cuts," while Pence (2021) proclaimed that the Trump Administration "cut regulations at a record pace."

[3] A few journalistic accounts have , of course, questioned the Trump Administration's boasts about the extent of its deregulation (Levin & Hamilton 2017; Qiu 2018, Pramuk 2019).

[4] Others have offered data-based reviews of the Trump Administration's deregulatory activity, but they have been limited in time because they were conducted at various earlier points during the President's term (Coglianese 2018b; Dooling 2018; Raso 2018; Shapiro 2018, 2020a; Belton & Graham 2019).

Administration's efforts to eliminate regulation turned out to be considerably less substantial than appears to have been widely believed. Furthermore, we search for but find no credible indication that deregulation under President Trump ever generated the dramatic economic benefits that the Administration claimed. The positive economic trends occurring in the pre-COVID years of the Trump Administration reflected a continuation of trends that began years prior. It turns out that, without exception, each major claim about deregulation we found to have been made by the former President and other former White House officials has been significantly exaggerated, is misleading, or is simply untrue.[5]

Setting the record straight about the exaggerated claims the Trump Administration made about deregulation not only brings accuracy to the historical record of the Trump Presidency, but it also provides an important case study of regulation's susceptibility to a type of politics that uses law as a symbolic foil—a scapegoating strategy that has been deployed by political leaders in other countries around the world (Coglianese 2020). In the United States, Presidents are usually well-positioned to attain their regulatory policy objectives (e.g., Lewis and Moe 2020). Yet despite President Trump's clear and repeatedly stated preference for deregulation—exemplified by his setting a goal, however unrealistic, that sought to reduce regulations by 75 percent (Pramuk 2017)—his Administration delivered relatively little by way of significant deregulation. Overall the Trump Administration completed little more than 600 actions that it deemed deregulatory—nearly two-thirds of which the Administration itself designated as substantively *in*significant. By comparison, the Obama Administration, in its first four years, took over 1,200 *regulatory* actions designated as *significant* (and many more that were not deemed significant).[6]

Why did the Trump Administration fail by comparison to deliver on its promise of substantial deregulation? For some regulatory scholars, a ready answer to this question might seem to rest with the so-called ossification of administrative rulemaking—that is, the view that administrative agencies have been severely hampered in their ability to adopt or change rules due to the accretion of regulatory procedures and the threat of judicial review (Mashaw & Harfst 1990; McGarity 1992; Pierce 1995). Because agencies must follow the same procedures and face the same risks of judicial review, when they repeal rules as when they first promulgate them (*State Farm* 1983), it might be thought that the Trump Administration's zeal for removing existing rules met the same ossifying fate that has purportedly confronted agencies in the past when they have sought to create new rules. Yet as suggested by the simple comparison between the number of

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[5] By itself, the fact that politicians' statements should be exaggerated, misleading, or false will come as hardly any surprise. After all, politicians' rhetoric is rarely intended to be dispassionate. On the contrary, such rhetoric surely often emanates from intuition and seeks to stir passions. Yet it is precisely because, as Short (2018, p. 101) has explained, "regulatory passions cannot serve as a rational basis supporting regulatory reform policies implemented by agencies" that it can be important to scrutinize factual claims advanced by politicians. This is especially so when it comes to the Trump Administration's claims about regulation, as these claims appear to have been widely accepted, even among otherwise informed observers. Regulatory scholars have a professional role to play in sharing their knowledge in such circumstances. As Wildavsky (1987, p. 389) observed, "the essence of policy analysis is learning to recognize and correct errors."

[6] The data on the Trump Administration's deregulatory efforts reported throughout this Article come from the authors' analysis of records from the semiannual regulatory agenda obtained from the XML files downloadable at the RegInfo.gov website, at https://www.reginfo.gov/public/do/eAgendaXmlReport. The data from the Obama presidency or other presidencies can also be found at RegInfo.gov, but are also conveniently compiled by the Regulatory Studies Center at George Washington University, at https://regulatorystudies.columbian.gwu.edu/reg-stats.

Trump Administration deregulatory actions and the much larger number of significant regulatory actions during the comparable period of the Obama Administration, something beyond generalized administrative procedures and judicial review is presumably needed to account for the Trump Administration's more limited deregulatory track record. We suggest the explanation more likely rests with legal and political obstacles that plausibly make deregulation more difficult as well as with a shortfall of professional acumen and effective leadership within the Trump Administration, exacerbated by vacancies in leadership positions. Perhaps most important of all was President Trump's prioritization of symbolism over substance, which allowed him to achieve his real objective quite well, which was simply to *convince* voters that his Administration had accomplished a lot by way of substantial deregulation and economic improvements, even if it never did so.

By uncovering the Trump Administration's deregulation deception, we show how regulation can become a relatively easy target for politicians to blame for economic difficulties (Coglianese & Walters 2020a). Moreover, even small gestures of deregulation can be effectively used to claim credit for positive economic trends. This presidential strategy of blaming regulation for problems while seeking to claim exaggerated credit for modest deregulation is one that parallels legislative incentives for responding to crises by creating or reorganizing bureaucratic agencies. It is widely understood that legislators claim credit for addressing public problems by establishing or restructuring bureaucratic bodies without making hard policy decisions themselves, but then later using these same bureaucracies as convenient scapegoats (Mayhew 1974; Lowi 1979; Seidman 1997). For executive leaders, regulation provides similar symbolic payoffs. Possessing "few, if any levers, to control the fundamentals of the economy," Presidents can at least see that their agencies exercise "the power to issue, modify, and repeal regulations, thereby presenting an image to their constituents that something is actually being done" (Coglianese & Carrigan 2013, p. 10; see also Shapiro & Borie-Holtz 2013). Presidents do not need to win any cooperation from Congress to undertake such regulatory or deregulatory actions. And because regulations are often complex and opaque, even to otherwise sophisticated observers, executing a deregulation deception is relatively easy to accomplish. Just repealing the tiniest fraction of the overall regulatory corpus can look like a major deregulatory accomplishment to those who possess little or no context within which to assess that activity. The rigor and accuracy of any economic analysis of the effects of deregulation matters less than being able to point repeatedly to at least some deregulatory measures and claim credit for prevailing positive conditions in the economy.

Especially for Republican Presidents, whose voters are already suspicious of regulations, the deregulation deception constitutes a seemingly low-risk strategy. After all, should the economy turn sour, other regulations will still remain available to serve as a convenient scapegoat. This strategy could not have been more evident when the COVID outbreak hit the United States in 2020. One of President Trump's earliest reactions was to try to shift the blame to regulation for his Administration's slow response to the crisis: "I don't take responsibility at all," he declared, "because we were given a set of circumstances and we were given rules, regulations, and specifications from a different time" (Qiu 2020).

We begin our analysis of the deregulation deception with an elaboration of the deregulatory goals that President Trump announced both as a candidate and early in his presidency. Then we turn to the findings from our original collection of administrative data on rulemaking and show how the level of deregulation during the Trump years turned out to be much lower than the

Administration repeatedly claimed. We next consider various claims about the impact of these purported deregulatory achievements on the economy. We begin by reporting data on the overall positive economic trends leading up to the Trump years before turning to a close examination of the analysis the Trump Administration put forward for its claimed economic benefits from deregulation, finding the evidence for these benefits to be lacking. In our concluding section, we turn to the question of why the Trump Administration failed to do more deregulating, notwithstanding the President's openly stated preferences and the strong deregulatory bent of his Administration. We explain why substantial deregulation can be difficult for any administration to accomplish but especially so for an administration lacking a high level of administrative competency and headed by a President who seemed to place a premium on symbolism over substance.

1. Trump's Deregulatory Goals

As a candidate, Donald Trump pitched to American voters a variety of populist and nationalist promises, most prominently his idea to build a wall across the United States' southern border. When it came to economic policy, though, his ideas largely drew from traditional Republican ideas of lowering taxes and cutting regulation.

In a major speech delivered during the height of his first presidential campaign, Trump criticized both President Obama and his political opponent Hillary Clinton for what he characterized as the severely negative economic effects of their propensity to regulate. The Obama Administration, he charged, had "[i]n 2015 alone, … unilaterally issued more than 2,000 new regulations—each a hidden tax on American consumers, and a massive lead weight on the American economy" (Trump 2016). Hillary Clinton, Trump asserted, would impose on small companies a suite of "onerous regulations [that] will put them totally out of business" (Trump 2016). Trump pronounced his intention to roll back regulations, stating that "[i]t is time to remove the anchor dragging us down" (Trump 2016). He promised "to cut regulations massively" (Trump 2016). Specifically, he pledged to "ask each and every federal agency to prepare a list of all of the regulations they impose on Americans which are not necessary, do not improve public safety, and which needlessly kill jobs" (Trump 2016). He then declared that "[t]hose regulations will be eliminated" (Trump 2016).

After winning the 2016 presidential election, Trump reiterated his strong intentions to repeal many existing regulations. Appearing with business leaders at a press event just a few days after his inauguration in January 2017, President Trump again promised "we are going to be cutting regulation massively" (Halper & Moore 2017). Indeed, at this same appearance, Trump proclaimed that "[w]e think we can cut regulations by 75 percent, maybe more" (Halper & Moore 2017).

A week later, Trump issued Executive Order 13,771, a directive that required executive agencies to identify at least two existing regulations to eliminate for each new one they proposed to adopt (E.O. 13,771 2017).[7] In previewing his release of the order, Trump declared that the "one-

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[7] This executive order was widely described as calling for the actual *elimination* of two regulations for each new one. Indeed, Trump created that impression: "This order requires that for every 1 new regulation, 2 old regulations must—and I mean must—be eliminated" (Trump 2017a). But this claim was itself deceptive. The order's so-called

in-two-out" standard would be central to his Administration's "effort to dramatically reduce federal regulations" (McCaskill & Nussbaum 2017). He promised that "we'll be reducing [regulations] big league and their damaging effects on our small businesses, our economy, our entrepreneurial spirit" (McCaskill & Nussbaum 2017). He again said that his Administration would cut regulations by "a little more than 75 percent" (Entis 2017). Furthermore, in the remarks he delivered upon actually signing Executive Order 13,771, Trump declared that "we're cutting regulations massively for small business—and for large business" (McCaskill & Nussbaum 2017).

Executive Order 13,771 required that "any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations" (E.O. 13,771 2017, § 2(c)). The executive order also included a regulatory budgeting scheme based on the costs of new regulations, imposing strict limits—initially set at zero—on the net costs that agencies could impose on the economy through their regulations (E.O. 13,771 2017, § 2(b)). Later in 2017, the director of the Office of Management and Budget announced that these budget limits under the order would tighten still further so that "each agency will propose a net reduction in total incremental regulatory costs" (Rao 2017a). This budgeting scheme implied that agencies would need to repeal many more than just two regulations when adopting new regulations, as the annual continuing costs of complying with existing regulations are usually much less than the initial costs created by adding new regulations, simply because businesses have already made the initial investments needed to install new equipment or change processes demanded by existing regulations. Leading regulatory experts, writing in a report released by the Brookings Institution, declared that Executive Order 13,771 represented "the most ambitious regulatory budgeting program in human history—just a tremendous undertaking" (Gayer et al 2017).[8]

Beyond this regulatory budgeting scheme, President Trump took a number of other steps aimed at reducing regulatory burdens. Less than a month after he issued Executive Order 13,771, he signed another related directive, Executive Order 13,777, which was intended to inform each agency's deregulatory efforts. This latter order called for agencies to designate "regulatory reform officers" and "regulatory reform task forces" to oversee the implementation of the President's deregulatory priorities. The task forces were specifically charged with finding existing agency rules that, among other things, "(i) eliminate jobs, or inhibit job creation; (ii) are outdated, unnecessary, or ineffective; (iii) impose costs that exceed benefits; [or that] (iv) create a serious inconsistency" (E.O. 13,771 2017, § 3(d)). In addition to these general executive orders on regulatory reform, President Trump also issued a variety of other more specific orders calling upon federal agencies to revisit and, wherever possible, repeal regulations related to health care (E.O. 13,765 2017), financial institutions (E.O. 13,772 2017; Trump 2017b; Trump 2017c), infrastructure projects and their environmental reviews (E.O. 13,766 2017), water pollution (E.O. 13,795 2017), and climate change

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two-for-one provision only required that agencies "identify" two rules to be eliminated for each new one to be adopted (Trump 2017a). In addition, a subsequent memorandum issued by the Office of Information and Regulatory Affairs made clear that this identification requirement only applied when agencies were proposing to add a new *significant* rule—not just any rule (Mancini 2017).

[8] Trump himself described the order as "significant action to roll back the massive regulation that is devastating our economy and crippling American companies and jobs," lauding it as "a permanent structure of regulatory reduction" (Trump 2017d).

(E.O. 13,783 2017).[9] These orders came in addition, of course, to President Trump's appointments as the heads of regulatory agencies a suite of conservative political leaders who could be expected to support a deregulatory mission.

The Trump Administation publicly emphasized the importance of deregulation throughout its four years. At a widely covered press event held in December 2017, President Trump dramatically cut a red ribbon connecting a small pile of papers (representing the level of federal regulation in 1960) with a roughly six-foot-tall mass of papers (representing the level of federal regulation today) (Ivory & Lipton 2017). He declared that "we're going to cut a ribbon because we're getting back below the 1960-level, and we'll be there fairly quickly" (Trump 2017a). He continued:

> For many decades, an ever-growing maze of regulations, rules, restrictions has cost our country trillions and trillions of dollars, millions of jobs, countless American factories, and devastated many industries. But all that has changed the day I took the oath of office, and it's changed rapidly. You've seen what's happened. We've begun the most far-reaching regulatory reform in American history (Trump 2017a).

In each subsequent year of his term, Trump held a similar press event touting the Administration's deregulatory efforts (Trump 2018b; Trump 2019a; Trump 2020b). No one could mistake that deregulation was one of the President's chief domestic policy objectives.

Given the high priority that the President placed in his public statements on his Administration making major deregulatory changes, it may not be surprising that he and other Administration officials frequently claimed to have accomplished a substantial amount of deregulating. From his first year in office, President Trump boasted that his Administration had made significant strides towards his goals. In his December 2017 ribbon-cutting press event, Trump declared:

> Earlier this year, we set a target of adding zero new regulatory costs onto the American economy. Today, I'm proud to announce that we beat our goal by a lot. Instead of adding costs, as so many others have done — and other countries, frankly, are doing, in many cases, and it's hurting them — for the first time in decades, we achieved regulatory savings. Hasn't happened in many decades. We blew our target out of the water.

> Within our first 11 months, we cancelled or delayed over 1,500 planned regulatory actions — more than any previous President by far. And you see the results when you look at the stock market, when you look at the results of companies, and when you see companies coming back into our country.

> And instead of eliminating two old regulations, for every one new regulation we have eliminated 22 — 22 — that's a big difference. We aimed for two for one, and, in 2017, we hit twenty-two for one (Trump 2017a).

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[9] Late in his Administration, President Trump also issued two executive orders related to guidance documents issued by regulatory agencies, seeking to make these non-binding materials more transparent to the public (E.O. 13,891 2019; E.O. 13,892 2019). On his first day in office, President Joseph Biden revoked these orders, along with Executive Orders 13,771 and 13,777 (E.O. 13,992 2021).

Throughout his term, he continued his refrain of having made significant regulatory rollbacks. In July 2020, for example, he claimed that "we ended this regulatory assault on the American worker, and we launched the most dramatic regulatory relief campaign in American history by far" (Trump 2020b).

2. The Deregulatory Deception Exposed

To assess how much deregulation actually occurred under President Trump, we collected comprehensive data reported by regulatory agencies from across the federal government. Rulemaking is a broad and varied function in the United States undertaken by dozens upon dozens of federal agencies. Not only do different agencies use varied forms of regulation to address a wide array of market failures and other social problems, but data on regulation can also vary across different sources, depending on which kinds of regulations they include. As a result, it is important to define the meaning of the term "regulation" when conducting any analysis of patterns of federal rulemaking.

Colloquially, the term "regulation" refers to any legal requirement imposed by the government on individuals or businesses.[10] But U.S. regulatory agencies typically give regulation a more specific definition: a "final rule" adopted by a regulatory agency such as a cabinet department (e.g., the Department of Transportation) or a stand-alone administrative body (e.g., Environmental Protection Agency (EPA) or Securities and Exchange Commission).[11] These agency-created rules implement statutes such as the Affordable Care Act and the Clean Air Act and can impose binding legal requirements on businesses and others in society.

The federal Administrative Procedure Act (APA) sets out the steps that an agency must follow to create, amend, or repeal a rule (APA 1946). With limited exceptions, the agency must publish a proposed rule in the *Federal Register* and give the public an opportunity to comment on the proposal (APA 1946). The agency must then consider the information contained in all of the submitted public comments before issuing a final rule. Other statutes and executive orders place further obligations on agencies for certain types of rules, including requirements to analyze the economic impact of new rules (E.O. 12,866 1993), assess their impact on small businesses (Regulatory Flexibility Act 1980), and undertake other mandated steps or analyses. Once an agency issues a final rule, it is published in the *Federal Register*, along with a statement explaining the rule's requirements and its purpose. That final rule document in the *Federal Register* also includes the agency's responses to the issues raised in the public comments as well as a summary of any required analyses. Later, just the rule's operative legal text—without any of the accompanying explanatory material—is published in the Code of Federal Regulations (CFR), an official government publication that organizes all the binding regulatory text by subject matter.

The federal government has established a well-developed system for tracking the development and adoption of agency-established rules. For our analysis, we determine the extent of the Trump Administration's deregulation by relying on that tracking system, known formally as the Unified Agenda of Federal Regulatory and Deregulatory Actions—or the regulatory

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[10] For a helpful conceptual discussion of what constitutes regulation, see Lambert (2017).
[11] Federal law defines a "rule" as "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy" (APA 1946, § 551(4)).

agenda, for short.[12] Each agency is required by law twice each year to publish its regulatory agenda in the *Federal Register* listing what are supposed to be all but the agency's most trivial rules. Each entry in the agenda shows the stage at which a rule is in development, from even before a rule has been proposed through to its completion and publication as a final rule. The data that appear in the semiannual regulatory agenda are provided by the agencies, but the agenda's publication is overseen by the White House's Office of Information and Regulatory Affairs (OIRA). Each entry in the agenda contains a standard set of information about each listed regulatory action, including a designation for the economic and policy importance of the action. Some rules in the agenda are designated as "routine," while others are designated as "significant" or "economically significant." Executive Order 12,866 has defined economically significant rules to be those expected to impose annual impacts to the economy of more than $100 million (E.O. 12,866 1993). By contrast, routine rules issued by federal agencies have at most minor economic impacts. The Federal Aviation Administration, for example, issues a routine rule whenever it approves the use of a new aircraft part, and the Department of the Interior sets out new routine rules annually to designate the hunting season for migratory birds.

When it comes to measuring levels of regulatory activity at an agency, researchers have relied on a variety of sources of data, including the overall number of pages in the *Federal Register* and the CFR, the incidence of new rules published in the *Federal Register*, and the number of regulatory actions listed in the semi-annual regulatory agenda. These sources of data provide the available basis for making credible claims about the level of regulatory activity within any administration. Some of these data apply to regulatory activity by all administrative agencies, while other data are available only for executive agencies that fall under OIRA's oversight. Regulatory actions undertaken by independent agencies—such as the Federal Communications Commission, the Federal Reserve, and the Securities and Exchange Commission—were not covered by President Trump's major executive orders on regulatory reform as they are headed by individuals insulated from both ordinary presidential removal and OIRA's regulatory review (Coglianese 2018a).

Using these various data sources, we consider in this section the Trump Administration's claims about what it achieved in terms of reducing the level of federal regulation in the United States. Specifically, we consider the former Administration's claims to have reduced the number of pages of federal regulations, repealed a number of existing rules, and made historic efforts to deregulate the economy. As we shall see, none of these claims find support in the relevant data.

2.A. Pages in the Code of Federal Regulations

> *"Under my administration, we have removed nearly 25,000 pages of job-destroying regulations—more than any other President by far in the history of our country, whether it was four years, eight years, or, in one case, more than eight years."*
> – President Trump, Press Conference (Trump 2020b)

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[12] These agendas can be found online at https://www.reginfo.gov/public/do/eAgendaHistory. For background information on the agenda, see https://www.reginfo.gov/public/jsp/eAgenda/UA_About.myjsp.

Removal of 25,000 pages of existing regulations sounds substantial, especially considering that it would amount to about a 14 percent decrease. But President Trump's claim that his Administration accomplished this feat is simply false. The Code of Federal Regulations (CFR) is the authoritative source of all existing federal regulatory requirements on the books in the United States. As Figure 1 shows, the accumulation of pages in the CFR has grown steadily over the decades, tripling from about 50,000 pages in 1967 to over 157,000 pages in 2008. The CFR has tended to increase in page count at a relatively constant rate.[13]

Growth in the CFR's page count continued during the Obama Administration, reaching 185,053 pages in 2016. If President Trump's claim to have eliminated 25,000 pages had been correct, we would have expected to see no more than about 160,000 pages in the CFR at the time he made his claim. But to the contrary, the count as of the end of 2019 was 185,984 pages—actually a greater number of pages, not fewer, than when President Trump took office.

Figure 1: Cumulative Pages in the Code of Federal Regulations
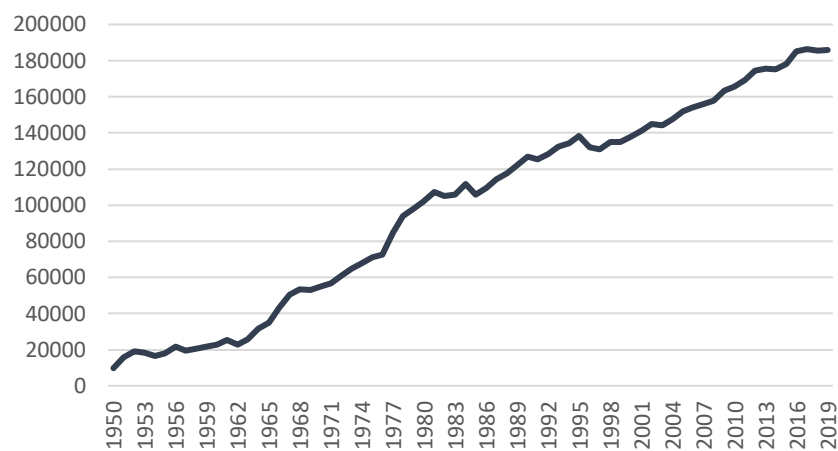
Source: Office of the Federal Register

It is true that the number of CFR pages dipped slightly between 2017 and 2018—by one-half of one percent, or a total of 940 pages. But this tiny decrease was offset by comparably sized increases that occurred first from 2016 to 2017 (0.71 percent) and then again from 2018 to 2019 (0.30 percent). Judged against historical standards, even the slight 0.5 percent decrease in pages from 2017 to 2018 was far from record-setting in terms of an annual decline in CFR pages. In 1954, 1957, and 1962 page counts in the CFR declined about 10 percent each year, relative to the preceding year. In more recent decades, the Reagan Administration saw a 5.3 percent decline in 1985, and the Clinton Administration's National Performance Review process brought about a 4.4 percent drop in pages in 1996. The Trump Administration's reduction between 2017 and 2018

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[13] The page-count data in this Figure and referred to in the text are maintained by the Office of the Federal Register and can be found at: https://uploads.federalregister.gov/uploads/2020/04/01123111/cfrTotalPages2019.pdf. These data have a lag in reporting, with the 2020 page counts having yet to be released.

does not even come close to these previous years' reductions.[14] And overall, data on the Code of Regulations showed more pages of regulation at the end of the Trump Administration than it did at the beginning.[15]

2.B. Number of Deregulatory Actions

> *"The Administration actually eliminated 22 regulations for every new regulatory action."*
> – Trump 2020 Reelection Campaign Website

> *"For every one new regulation added, nearly eight federal regulations have been terminated."*
> – President Trump, Press Conference (Trump 2020b)

> *"Under President Trump, seven deregulatory actions have been taken for every one new regulation."*
> – Press Secretary Kayleigh McEnany, Press Briefing (McEnany 2020)

A count of pages in the CFR is only an indirect proxy for regulatory obligations. Not all pages are created equal, as some pages include requirements imposing substantial burdens on businesses and other entities, while other pages do not (Short 2018). Some pages of the CFR only apply to particular sectors or industries, while other pages apply more generally to many industries. Another way to look at what the Trump Administration achieved by way of deregulation would be to look not at pages but at the number of actual rules repealed or rolled back.

Whenever an agency seeks to repeal or modify an existing regulation, it must still go through the notice-and-comment rulemaking process outlined in the APA, including publishing as a "final rule" in the *Federal Register* the agency's decision to repeal or amend a previously adopted regulation (APA 1946; *State Farm* 1983). The Trump Administration designated different final rules listed in its semiannual regulatory agenda as "deregulatory," making it possible to discern the number of completed rules that purportedly involved the repeal or rolling back of existing

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[14] Trump's "25,000-page" claim could have possibly derived in some fashion from the decline of approximately 25,000 pages of new content published in the federal government's daily newspaper of record, the *Federal Register*. Just as the thickness of ordinary daily newspapers can decline, the annual number of pages in the *Federal Register* decreased from about from 95,894 in 2016 to 70,938 in 2019. A decrease in the number of pages in the *Federal Register* can at most indicate a decline in the issuance of new rules—that is, a decline in the rate of flow of rules, not the removal of the existing regulatory stock, or deregulation. Even that, however, is far from clear as the *Federal Register* "contains many other items related to non-regulatory activities, including presidential documents, notices, and corrections" (Carey 2019). The vast majority of pages in the *Federal Register* appear in the sections devoted to matters other than final rules Even within the section for final rules, the number of pages devoted to the regulatory preambles—non-binding explanatory material—is substantially larger than the number of pages devoted to actual binding regulatory text. In short, a decline in 25,000 pages in the *Federal Register* says nothing about the level or volume of regulations "removed" by the Trump Administration.

[15] As indicated in note 13 above, the 2020 page-count data for the CFR have not yet been released. But researchers at George Mason University's Mercatus Center assemble counts of so-called restrictive words in the electronic version of the CFR that are updated nearly daily. These restrictive word counts are highly correlated with overall word counts (0.93) and thus presumably also with page counts during the relevant period (Al-Ubaydli & McLaughlin 2017, p. 114). These data—available at https://www.quantgov.org/federal-us-tracker—show an increase in the restrictive words in the CFR from January 2017 to January 2021.

regulatory obligations. The number of completed rules designated as deregulatory can then be compared to the number of new rules that were designated as regulatory—or other rules not designated at all. Although the President and his supporters have claimed various levels of deregulatory activity—from 7 to 22 rules removed for every new rule added—these claims are false or misleading (Trump 2017a; Trump 2020b; McEnany 2020).

The use of a metric that tracks the number of rules removed for each new rule added follows from a framework established by Executive Order 13,771 (2017). As described in Section 1, this order of President Trump's called upon agencies to identify for elimination at least two rules for every new one that they issued. Given the existence of this presidential directive, it is certainly understandable that the Administration would take an interest in counting how many rules have been eliminated for every new rule adopted. In principle, though, ratios of deregulatory actions to regulatory ones are not all that meaningful. For one thing, under the Trump Administration's classification scheme, a "deregulatory" action need not have been the same as eliminating a rule altogether. As Coglianese (2018b) has noted, "even actions classified as 'deregulatory' can still be accompanied by new requirements."

Even when old rules are fully repealed with no new requirements in their place, the impacts of those repeals are not necessarily just the inverse of the new rules added. If numerous *minor* deregulatory changes are made for every one *major* regulatory change, the regulatory burden on business could still increase even if the "rules-out-to-rules-in" ratio were positive. In fact, the Administration's deregulatory actions tended disproportionately to target less significant rules. As Coglianese (2018b) noted after the first year of President Trump's term of office, it may not be "too much of an exaggeration to say that Administration officials are removing 22 *Peter Rabbit* books from the regulators' shelves for every one *War and Peace* they add." As a result, the Trump Administration's rules-out-to-rules-in comparison has never been a clear measure of a change in regulatory burdens.

But even putting aside the lack of meaningfulness to a rules-out-to-rules-in ratio, the Trump Administration's claims that it removed anywhere from 7 to 22 rules for every new one added are mistaken, even on their own terms. The Administration's claims are purportedly based on annual reports the White House has issued to update its progress under Executive Order 13771 (OIRA 2017b; OIRA 2018; OIRA 2019). But, as Coglianese (2018b) and Shapiro (2018) have noted, these reports are highly problematic sources of data on rules repealed versus rules adopted. The lists overcount deregulatory actions by including a range of actions other than repeals of existing regulations: *e.g.,* withdrawals of proposed rules that were never finalized; delays in effective dates which did not eliminate regulations; non-regulatory actions (such as the repeal of guidance documents); and even merely *proposed* deregulatory actions rather than completed ones. In addition, when comparing deregulatory actions to regulatory ones, the White House only counted new regulatory actions designated as "significant,"[16] while it counted deregulatory actions of any magnitude or level of significance—the *War and Peace* versus *Peter Rabbit* problem. Any serious effort to document the relationship between the Trump Administration's imposition of and relief from regulatory burdens must treat the annual reports issued by the Administration as unreliable.

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[16] What counts as a "significant" rule is governed by a multi-factor definition contained in Executive Order 12,866 (McCaskill & Nussbaum 2017).

To undertake a meaningful, consistent method of measuring the Trump Administration's deregulatory accomplishments, we collected data on completed rulemakings from the semiannual regulatory agenda.[17] We culled all of the completed actions from each edition of the agenda published during the Trump Administration, from 2017 to 2020.[18] We supplemented with review of *Federal Register* notices on completed rules after the issuance of the Fall 2020 edition of the agenda through January 20, 2021,[19] so as to have the most comprehensive data on Trump Administration rulemaking—including during the "midnight" period of rulemaking in the Administration's lame-duck months.[20] We removed all proposed actions that were deemed "completed" due to their simply having been withdrawn, as a withdrawal of a planned or proposed rule reflects no change in the compliance costs incurred by businesses. That left all regulatory and deregulatory actions completed by promulgation at any point throughout the Trump Administration.

For each action it lists, the unified agenda includes a classification field for the level of significance: "routine and frequent," "info/admin/other," "substantive nonsignificant," "economically significant," and "other significant." Those regulations deemed "economically significant" and "other significant" are ones that are generally selected for review by OIRA. They are also more likely to be the kind of actions that tend to generate headlines, that impose (or relax) significant burdens, or that produce the lion's share of regulatory benefits (such as clean air, worker safety, or reduced risk of a terrorist attack).

In addition to the significance classification which has appeared in the agenda for decades, the Trump Administration, as discussed above, for the first time added a field in which completed actions in the agenda were classified as "deregulatory" or "regulatory" for purposes of Executive Order 13,771. For many rules, this field in the dataset contained a coding other than "deregulatory" or "regulatory." For some rules, this field contains a code indicating that they were completed by independent agencies,[21] which are not subject to OIRA review and escape the coverage of

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[17] The Trump Administration has also claimed deregulatory success by citing removal of *plans* to regulate from the unified regulatory agenda. For example, President Trump has said that, "[w]ithin our first 11 months, we cancelled or delayed over 1,500 planned regulatory actions—more than any previous President by far" (Trump 2017a). But these withdrawals of planned regulations from the regulatory agenda did not in fact constitute deregulation since they were removals of *plans*—some of which sit in the unified regulatory agenda for years—rather than of completed rules. The Trump Administration is also far from unique among Presidents in making withdrawals of planned rules in the works, even before they are proposed (O'Connell 2008; Coglianese & Acs 2021).

[18] We collected data from the Fall 2017 edition of the unified agenda through to the Fall 2020 edition. We did not include the Spring 2017 edition because almost all of its completed actions were rules finished during the Obama Administration—at most, this missed rules issued for only about two months during the beginning of the Trump Administration, when the agencies were still getting direction from new leadership and at their least active level. The source of the data we used can be found online at: https://www.reginfo.gov/public/do/eAgendaXmlReport.

[19] Many of the regulations issued late in the Trump Administration were not yet effective when President Biden took office and were subsequently suspended by the Biden Administration pending possible repeal (Klain 2021). We do not consider these suspensions here, and on the assumption that the Biden Administration would be more likely to repeal the Trump Administration's deregulatory actions, we may be effectively overcounting the number of such deregulatory efforts that actually took effect.

[20] For an overview of midnight rulemaking, see Beermann (2013), O'Connell (2011), O'Connell (2008), and Dudley (2001).

[21] Agencies are defined as "independent" by being listed as such in the Paperwork Reduction Act (1980). The following agencies are also designated as independent in the agenda for purposes of the applicability of Executive

Executive Order 13,771. Although a nontrivial portion of entries in the agenda data were issued by independent agencies, these agencies were not included in the Trump Administration's annual reports of deregulatory actions.[22] We thus excluded all actions completed by independent agencies from our analysis entirely.[23] We did, however, include all completed actions in the regulatory agenda by executive branch agencies that were classified as neither deregulatory nor regulatory but as being either "fully or partially exempt" or "not subject to/nonsignificant" from the rubric of Executive Order 13,771—a combined category of completed actions labeled as exempt which turned out to contain the largest number of rules.[24] This same field in the dataset also simply designated some completed actions as "other."

Table 1: Completed Actions in Semiannual Regulatory Agenda, 2017-2020

13,771 Designation	*Significance of Action*					
	Routine & Frequent	Info/Admin/ Other	Substantive Nonsignif.	Econ. Signif.	Other Signif.	*Total*
Regulatory	0	2	17	61	60	*140*
Deregulatory	10	12	385	64	164	*635*
Exempt	70	84	1105	37	193	*1489*
Other	0	14	219	55	113	*401*
Total	*80*	*112*	*1726*	*217*	*530*	*2665*

Source: Unified Agenda of Regulatory and Deregulatory Actions

Table 1 shows the designated significance level and 13,771 classifications for all executive agencies' completed actions appearing in the regulatory agenda during the Trump Administration.[25] One can immediately see that those actions designated as "deregulatory" make up less than a quarter of the overall number of completed actions within the regulatory agenda (24 percent). This means that, rather than there being more deregulatory actions than other actions, as the Trump Administration's claims have implied, there was, in fact, just the opposite. Overall about three completed actions in the regulatory agenda appeared for every action designated as deregulatory.

The 13,771 designation for "regulatory" actions is a bit of a curiosity, even perhaps a redundancy, as every entry in a regulatory agenda is, by definition, *regulatory*. It is puzzling why the vast bulk of entries other than the deregulatory ones are not classified as regulatory. Executive

Order 13,771: Surface Transportation Board; Farm Credit Administration; Farm Credit Insurance Corporation; Federal Mine Safety and Health Review Commission; National Credit Union Administration; Appraisal Committee of the FFEIC; National Indian Gaming Commission; National Transportation Safety Board; Office of Government Ethics; Railroad Retirement Board; and U.S. Chemical Safety and Hazard Investigation Board. Independent agencies are also excluded from OIRA's annual reports of regulatory and deregulatory actions.

[22] In the regulatory agendas from Fall 2017 to Fall 2020, rules completed by independent agencies made up roughly 20 percent of all completed rules.

[23] In addition, without researching every rule individually, it would impossible to determine whether each of the rules issued by independent agencies were regulatory or deregulatory, as these rules are exempt from Executive Order 13,771. Although a small number of rules by independent agencies are designated in the agenda dataset as being economically significant or significant in the agenda dataset, it is unclear whether the classifications for significance are complete for this set of rules because they are also exempt from Executive Order 12,866.

[24] We include all rules classified with either set of quoted terms in the "exempt" category in Table 1.

[25] Again, a modest portion of these totals contains rules finalized after the release of the Fall 2020 regulatory agenda.

Order 13,771 gives the OIRA Administrator discretion to exempt rules from its coverage, but the agenda data do not come accompanied with any explanation for classification choices.[26] Much like golfers only counting the strokes that suit them, any administration seeking to proclaim to have issued more deregulatory actions than regulatory ones would have a strategic reason, at least at the margins, for not designating completed actions as regulatory.[27] After all, a ratio of deregulatory-to-regulatory actions could be inflated simply by eliminating rules counted as regulatory. With this in mind, it is at least striking that the Trump Administration took 71 percent of all of its completed actions in the regulatory agenda out of its calculations altogether when reporting a ratio of deregulatory-to-regulatory actions.[28]

Even taking these exemptions at face value, the Trump Administration's own data do not support its claims of a 7-to-1 ratio (or more) of deregulatory actions to regulatory ones. Just comparing the "deregulatory" actions with those relatively few ones that the Administration coded as "regulatory," the ratio of deregulatory actions to regulatory actions turned out to be slightly less than 5-to-1, which is also less than *any of* the claims made by the Trump Administration.

This 5-to-1 ratio, though, surely overstates the Trump Administration's deregulatory accomplishments for three reasons. First, a substantial percentage of completed actions classified as deregulatory were also classified as *routine* or *not significant*. Under a more apples-to-apples comparison—one that compares *significant regulatory* actions to *significant deregulatory* actions (again, using the Administration's own classifications)—the ratio of deregulatory actions to regulatory actions drops to less than 2-to-1. And if only those regulatory and deregulatory actions that fall in the "economically significant" category are compared, the ratio drops further to roughly 1-to-1. In other words, even on assumptions most favorable to the Administration, when it comes to actions with a notable economic or policy impact, the Trump Administration has, by its own agenda data, issued nearly as many actions increasing the burden on the public as ones that decrease the burden.

Second, as we have noted, these ratios only include those completed actions expressly coded as "regulatory" and "deregulatory," leaving out entirely all the actions designated as exempt or labeled as "other." To the extent that some or all of these exempt rules were still regulatory in nature, any ratio that excludes them will paint a biased portrait of the extent of deregulation. It might be reasonable, for example, to surmise that any rule designated as "significant" should not be excluded from a count of the Administration's record. If that is true and just the "exempt" and

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[26] Executive Order 13,771 provided for express exemptions for rules related to military, foreign affairs, and internal agency matters, but it also allowed for exemption of "any other category of regulation" by the OIRA Administrator. OIRA issued guidance articulating other categories that would qualify rules for exemption from the order, but it also made a point to note that "[t]hese categories are not exhaustive" (Mancini 2017, p. 13). For further discussion of the lack of clarity associated with some of 13,771 classifications, see Dooling, Febrizio & Pérez (2019).

[27] Such strategic considerations appear to be manifest in the Trump Administration's guidelines for implementing Executive Order 13,771, under which, as Dooling, Febrizio & Pérez (2019) note, "more types of activities count as deregulatory actions than as regulatory actions."

[28] It is true, of course, that some regulations—so-called transfer rules—only shift resources between taxpayers, such as rules about Medicare spending. These rules are treated by OIRA as outside the scope of Executive Order 13,771 (Mancini 2017). We find it difficult to believe that 71 percent of all the federal government's regulatory actions are transfer rules. Moreover, transfer rules are still regulations, and nowhere did we observe anyone in the Trump Administration qualifying their claims and limiting their stated ratios to non-transfer regulations; instead, they made claims about regulations writ large.

"other" (but still "significant") rules are included and treated as regulatory, that would flip the results to slightly greater than a 2-to-1 ratio of significant *regulatory* actions to *deregulatory* ones (of any level of significance). When it comes to all rules deemed significant, the Trump Administration imposed twice as many regulations than it repealed or lifted them.

Finally, the count of completed actions in Table 1 labeled as deregulatory overstates the number of such actions that the Administration truly completed. Although the regulatory agenda treats an action as completed when a final rule has been issued, many of the Trump Administration's most salient deregulatory initiatives had been challenged in court, such as EPA's attempts to repeal regulations on power plant emissions, auto emissions, and water pollution. A number of these cases were still being litigated at the end of the Trump Administration. They were not in fact fully completed or in effect while pending litigation. Given the Trump Administration's seemingly poor record in court defending its deregulatory initiatives (Davis Noll forthcoming), and the Biden Administration's willingness to withdraw from defending these initiatives in court (or to rescind some of these litigated Trump-era rules), it would be reasonable to assume that some number of actions the Trump Administration counted as deregulatory were never truly completed.[29]

All of these reasons lead us to conclude that the Trump Administration's claims about its deregulatory actions in comparison to regulatory ones were not only unsupported by the data but were quite overstated—even if we give the Administration the benefit of the doubt in what actions listed in the regulatory agenda that it chose to treat as regulatory. In terms of the significant actions that have substantial impacts on the lives of Americans, the number of deregulatory actions the Trump Administration completed appear to have been much smaller than its total number of regulatory actions—or at most very close to the number of regulatory actions under other categorizations of the data.

2.C. Historical Comparisons

> *"Nearly four years ago, we ended this regulatory assault on the American worker, and we launched the most dramatic regulatory relief campaign in American history by far. No other administration has done anywhere near."*
> – President Trump, Press Conference (Trump 2020b)

> *"And this President has already signed more bills rolling back federal red tape than any President in American history."*
> – Vice President Pence, Press Conference (Trump 2020b)

> *"We've eliminated more regulations in our first year than any administration has ever eliminated. And that means four years, eight years, or, in one instance, 16 years."*
> – President Trump, Republican Conference (Trump 2018c)

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[29] Similarly, some deregulatory actions published in the *Federal Register* before Trump's last day in office had yet to take legal effect. For many if not all of these actions, the Biden Administration postponed them pending further review and reconsideration (Klain 2021).

The Trump Administration's claims to the contrary, no support exists to show that the Administration delivered historic levels of regulatory relief. Once the full data are examined, as we have shown, the Administration completed more regulatory actions than deregulatory ones. As we have also shown, the number of pages in the regulatory code book did not make an overall decline during the Trump years, even though the Eisenhower Administration did see a decline of 6 percent in such pages over the comparable period of its first term.[30]

In terms of "dramatic regulatory relief," nothing the Trump Administration achieved compares to the deregulation of the airlines (Airline Deregulation Act 1978; see also Brown 2014, Morrison and Winston 1986), railroads (Staggers Rail Act 1980; see also Thoms 1981), and truck transportation (Motor Carrier Act 1980; see also Traynor and McCarthy 1991, Corsi et al. 1990) that occurred during the Carter Administration in the late 1970s (Dudley 2011). Prior to that time, these major sectors of the economy—along with others, such as natural gas and telecommunications—were subject to regulation of prices and outputs, an inefficient form of regulation that advantaged incumbent firms at the expense of consumers. President Carter championed major deregulatory initiatives that loosened government restrictions on the air, rail, and transport sectors. Retrospective analysis indicates that the deregulation of these industries resulted in $70 billion in annual consumer benefits (Crandell & Ellig 1997).

It is true, of course, that a 1994 law known as the Congressional Review Act (CRA) was invoked by Congress to repeal 14 Obama Administration regulations during the first six months of the Trump Administration (Larkin 2018, p. 509).[31] These efforts were initiated by Republican members of Congress who passed the resolutions of disapproval; however, the resolutions did need to be signed by the President. As only one previous President had the opportunity to sign such a resolution in the past, President Trump has clearly signed more such resolutions than any other President. But the Congressional Review Act is in reality only a viable tool for repealing rules during a short window following the transition of the White House from one party to another, something that had occurred only twice before in the years since the Congressional Review Act's passage.[32] Furthermore, the impact of President Trump's signing of disapproval resolutions was quite limited. These rules had either not yet taken effect or only recently had become binding.

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[30] According to data from the Office of the Federal Register, the number of CFR pages stood at 19,232 pages in the last full year of the Truman Administration but only at 17,989 pages at the end of the third full year of the Eisenhower Administration. For the Trump Administration, data on CFR pages are currently available only for its first three years, through 2019. It is possible, of course, that when data for 2020 are released the Trump Administration could see an overall reduction in CFR pages. But this seems unlikely given the overall number of final rules published in the *Federal Register* through to the end of 2020. The number of final rules published in 2020 was 15 percent higher than in 2019 or any other year of the Trump Administration. Moreover, counts of so-called restrictive words in the CFR are higher at the very end of the Trump Administration. See note 15 above.

[31] President Trump did later sign two additional Congressional Review act resolutions, but they were resolutions disapproving rules adopted during the Trump Administration by the then-independent Consumer Financial Protection Bureau (CFPB). For a complete listing of resolutions of disapproval signed by President Trump, see the website on "Congressional Review Act Resolutions in the 115th Congress" maintained by the Coalition for Sensible Safeguards at https://sensiblesafeguards.org/cra/.

[32] The Congressional Review Act may also be a vehicle for the disapproval and repeal of rules adopted by independent agencies. Indeed, President Trump did sign two Congressional Review Act resolutions of disapproval for rules adopted after he took office by the CFPB, still headed at that time by a director appointed by President Obama (Larkin 2018).

Moreover, only two of the fourteen rules were economically significant.[33] Disapproving only fourteen rules out of thousands issued during the Obama Administration is a far cry from a "dramatic" regulatory roll-back.[34]

If there was any distinctiveness to the Trump Administration's regulatory agenda when compared with other recent administrations, that distinction lay in a decrease in the number of *new* rules issued during the Trump years, rather than in any record levels of eliminating existing rules. As a measure of overall output, consider that during the first three years of the Trump Administration—the years for which data on new rules from the Office of the Federal Register are available (2017-2019)—the federal government overall published an annual average of 3,204 final rules.[35] That marked a 12 percent decrease over the first three years of the Obama Administration, which averaged 3,628 rules per year and which was itself a 12 percent decrease over the first three years of the George W. Bush Administration.[36] A search in a private database of federal regulations confirms a 12 percent decrease in the number of final rules published over the duration of the Trump Administration, compared with the first term of the Obama Administration.[37]

In addition, the Trump Administration also issued fewer new economically significant rules (with economic effects over $100 million per year) during its first three years than during the comparable period for other presidents.[38] Nevertheless, by the end of Trump's four years, this could no longer be said to be the case. More economically significant rules were adopted from 2017 to 2020—the Trump years—than during the first four years of the Obama Administration or of any other administration.[39] Indeed, as shown in Figure 2, for as long as rules have been classified

[33] Of the fourteen repeals, only two were "economically significant," while eight were "other significant." Two were from independent agencies not subject to Executive Order 12866 and hence not categorized. Two were not significant.

[34] Moreover, in at least two cases, the agencies returned to the drawing board and reissued new rules to replace those that Congress had disapproved. (SEC 2021; DOL 2019).

[35] This number is larger than the total number of entries in Table 1 in part because we excluded rules by independent agencies from Table 1, while they are included in the Office of the Federal Register's data on number of final rules. In addition, the regulatory agenda never captures all rules, especially minor rules issued without notice and comment, such as those issued due to emergency circumstances.

[36] It was also lower than the average annual final rule documents published in the *Federal Register* for any first three years of any administration since 1976, the first year the Office of the Federal Register started tracking the number of rule documents.

[37] A search for "final rule" in the "action" field in the Lexis database for the *Federal Register* yields 11,240 search results for the period of January 21, 2009 to January 20, 2017, but yields only 9,879 results for the period January 21, 2017 to January 20, 2021.

[38] The Trump Administration issued 107 economically significant rules during its first three years (2017-2019), while the average for the first three years of the prior five presidencies was 118 such rules. These data for our historical comparison of economically significant rules originate from OIRA. We obtained these data from a compilation for the years 1981 to 2019 maintained by the George Washington University Regulatory Studies Center at https://regulatorystudies.columbian.gwu.edu/reg-stats. Prior to the adoption of Executive Order 12,866, rules which met the same criteria as economically significant rules—that is, those having annual economic impacts of greater than $100 million—were technically labeled "major" rules. The $100 million threshold for economic significance, of course, has never been adjusted for inflation, which at least partly explains why more rules over time have surpassed the threshold.

[39] These data can be found at Reg Stats, George Washington University (GWU) Regulatory Studies Center, https://regulatorystudies.columbian.gwu.edu/reg-stats. Our data from the unified agenda for the Trump Administration are somewhat lower, but we rely on the GWU data here in order to make comparisons with other

in terms of a threshold of economic significance, no administration had seen an annual average of such rules higher than the Trump Administration—whether across a four-year or eight-year duration.

Figure 2: Annual Average Economically Significant
Rules by Presidential Administrations, 1981-2021
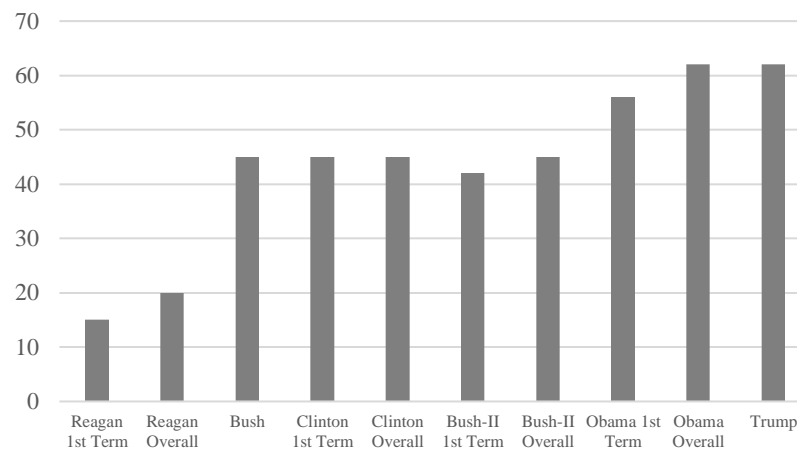
Source: GWU Regulatory Studies Center

The evidence does not support the Administration's claims to have engaged in a historic scaling back in government regulation. The data do show a smaller number of new rules overall. But the number of pages in the CFR did not decline across the Trump years. Even when they did dip slightly during is first three years, more CFR pages were removed in the comparable period during the Eisenhower Administration. More importantly, a more substantial unleashing of market forces occurred from the deregulatory changes made in the Carter Administration. Overall, the data show that the Trump Administration did at least as much significant regulating as it did deregulating, and it issued more economically significant rules than any other administration in the past.

3. Unsubstantiated Claims of Economic Effects

Prior to March 2020, the U.S. economy had steadily improved during the first several years of the Trump Administration, reaching historically high levels of employment and national income, along with historic gains in stock prices. The Trump Administration took credit for these

administrations. We also acknowledge, of course, that about 30 percent of the Trump Administration's economically significant rules were ones that the Administration treated as "deregulatory." Taking these rules out of our comparison, though, would still leave the Trump Administration about on par with the Bush-II and Clinton Administrations when it comes to the number of economically significant rules issued during the first four years. We do not take these out of our counts, though, because some of the economically significant rules adopted by previous administrations could also have been fairly considered to be deregulatory, even though no classification of rules as deregulatory existed prior to the Trump Administration.

trends, attributing the positive economic indicators to, among other things, what it had accomplished by way of deregulation. The White House declared that "[a] major driver of recent economic gains is the Administration's regulatory reform agenda" (CEA 2020a).[40] Yet given that this agenda was much less substantial than the Administration asserted, the question arises to what extent, if at all, deregulation was responsible for the economic gains that did occur during the Trump Administration prior to the COVID outbreak.

One possible response might be to point to a slowdown in the issuance of new regulations during the early part of the Trump Administration (Raso 2018; Dooling 2018; Belton & Graham 2019), perhaps under the theory that businesses facing fewer prospects of regulation ease up on setting aside capital reserves and make more investments in productive economic output (Appelbaum & Tankersley 2018). Yet giving a slowdown in new rules or a repeal of some existing rules much credit for the positive economic indicators leading up to the COVID outbreak would risk overlooking the economic trends that prevailed when President Trump took office. Trump inherited a growing economy, a strong predictor of continued economic growth. The positive economic trends of the early years of the Trump Administration largely tracked trends that dated back to the Obama era (Figure 3).[41] In fact, if anything, the rate of overall growth in GDP (12.1% vs. 12.5%) and in employment (1.3% vs. 2.0%) actually was lower across the first three years of the Trump Administration versus the last three years of the Obama Administration. As Rattner (2020) has noted about this pre-COVID period, "almost exactly 1.5 million fewer jobs were created on Mr. Trump's watch than during Mr. Obama's final three years."[42] This pattern of more robust economic growth during the Obama Administration than the Trump Administration would appear the opposite of what would be expected if regulations, or even the prospects of additional regulations, served as a major drag on economic growth.

Figure 3: Cumulative Employment and GDP Growth, 2012-2020

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[40] Conservative commentators have reinforced the Administration's claims. For example, Savickas (2020) has claimed that "[o]ne of the most important legacies the Trump administration will leave behind is the mountain of regulatory red tape taken off the books. This red tape reduction contributed greatly to the expansion of our economy, the growth of the stock market, and the reduction in unemployment."

[41] For discussion of the economy's continuation of the Obama trendline through the first three Trump years, see Rampell (2020b) and Hunter (2020).

[42] Rattner reports changes in seasonally adjusted nonfarm employment. Needless to say, once the COVID outbreak occurred, the U.S. economy, as with economies around the world, suffered gravely. The economic gains made since 2008 were wiped away as tens of millions of Americans found themselves jobless in the face of a deadly pandemic. The unemployment rate spiked to 14 percent in April 2020, and by the end of the year still remained at 6.7 percent. As many as 25 percent of Americans reported having trouble paying their bills (Parker, Minkin, & Bennett 2020).
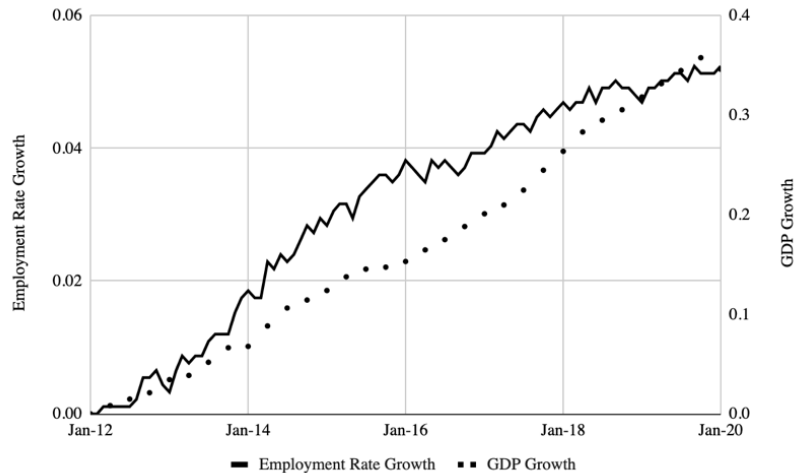
Sources: U.S. Bureau of Labor Statistics; U.S. Bureau of Economic Statistics

The Trump Administration would not be expected to draw such comparisons with the pattern of growth it inherited from the Obama Administration. Instead of pointing to a continuation of economic trends that had been in place for years, the White House instead proclaimed in December 2019 that it was deregulation that "continues to benefit American consumers, driving economic growth" (CEA 2019a). Perhaps unsurprisingly, even in its response to the COVID crisis, the Trump Administration turned again to deregulation as an asserted solution to the economic devastation wrought by the viral outbreak—urging throughout 2020 that what was needed was a suspension of small business regulations and the expansion of Executive Order 13,771's call for revoking existing regulations when agencies issue new ones (Stein & Costa 2020). Such a focus on deregulation to spur economic recovery in a pandemic reflected the Administration's familiar rhetoric around pre-COVID economic growth. Up until that time, the Administration had repeatedly lauded deregulation for spurring innovation and employment growth by removing barriers to small business development and delivering meaningful savings to American households. President Trump even specifically claimed that his Administration's deregulatory efforts had delivered to "the average American household $3,000 more to spend every single year" (Trump 2019b).

The Trump Administration's claims to have achieved macroeconomic gains through deregulation can be subjected to review, just as we examined in Section 2 the Administration's claims to have achieved substantial and historic levels of deregulation. In this section, we undertake an assessment of the Administration's assertions about the positive economic effects from deregulation, finding that these claims fail to withstand examination. Even under the Administration's own analysis, households had not reaped thousands of dollars as a result of the Trump Administration's deregulatory efforts—nor would the economy overall have seen payoffs

from deregulation for a considerable time.[43] The Trump Administration's claims to have boosted the economy in its first three years through its regulatory policies lack any credible empirical support.

3.A. Overall Economic Growth

> *"They tell us that we've saved $220 billion in our economy ...."*
> - Vice President Pence, Press Conference (Pence 2020)

> *"Our historic regulatory relief is providing the average American household an extra $3,100 every single year. And we're going up from that number."*
> – President Trump, Press Conference (Trump 2020b)

In 2019, economist Tomas Philipson, President Trump's appointee to head the Council of Economic Advisors (CEA), declared deregulation to be "the cornerstone of the president's pro-growth economic policies" (Jagoda 2019). At the same time, the CEA's Chief Economist, Casey Mulligan, asserted that the Administration's "deregulatory actions [were] raising real incomes by increasing competition, productivity, and wages" (Lucas 2019). Overall, Trump Administration officials claimed that deregulatory actions translated into a $220 billion boost to the economy and a $3,100 increase in household incomes (CEA 2019b).

We have already put forward evidence that belies the notion of significant economic effects from the Trump Administration's deregulatory efforts, both by showing the relatively modest policy changes that the Administration accomplished (Section 2) and by pointing to the more straightforward explanation for positive economic growth in the continuation of prevailing trends (Figure 3). The purported basis for thinking otherwise stems from a 30-page CEA report released in June 2019 (CEA 2019b). [44] With this report constituting the basis for the Trump Administration's asserted claims to have boosted economic growth and household income through deregulation, to assess the Administration's macroeconomic claims is in an important sense to assess the quality and credibility of this report. Yet, as we explain in detail below, the CEA report suffers numerous deficiencies that undermine the Administration's claims of economic growth from deregulation.

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[43] As discussed below in Section 3.A, the Administration's own analysis, accepted at face value, did not forecast its purported $3,100 in household regulatory cost savings to accrue for another 5 to 10 years had passed. The claims of cost savings from regulation that we examine here were distinct from any claimed effects of the Trump tax reform legislation. Although tax policy is thus outside the scope of our analysis, it is true that many American households saw some savings in terms of tax relief. But even the amounts of these savings were far from thousands of dollars for most taxpayers. The nonpartisan Tax Policy Center (2018) estimated that only taxpayers making more than $100,000 would receive more than a thousand dollars in tax relief on average. The weighted average in estimated individual tax relief across the bottom 92 percent of taxpayers was only $817. The larger tax cuts—both in absolute and relative terms—went to a small fraction of taxpayers at the top of the income distribution.

[44] To put these claimed impacts into perspective, $220 billion amounted to only about 1 percent of the total GDP in 2019. The Administration also separately claimed that from 2017-2019 it achieved $51 billion in regulatory cost-savings based on the estimates gleaned from the OIRA review process (OIRA 2019). This smaller figure itself was used to create a false impression, as it represented a net present value of a stream of benefits. In annual terms, it amounted to no more than about $3.5 billion in cost-savings, a trifling in comparison with the entire economy.

The CEA reached its estimates of future economic gains by making estimates of the change in real income associated with 20 non-randomly selected deregulatory actions that occurred during the Trump Administration.[45] It then spread its estimated real income gains across all households equally. It separately derived an estimate—based solely on assumptions—of what it claimed would be the cost-savings from the Trump Administration not adding new regulations at the same pace as the Obama Administration. The CEA concluded that, over time, real incomes would be 2.1% above the prior growth path, saving American households on average $3,100 annually—$1,900 from the 20 deregulatory actions, and $1,200 from the restraint on new regulations (CEA 2019b, p. 16-17).

The methods and assumptions underlying the CEA report's conclusions were not always clearly described in the report. But the report was clear about at least the timing of the economic effects that it concluded would derive from deregulation. Contrary to Vice President Pence's declaration that the Trump Administration had already "saved" the economy $220 billion (Pence 2020) and other similar claims that the Administration had already delivered economic results, the CEA's analysis was explicit that its estimated economic effects from deregulation would arise only after the deregulatory actions had time to "go into full effect" (CEA 2019b, p. 1).[46] The estimated gains in income of $3,100 per household, for example, were not to be realized for another 5 to 10 years (CEA 2019b, pp. 1, 19). These estimates, thus, never even purported to explain the positive trends that the U.S. economy enjoyed in the first three years of the Trump Administration. Rather than an extra $3,100 having already landed in household pocketbooks during the Trump years, the report made plain that its estimates were of what households might gain in the future.

If the report's own explicit statements were not enough to demonstrate that its analysis could not have supported attributing to deregulation the positive economic trends through 2019, the analysis of some of the selected rule repeals made this clear as well. Some of the purported cost-savings from regulatory repeals contained in the CEA report were simply changes in estimates of future costs—rather than estimates of real savings accrued—because the repeals occurred before compliance would even have been required under the repealed rules. In these cases, the estimates could not reflect reductions in mandatory compliance costs because compliance had yet to be mandated.

Consider key dates associated with the Federal Communications Commission's (FCC) broadband privacy rule. The CEA attributed an annual gain of $22 billion in real income from the repeal of this rule on April 3, 2017, the day when President Trump signed a joint resolution of disapproval adopted by Congress under the terms of the Congressional Review Act (Shepardson 2017). The FCC had published this final rule in the *Federal Register* four months earlier, on December 2, 2016 (Protecting the Privacy of Customers 2017).[47] The rule required internet service providers (ISPs) to shift from an opt-out to an opt-in system for protecting sensitive customer

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[45] We follow the CEA's account in saying that CEA staff members considered 20 deregulatory actions, even though in the end they really only examined 18 such actions, as two involved deregulatory changes to pairs of related rules (CEA 2019b, p. 21-22).

[46] As a sign of the report's lack of clarity (and perhaps its quality), it is notable that the report only mentions the $220 billion amount in the executive summary, not in the body of the report. Furthermore, in the appendix, CEA actually claims that the boost to the economy would be closer to $235 billion (CEA 2019b).

[47] Under the Administrative Procedure Act (1946), rules ordinarily cannot take effect for 30 days after publication in the *Federal Register*.

information. Whereas ISPs previously could make their default to share sensitive customer information, unless the customer opted out and requested privacy, the new rule would have required ISPs to protect privacy as the default and obtain a specific opt-in approval before sharing any such sensitive information.

The CEA report made a point of noting that the FCC opt-in rule "was to go into effect on January 3, 2017," which naturally would seem to imply that ISPs were already incurring compliance costs by the time President Trump signed off on a repeal of the rule in April of that year. Yet the CEA report never mentioned that, under the very terms of the FCC rule itself, even after the rule took effect in January 2017 the ISPs still had no obligation to comply with the new notice and choice requirements until 12 months after the publication of the rule in the *Federal Register*. Although the repeal of the rule would presumably spare ISPs compliance costs they would have had to incur down the road, it did not lift mandated burdens that ISPs had already been obligated to incur from the new consent requirements. Perhaps not surprisingly, a subsequent report from Goldman Sachs that discussed the rule's repeal by the Trump Administration stated that "our equity analysts believe that the repeal had negligible economic effects" (Nicolae 2021).

When rules have extended implementation periods, repeals of such rules by definition do not immediately lift any regulatory burdens off of firms or unleash cost-savings to the economy. The best that could be said from the CEA report, taken on its own terms, is that deregulation by the Trump Administration might have alleviated costs to the economy in the future. Yet even with respect to such future effects, the CEA analysis suffered from three other limitations that undermine reliance on it to proclaim positive economic effects from the Trump Administration's deregulatory actions: insufficient attention to counterfactuals; neglect of the costs of deregulation; and an unjustified sampling strategy.

Insufficient attention to counterfactuals. In determining the economic effects of deregulation, the relevant task is to assess impacts against a counterfactual: that is, to look for the difference in how resources that would have been devoted to compliance with a regulation would be deployed once the rule is rolled back. A counterfactual can be difficult to estimate but it is essential to sustain a causal claim that a deregulatory action led to a positive (or negative) economic effect. It is, in theory, conceivable to use existing statistical techniques to try and infer the benefits (and costs) of deregulation (Coglianese 2012). Unfortunately, the CEA report did not use any of these techniques. Indeed, it is far from clear how it could even reasonably have done so, given that so many of the regulations in its sample had only relatively recently been adopted. As Howard Shelanski, the former administrator of the White House Office of Regulatory Affairs under President Obama, has suggested, "one of the oddest claims in the report is that we have enough time since the repeal of the rules to empirically measure what the effect would be" (Kessler 2019).

An example makes this point. Even though Trump pulled back from energy efficiency standards adopted under the Obama Administration, it is impossible to make meaningful ex ante predictions of how this deregulatory change will impact the market—and translate into consumer savings—over the course of the next decade. Against the assumption that consumers will accrue savings from the Trump Administration's intervention, it is just as possible that consumers will be harmed by this intervention (because they value efficient products and the incentive to produce them will be diminished by the Trump rollbacks) or that there will be no effect at all (because market demand or economies of scale for manufacturers seeking to meet international standards

will carry over to the US). It is almost certainly too early to ascertain what the consequences of the retreat from certain energy efficiency standards will be for consumers. To do so would require comparing economic indicators post-deregulation to a counterfactual world where regulations were not lifted. That was not the task that the CEA report undertook. Rather than attempting any causal inquiry, the CEA staff relied simply on a series of assumptions. These assumptions often were neither clearly articulated nor sufficiently justified in the CEA report.[48]

The estimates arrived at by the CEA's assumptions sometimes departed widely from the estimates made by the agencies that issued the rules at the time they were adopted—though without any explanation for the departures. For example, with the Department of Interior's stream protection rule, the Department had estimated the rule would impose $81 million costs to industry when it was initially adopted (Stream Protection Rule 2016). But CEA estimated that the rule's repeal would deliver an estimated $2 billion in real income gains. The CEA failed to justify this large discrepancy.[49]

The CEA's insufficient attention to counterfactuals also led it to make unsupported causal inferences. An example was with its assertion that the FCC's broadband privacy rule would deliver $22 billion annually in real income savings. As with the stream protection rule, this was a striking estimate given that the benefit-cost assessment conducted by the FCC at the time of the rule's adoption arrived at a vastly different conclusion; the rule was reported to Congress as a "non-major" rule, which means that its economic impacts were estimated to be less than $100 million annually.[50] But the CEA reached its estimate of a purported $22 billion gain based on a decline in prices for wireless services in the early months of 2017 when Congress considered a nullification of the net neutrality rule. Yet, heightened market competition between Verizon and T-Mobile around the same time presumably impacted pricing practices too (Trefis Team 2017). It is, admittedly, hard to disentangle these two effects, but it was not credible for the CEA simply to ascribe all of the price reductions to savings from the considered repeal of the net neutrality rule, especially when the estimates of the impact of cost-savings from rolling back the rule differed so drastically from the cost estimates attached to the rule at its adoption.

Neglect of the Costs of Deregulation. The CEA (2019b) explained that its main estimation procedure comprised a bottom-up aggregation of the estimated impact of the 20 deregulatory actions chosen from the thousands of rules issued by federal agencies since 2017. For each of these

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[48] The CEA's estimation of the impact of the Administration's initial slowdown in the adoption of new regulations suffered these deficiencies too. The CEA simply assumed new regulations had been frozen when, as we showed in Section 2 of this article, the Administration in fact continued to issue significant regulations. The CEA neither investigated these new rules nor took note of them in its analysis.

[49] For further discussion of the Trump Administration's treatment of cost-savings from the stream protection rule, see Thorlin (2020). The stream protection rule also illustrates the deficiency of the CEA report when it comes to considering foregone benefits from deregulation (a point we turn to next). In promulgating the stream protection rule, the Department of Interior did an extensive job of quantifying many benefits that the rule would deliver in terms of preserving streams for fishing and improving forest lands, even though it did not monetize these various environmental benefits or any health benefits from improved water quality. It only attempted to monetize reductions in greenhouse gas emissions associated with some reductions in coal use forecasted from the rule. Based on a global social cost of carbon, the agency's RIA pegged a monetized benefit at $110 million per year in completing its regulatory impact analysis, which it later reduced to $57 million per year when it released the final rule (Industrial Economics, Inc. 2016).

[50] The definition of a "major rule" under the Congressional Review Act can be found at 5 U.S.C. § 804(2). For the reporting of the FCC's broadband privacy rule as a "non-major rule," see https://www.gao.gov/fedrules/186577.

actions, the CEA performed an industry-level analysis, relying on "simple sufficient statistics" and observed changes in market data. The procedure the CEA used varied depending on the regulation considered, and often it appeared to rely on a single estimated parameter of costs, without a discussion of the range of estimates in the literature and without explicit justification of why the selected estimate was preferred.[51] The CEA then added in estimates of indirect costs. To estimate indirect costs, the CEA first obtained estimates for the impact the deregulatory action could be expected to have on labor and capital utilization and then divided by a tax wedge of 0.48, finally adding this to its "primary market" impact. The result was a total output estimate for each deregulatory action.

Missing from the CEA estimates, though, was any serious consideration of the "other side of the ledger"—the forgone benefits from deregulation.[52] For example, the CEA estimated that the repeal of one rule in its sample, the "Fair Pay and Safe Workplaces Rule," would have zero effect on real income. The objective of this rule was to protect contractors from unsafe working conditions by requiring disclosure of violations of labor laws. The CEA report concluded that the repeal did not result in significant household savings—but in doing so, it ignored the potential losses to employees who would be more likely to be exposed to wage theft or poor working conditions in the absence of regulation.

The CEA did purport to account for "non-pecuniary and environmental costs" of deregulation, although the procedure it used was not explained in its report. It simply factored in the loss of benefits from regulations repealed by making an adjustment in its overall estimates, reducing the income boost from $3,100 per household to $2,500 per household (CEA 2019b, p. 4, 18). In effect, this implies that the costs of the regulations that were repealed or relaxed were more than five times their benefits—an extreme assumption never justified or examined in the report. At a minimum, though, taking the Administration's own computations at face value, the Administration's claims that its deregulatory policies were "providing the average American household an extra $3,100 every single year" (Trump 2020b) exaggerated the Administration's own estimate of the economic consequence of deregulation by about 25 percent.

Biased Sampling Strategy. A final problem with the CEA's analysis stemmed from its sampling strategy. CEA analysts selected deregulatory actions to examine from five categories: Congressional Review Act disapprovals (6 actions selected); agency-selected rule changes (8 actions); independent agency actions (1 action); reform of guidance documents (1 action); and statutory repeals (2 actions).[53] Within the two categories for Congressional Review Act disapprovals and agency-selected rule changes, the CEA sampled based on the number of comments submitted on the underlying rules, with the explicit intent of choosing rules with the most comments because they would be likely candidates for high-cost rules that would deliver

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[51] A sensitivity analysis reported in an appendix to the CEA report only partly addressed this concern (CEA 2019b, p. 24-26).

[52] These forgone benefits could have been potentially quite substantial. According to a review of public health during the Trump years, for example, annual deaths related to environmental exposures and occupational factors increased by 22,000 from the years 2016 to 2019 (Woolhandler et al. 2021).

[53] Although this amounts to only 18 actions, the CEA stated that one Congressional Review Act disapproval involved a pair of rules, while one agency-selected rule change also apparently involved a pair of rules (CEA 2019b, p. 21-22).

high impacts on real income when repealed.[54] The CEA appeared to claim that, by choosing a sampling strategy designed intentionally to target changes to regulations with the largest economic impacts, it was conservatively estimating the total impacts of deregulation. But, in fact, the sampling strategy appeared self-consciously designed to try to find the rules that delivered the most gains from being rolled back—without doing much to try to estimate the precise losses from these roll-backs.[55]

The CEA's sampling strategy relied on the assumption that the economic consequences of non-sampled rules would be negligible. But the CEA provided no justification for that assumption. Given plausible negative economic effects from the Administration's trade and immigration regulations (Flaaen & Pierce 2019), for example, it would have been appropriate for the CEA to show that its decision to focus more on rules with likely large cost-savings did not result in ignoring costly or inefficient rules that the Administration had imposed. As noted in section 2, executive agencies in the Trump Administration issued as many economically significant regulatory actions as deregulatory ones—and overall they issued more economically significant rules on average than any other administration had done in its first four years (Figure 2). Any purported economic gains from repealing the regulations in the CEA's sample could well have been offset, at least to some degree, by economic losses from other regulatory actions not in the sample.

Overall Assessment. Tracing out the effects of specific regulatory policies on macroeconomic indicators such as national income or GDP is a deeply complex exercise that is highly fraught with uncertainty. This reality had been publicly acknowledged elsewhere within the Trump White House. OIRA (2017a, p. 44) acknowledged that "[m]easuring the effects of regulation on economic growth is a complex task." It further explained that "the direct impacts of particular regulations, or categories of regulations, on the overall economy may be difficult to establish because causal chains are difficult to ascertain and because it is hard to control for confounding variables" (OIRA 2017a, p. 44).[56] For this reason, neither regulatory agencies nor OIRA typically seek to estimate the broader macroeconomic ramifications of regulation.

This challenge also means that, as a practical matter, anyone who tries to estimate the overall effects of regulations on the economy, as the CEA staff members did, faces an exceptionally tall task and heavy burden of proof with respect to demonstrating causality. The CEA report overall evinces insufficient consideration of the complexities involved and contains numerous weaknesses, failing to overcome its burden of showing that positive economic growth during the initial Trump years stemmed from deregulation rather than from the continuation of prevailing economic trends. Moreover, by its own terms, the report provided no basis for

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[54] Research shows that about half of all federal regulations are adopted without going through the notice-and-comment process (Raso 2015), a fact that the CEA never acknowledged in trying to justify its use of the number of comments as the key variable on which to sample within two of its categories. According to Balla & Daniels (2007), the median number of comments on agency proposed rules is about thirteen.

[55] To be sure, the CEA did not claim that all the deregulatory actions in its sample delivered dramatic real income gains. In fact, the CEA estimated that three actions had no effects and, for another four, the CEA conceded they will have small aggregate effects, meaning that 13 rules comprised the bulk of the purported savings in the report (CEA 2019b, p. 22).

[56] As Mannix (2013, p. 196) has also observed, the downstream effects of regulations on the economy "are too complex to measure."

attributing any positive effects during the first three years of the Trump Administration, as the analysis only purported to estimate effects that would take place years later.

Our overall assessment of the CEA report is consistent with a view that has been expressed by various outside economists who panned the CEA report after it was released. For example, one prominent regulatory economist colorfully characterized the report as "just crazy" (Kessler 2019). An independent consulting firm subsequently undertook a careful review of a range of data on capital expenditures, consumer lending, and othereconomic indicators and found little evidence of a deviation from baseline trends due to Trump's deregulatory efforts, concluding that "[t]here is little to suggest that President Donald Trump's deregulatory agenda has provided a significant boost to economic growth" (Hunter 2020, see also Rampell 2019). Even when economists have used synthetic control techniques to estimate the counterfactual of what the economy would have been like in the absence of Trump Administration policies, they have failed to find that the Trump-era policies made any difference in major indicators such as GDP and employment (Born, Müller, Schularick, and Sedlácek 2020).

3.B. Jobs, Poverty Levels, and Energy Outputs

> *"[O]ur regulation cuts have helped create thousands and thousands of jobs."*
> – President Trump, Press Conference (Trump 2020b)

> *"Prior to the global pandemic, regulatory reforms contributed to a historically strong labor market and economy, lifting more than 2 million Americans out of poverty and liberating 7 million Americans from food stamps. This is the direct result of President Trump's actions, and his plan for further deregulatory overhaul will ensure that America's workers and families prosper."*
> - White House Council of Economic Advisors (Trump 2020b)

> *"Thanks to our bold regulatory reduction campaign, the United States has become the number one producer of oil and natural gas anywhere in the world, by far."*
> – President Trump, State of the Union (Trump 2020c)

> *"My administration has just issued another reform that my Council of Economic Advisers estimates will lower the price of new vehicles by more than $2,200 per vehicle. And I think we're going to get that up to $3,500 per vehicle."*
> – President Trump Press Conference (Trump 2020b)

In addition to boasting about massive gains to economic growth from deregulation, President Trump and Administration officials asserted a variety of other specific effects from its deregulatory agenda: increased jobs, decreased poverty, expanded energy production, and even decreases in the prices of automobiles. Yet, these claims, too, were misleading and suffered from the same kinds of problems that afflicted the rest of the Administration's assertions about the economic effects of its deregulatory bent.

As already noted, it is hard to see how deregulation could conceivably have driven improvements in these various indicators when positive trends were already well underway before

the Trump Administration's interventions. Consider the following positive economic trajectories that were well underway before President Trump took office:

- Unemployment had been dropping steadily throughout the Obama Administration from its peak of 10 percent in October 2009 to 4.7 percent by the time President Trump took office. It declined by about another percentage point during the first two years of the Trump Administration.
- It is true that millions fewer Americans were drawing Supplemental Nutrition Assistance Program benefits (SNAP benefits, or "food stamps") during the pre-COVID Trump years than previously. But rather than being driven by Trump's deregulatory aims, this decline too reflected part of a general decrease in poverty that dated back to the Obama era. The share of Americans in poverty has trended downward each year since 2014 (U.S. Census Bureau 2020).
- As President, Trump credited himself for dominance in the energy sector; however, the timeline does not substantiate his assertion. The U.S. surpassed Russia *in 2011* to be the largest producer of natural gas in the world, and petroleum production in the United States had trended upward ever since President Obama took office (EIA 2018). It is hard to see how an inherited upward trajectory could reasonably be ascribed to the actions that occurred under the Trump Administration.
- With respect to automobiles, average prices for new cars started to drop three years prior to the Trump Administration's completion of a final rule to scale back the fuel economy and carbon dioxide emissions standards. All of these price decreases subsequently disappeared following the Trump Administration's deregulatory steps, although almost surely because of COVID-related factors.

The Trump Administration's assertions about the impact of its deregulation on the prices of new automobiles exemplify more generally other flaws in the Administration's claims about the effects of deregulation. First, even by the Administration's own analysis, the decrease in the purchase cost of new cars that the Administration trumpeted was not anything that consumers actually experienced during the first several years of the Trump Administration. The Administration's new fuel economy and greenhouse gas standards for automobiles only applied to model years 2021 and beyond. Second, by the Administration's own analysis, consumers would actually spend more on car transportation overall due to deregulation: while prices of new cars were expected to go down under the Trump Administration's relaxed automobile efficiency standards, motorists would have ended up spending *more* over the life of the vehicle due to offsetting increases in fuel costs (EPA & DOT 2020a, pp. 11, 1699, 1701).[57] Administration officials also "estimate[d] that less stringent standards could slightly reduce domestic employment" (EPA & DOT 2020b, p. 24,741). Finally, an exclusive focus on consumer costs ignored the forgone environmental benefits from improved fuel economy and a reduction of greenhouse gas emissions.

3.C. Distributional Consequences

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[57] Some outside experts have reportedly indicated that the Trump Administration's more relaxed rule could impose a total cost on the economy of up to $22 billion (Davenport 2020a).

"The cost of these burdensome regulations fall disproportionately and benefit disproportionately lower-income Americans. So this President took action to roll back the burdensome regulations that harm low-income communities and make sure that these lower-income Americans are taken care of."
   - Press Secretary Kayleigh McEnany, WH Press Briefing (McEnany 2020)

"[T]he net effect of these deregulatory actions, once fully realized, will represent nearly 15 percent savings for the bottom quintile of households."
   - White House Council of Economic Advisors (CEA 2020a)

Although the Trump Administration sometimes sought to justify deregulatory measures by claiming that they would help lower-income Americans, no research supports such claims. Indeed, as others have noted, economists and regulatory policy experts actually know strikingly little about the general incidence of the costs and benefits of regulation.[58] Citing only theoretical treatments of the distributional impacts of regulation, OIRA (2014, p. 8) noted that, "[s]o far as we are aware, there is only limited analysis of the distributional effects of regulation in general or in significant domains" (see also Revesz 2018). In the absence of a robust research literature, estimating the distributional effects of regulation has proven difficult for regulatory agencies to undertake. Robinson et al. (2016) have noted that typically "agencies' analysis provide little information on distributional impacts" of new regulations. With a paucity of both academic research and agency analysis, estimating the distributional effects of regulation has proven difficult. Perhaps for this reason, the Trump CEA did not report having undertaken any research itself and instead simply estimated an average cost savings per family by taking the increase in national income it had assumed and distributing it equally among households.

By assuming that deregulation results in net cost-savings or benefits that are equally distributed across all income groups, though, the Trump Administration assumed its own conclusion of having helped lower-income households. This is because any sum of benefits distributed equally across the entire income spectrum will, by definition, make up a larger proportion of a lower-income household's income than a higher-income household. Ultimately, the distributional consequences of deregulation are not a matter of assumption but an empirical question. The CEA's approach ignored the possibility that deregulation might in fact, perhaps in many cases, end up being regressive once a full accounting is made of winners and losers.

In related work trumpeted by the Trump White House (CEA 2020b), economist Casey Mulligan, who had by then returned to his academic position at the University of Chicago, concluded in an op-ed published near the end of the Trump Administration that deregulation had actually benefitted the bottom of the household income distribution more than the top, with the net effect of deregulatory actions representing nearly 15 percent of their household income (Mulligan 2020). He asserted that these households would be harmed by a hypothetical revival of the regulatory state under a Biden Administration. It is hard to engage, though, with Mulligan's conclusion directly since, to our knowledge, the estimates that underlay it have not been made publicly available. Moreover, what we have been able to glean suggests that at least some of his

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[58] Citing only theoretical accounts of the distribution of regulatory impacts, OIRA (2014, p. 8) acknowledges that, "[s]o far as we are aware, there is only limited analysis of the distributional effects of regulation in general or in significant domains." Revesz (2018) and Robinson et al. (2016) also have noted the paucity of economic analysis on the incidence of regulatory benefits and costs.

estimates were misleading—as Mulligan ascribed losses to households from, for example, a ban on fracking, even though then-candidate Biden had been explicit that he would propose no such ban. Furthermore, as with the Trump Administration's deregulatory claims more generally, Mulligan focused principally if not exclusively on *gains* to workers from labor market deregulation, presumably from decreased costs of regulatory compliance that could result in higher wages. It is far from self-evident that decreased regulatory costs do in fact accrue to workers. On the contrary, workers may well suffer disproportionate harms from deregulation, especially when they involve reductions in worker health and safety protections.

It seems as implausible to assume that all deregulatory actions during the Trump years delivered positive net benefits to workers at the lower end of the income distribution as to assume that the benefits and costs of deregulation are evenly shared across society. After all, patterns in the distribution of benefits and costs of regulation have long been identified to vary (Wilson 1980). The benefits and costs of public policy more generally have been found to skew with a bias toward those at the higher end of the economic distribution (Bartels 2016; Hacker & Pierson 2010). One need only consider a few examples of rule changes that the Trump Administration classified as deregulatory to draw into question the validity of any assumption of an equally distributed incidence of the impacts of Trump-era deregulatory policies:

- In a pair of deregulatory actions, the Department of Housing and Urban Development (HUD) repealed an earlier regulation designed to promote compliance with federal housing discrimination laws (HUD 2020a) and changed another rule to make it more difficult for members of underrepresented racial groups to demonstrate that they have been victims of housing discrimination (HUD 2020b). The socioeconomic status of those who would reap cost-savings from these deregulatory actions presumably differed from renters and home buyers who would incur the consequences from the loss in remedies for discrimination in the housing market.
- A revised standard issued by the U.S. Department of Labor limited the basis on which employees of contractors could seek recovery for illegal wage practices from the companies that hire the contractors (DOL 2020). In issuing its narrowed standard, the Department itself acknowledged that the change "may reduce the amount of back wages that employees are able to collect" (DOL 2020, p. 2853). A federal court, which subsequently invalidated most of the rule as inconsistent with the statute and arbitrary and capricious, noted that the Department "did not account for these costs to employees" (*Scalia* 2020, p. 14).
- Another Labor Department deregulatory action narrowed the standard for determining whether workers count as "employees" under the federal law, entitling them to minimum wages and overtime pay (DOL 2021a). The Biden Administration withdrew the Trump era rule, stating that it would have harmed low-wage workers who were more "likely … reclassified or misclassified as independent contractors not entitled to [labor law] protections" (DOL 2021b, p. 24312).

These are but a few examples, of course, and we do claim that they are representative of the distributional consequence of all of the Trump Administration's deregulatory actions. Still, they

do suggest that it was unrealistic for the Trump Administration to assume that the consequences from deregulation would be evenly distributed across society.

The Trump Administration had no empirical basis to claim that lower-income households benefited more from its deregulatory actions. The incidence of benefits and costs from the Trump Administration's deregulatory agenda is, at best, simply not known. At worst, workers and others at the lower end of the economic distribution may have fared worse than wealthier employers and shareholders. As with the other claims about the

4. Why Did the Trump Administration Fail to Do More?

In the preceding sections, we have shown how the widely held notion that the Trump Administration accomplished "a vast rollback of federal regulations" (Lemann 2020) does not fit the evidence. The Administration took only about 160 deregulatory actions each year (compared with many more regulatory actions), about two-thirds of which had been deemed by the Administration itself to have been "not significant." Of course, this is not to suggest that the overall economic impacts of regulatory changes during the Trump years were benign. Some of these deregulatory actions—especially those deemed significant—may have resulted in a loss of public benefits and individuals protections. As we have suggested, different segments of society might have been differentially affected by these changes. Even in the aggregate, it is possible that, with its imposition of immigration and trade restrictions taken into account, the Trump Administration's overall regulatory record may well have harmed the economy more than helped it.

What is undeniable, though, is that the Administration issued far more regulations than it took deregulatory actions—and, even when looking at the Administration's most significant rules, it did as much regulating as it did deregulating. The data are far from what one would expect to see from an Administration that had deregulated "big league" (McCaskill & Nussbaum 2017). On the contrary, the data indicate that the federal government simply did not "dramatically" (McCaskill & Nussbaum 2017) or "massively" (Halper & Moore 2017) repeal regulations under President Trump.

Revealing the extent of the Trump Administration's deregulation deception makes an important contribution in helping to ensure an accurate historical account of regulatory policy during the Trump years. But exposing the deregulation deception also raises an additional question with broader implications for those interested in understanding administrative and regulatory behavior: Why did an Administration that seemed so committed to largescale deregulation fail to fulfill its ambitions?

For many administrative law scholars, the answer to this question could at least initially seem to lie with the widely discussed phenomenon known as the ossification of administrative rulemaking.[59] Starting in the 1990s, legal scholars have argued that the federal rulemaking process in the United States had grown ossified due to the risk of judicial review under the arbitrary and capricious standard and the accretion of additional rulemaking procedures (Mashaw & Harfst

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[59] As Dudley (2018) notes, "President Trump's initiatives have not come close to achieving his promise of cutting regulations by 75 percent, and that is due to the regulatory process that previous reforms have instituted"—a process said to be prone toward ossification. In addition, ossification came to the fore in some of the critiques leveled against several Trump Administration regulatory process changes, such as Executive Order 13,771 (Melberth et al. 2017).

1990; McGarity 1992; Pierce 1995). The ossification thesis advanced by these scholars is grounded in a strong conceptual intuition that rulemaking would be easier and quicker if agencies encountered fewer procedural steps and no prospect of judicial review. Procedures and judicial review have, legal scholars have suggested, led to a "paralysis" by analysis, with some regulatory agencies said to have retreated from rulemaking altogether and choosing instead to rely on non-regulatory means to advance their missions (Mashaw & Harfst 2017, p. 198; see also Mashaw and Harfst 2017; McGarity 2012; Pierce 2012).

Ossification might be thought to explain the Trump Administration's relatively feeble deregulatory achievements because of a basic rule in U.S. administrative law that requires agencies to go through the same rulemaking process—and expose themselves to the same prospect of judicial review—whenever they wish to repeal a rule as when they seek to put a new rule in place.[60] The Trump Administration's slow rate of deregulation might thus be considered to be just another manifestation of the ossification of rulemaking, with the same procedural factors that impede agencies when they wish to impose new obligations also impeding agencies when they seek to repeal old obligations.

Some debate exists over the behavioral implications of rulemaking procedures and judicial review. Much of the evidence legal scholars have put forward in support of the ossification thesis has tended to be based on individual case studies, while social scientists have tended not to find much of a slowdown in rulemaking when they have tried to test the ossification thesis more systematically (O'Connell 2008, Yackee & Yackee 2010, Coglianese 2002, Shapiro 2002). Regardless of the overall merits of the ossification thesis, it cannot explain very well, at least on its own, why the Trump Administration failed to accomplish more by way of deregulation. Other recent administrations had been able to issue many more rules than the Trump Administration was able to remove. Operating under the same procedural constraints and threat of judicial review, for example, the Obama Administration completed more than 1,200 significant regulatory actions during its first four years, compared with the Trump Administration's achievement of little more than 600 deregulatory actions—the vast bulk of which were deemed to be not significant.

Moreover, if both rules and rule repeals are subjected to the same ossifying forces, then ossification by itself cannot explain why the Trump Administration completed more significant regulatory actions than deregulatory ones. The Trump Administration, it should be recalled, issued more economically significant regulations than most other recent administrations during their first four years (Figure 2). Clearly, any problems the Trump Administration faced with achieving the President's deregulatory goals do not appear to have stemmed from a generic ossification effect created merely by the existence of rulemaking procedures or judicial review. The Administration was merely deficient in meeting its *deregulatory* goals and in living up to its claims about what it actually accomplished by way of repealing regulations.

In explaining the Trump Administration's failure to achieve more by way of deregulation, we see three plausible alternative explanations that are based on distinctive characteristics of the

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[60] Motor Vehicle Manufacturers Association v. State Farm (1983).

Trump Administration as well as distinctive challenges of deregulation more generally.[61] No matter how much the rulemaking process may have become ossified, it seems apparent that other factors, such as the motivations and skills of agency leadership and staff, almost certainly affect and help explain patterns in the making and rescinding of rules (cf. Seidenfeld 2009). In addition, it is plausible that deregulating is simply more difficult for regulatory agencies to effectuate than regulating—or at least much more difficult than might be expected within an administration seemingly dedicated to rolling back regulations.

4.A. Deregulation's Challenges

The first possible explanation for the Trump Administration's relatively weak track record rests with the challenges, both legal and political, that confront an administration that seeks to repeal existing rules. The legal obstacles do not arise because deregulating is subjected to additional procedures or more stringent judicial review.[62] On the contrary, in what has become the canonical case on the applicable arbitrary and capricious standard for judicial review, the Supreme Court has stated bluntly that "the rescission or modification of [a regulatory] standard is subject to the same test" for judicial review as the establishment of a new regulation (*State Farm* 1983).[63] The Court has subsequently affirmed that the standard for judicial review remains the same when an agency changes its rules, making clear that the law does not require to meet any different standard of review when it seeks to repeal a rule (*Fox* 2009).[64]

But as a practical matter, the legal requirement that agencies must justify a decision to repeal or change an existing rule will often mean that the agency must operate on different factual footing than if it were regulating on a completely blank slate. Because the agency would have previously created an administrative record to support its existing rule, it may not be as easy for the agency to justify a change in the face of countervailing factual evidence that it previously had put forward (Cecot 2019). In repealing an existing rule, the agency will, if nothing else, need to grapple with the evidence and analysis that it previously put forward—and with new public

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[61] The empirically oriented reader might well wonder whether we have an overdetermined account of the Trump Administration's regulatory agenda by offering three explanations for the pattern of rulemaking activity during a single administration. We do not claim here to determine which of the three alternative explanations might matter the most. Rather, we are arguing simply that the experience of the Trump Administration demands more than the ossification thesis to explain patterns of agency rulemaking. The three alternative explanatory accounts that we present here, either separately or in tandem, seem needed to account for the Trump Administration's surprisingly weak deregulatory record, especially compared with its ability to adopt significant new regulations.

[62] The APA's basic notice-and-comment procedures expressly impose the same steps whether the agency is "formulating, amending, or repealing a rule" (APA 1946, § 551(5)). The only difference is that, when issuing a rule that alleviates an existing obligation, the APA allows the agency to allow that alleviation to take effect immediately upon completion of the rulemaking process, bypassing the normal 30-day waiting period (APA 1946, § 553(d)(1)).

[63] The arbitrary and capricious standard is articulated in section 706 of the APA.

[64] In *Fox*, the majority opinion made clear that agencies "need not demonstrate to a court's satisfaction that the reasons for the new policy are *better* than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates" (*Fox* 2009, p. 515). In other words, if the agency simply changed its mind and decided to weigh the policy values differently or make a different assessment of core tradeoffs in these values, then the Court indicated that it suffices for an agency simply to acknowledge its changed priorities. If anything, a host of other administrative law doctrines tends to treat more leniently agency efforts to lighten or alleviate regulatory obligations than efforts to impose obligations (Coglianese, Scheffler & Walters 2021).

comments that will likely raise many of the same arguments that the agency previously put forward in defense of its existing rule.[65]

Furthermore, deregulating can be difficult due to the existence of numerous statutory requirements calling for agencies to establish regulations. All regulations obviously need a statutory basis, and the *lack of* statutory authorization can keep agencies from adopting new regulations. But given that many statutes on the books already authorize agencies to adopt or amend regulations, there may well be greater opportunities for a pro-regulatory administration to increase regulation, even if by fitting "old statutes" to "new problems" (Freeman & Spence 2014), than for an anti-regulation administration to repeal rules put in place to meet obligations contained in existing statutes. These existing statutory obligations undergird many federal regulations adopted over the last fifty years.[66] The Dodd-Frank Wall Street Reform and Consumer Protection Act, for example, contained over 400 mandates calling for agencies to adopt new regulations (Romano 2012, p. 89). Most major environmental legislation also contains numerous specific provisions that require the EPA to adopt regulations (Andrews 2006, p. 262-267). In fact, when the EPA during the George W. Bush Administration argued that it was not required to adopt climate change regulations under the Clean Air Act, the U.S. Supreme Court essentially held that the statute nevertheless denied it the discretion not to regulate (*Massachusetts* 2007).

The proliferation of legislative requirements for regulation explains why, after President Trump announced in December 2017 that "we're getting back below the 1960-level" of federal regulation, his own OIRA Administrator, Neomi Rao, responded in a later press briefing that getting down to the level of regulations in the 1960s would require legislative change (Rao 2017b). Then-Administrator Rao similarly noted at a subsequent event at the Brookings Institution that "to get down to those levels you'd also have to have a lot of statutory reform because the growth from 1960 to today is largely based on a number of statutes that have required a lot of regulation. So you'd have to work with Congress in order to get back to those levels" (Rao 2018). In other words, massive, big-league deregulation simply cannot occur without massive, big-league legislative change, the latter of which the Trump Administration never seriously pursued.[67]

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[65] The Supreme Court in *Fox* (2009, p. 515) acknowledged that, even if "[t]he agency need not *always* provide a more detailed justification than would suffice for a new policy created on a blank slate" (emphasis added), "[s]ometimes it must," such as when the agency's rationale for repealing an existing rule "rests upon factual findings that contradict those which underlay its prior policy" or when that prior policy had created reliance interests. It would be arbitrary and capricious, the Court acknowledged, for an agency to fail to give an adequate justification "for disregarding facts and circumstances that underlay or were engendered by the prior policy." For a discussion of a legally "suspect" strategy used by the Trump Administration to try to circumvent the need for development of new evidence, see Masur & Posner (2022, p. 1114).

[66] Mashaw (1994, p. 205) has noted that "Congress has included hundreds of action-forcing mandates, principally rulemaking deadlines, in federal agency legislation."

[67] Some regulatory requirements would have been eliminated if the Administration had succeeded in winning a legislative repeal of the Affordable Care Act. The only other major statutory change with significant regulatory implications during the Trump years came with the passage of The Economic Growth, Regulatory Relief, and Consumer Protection Act, signed into law in May 2018, which made certain changes in the thresholds of applicability of banking requirements imposed under the Dodd-Frank Act. Without trivializing this reform legislation's implications for those financial institutions it affected, it is notable that it only gave some regulatory relief to smaller institutions in a discrete sector of the economy—hardly a massive deregulation of the entire economy. Even within the domain of financial regulation, its impact was more limited than Republicans claimed (Klein 2018).

In addition to inherent legislative constraints on major deregulation, regulatory agencies seeking to repeal rules will confront political challenges that might at times make it more difficult to deregulate than to regulate (Derthick & Quirk 1985). Intuitively, it might seem that a pro-business, anti-regulation administration should garner considerable political support from powerful business lobbies. But the reality is that some businesses favor regulation, thus creating a set of well-resourced opponents to regulatory rollbacks. Incumbent firms that have already made major capital investments to comply with regulations may not see much advantage to rolling back requirements for would-be competitors who have not make such investments. For these incumbent firms, the retention of regulatory obligations acts as a barrier to entry by new competitors (Stigler 1971; Carpenter and Moss 2013). Even those firms that seek to act responsibly may favor keeping regulations on the books to protect consumer good will in their products or to ensure that irresponsible companies do not damage their industry's reputation (Vogel 1989). As a result, agencies that seek to repeal existing regulations can count on opposition not only from public interest groups and other organizations that advocate on behalf of regulatory beneficiaries, but also from existing regulated firms—the very firms for which deregulation is presumably supposed to help by reducing burdens.

The Trump Administration encountered just such business opposition to a number of its attempts at regulatory rollbacks (e.g., Davenport 2020b). As one press account has explained, in the context of COVID, pharmaceutical companies desired strong regulatory controls to boost public confidence in treatments and vaccines:

> [D]rug companies — which historically have sought fewer restrictions and faster approval from the FDA — once complained that the bar for bringing new drugs to market was too high. Now they worry that bar appears too low. This is not the first time the Trump administration has sought to lower the regulatory bar in the name of helping industry and boosting economic growth even when industry objected. See, for example, its rollback of rules regulating methane emissions, automotive fuel-efficiency standards and mercury pollution. These actions were opposed by companies the administration claimed to be helping (Rampell 2020a).

Whenever an administration faces outright opposition from those entities that ostensibly would benefit from its efforts to lift the regulatory yoke, it will surely confront a much more challenging environment in which to pursue its policy goals.

Furthermore, if the political costs of deregulation can be higher than the political costs of regulation, the political benefits from deregulation may not always make it worth it for an administration to incur the higher costs. Deregulation, after all, is unlikely to deliver overall economic benefits at a level needed to turn an economy around in any demonstrably meaningful way (Coglianese & Carrigan 2013, p. 10). As suggested in Section 3, even the Administration's falsely claimed $220 billion boost to the economy, if true, would have represented only about one percent of GDP. As a result, any administration that seeks to deregulate probably cannot realistically expect to deliver real economic improvements that in turn might yield strong political benefits. Achieving substantial deregulation is simply not as easy politically as it might seem.

4.B. Shortage of Administrative Acumen

Given the distinctive legal and political challenges that must be overcome to achieve major deregulation, an administration that seeks to achieve big deregulatory goals must possess considerable administrative skill in both the White House and the heads of agencies. Political appointments are key for presidents to achieve their policy goals (Lewis 2008; Livermore 2015). But in contrast with previous administrations—both Democratic and Republican—the Trump Administration appears to have suffered from a distinctive lack of both effective White House management and skilled appointees at the head of administrative agencies.

The Trump Administration's deficiencies in managerial competency began even before President Trump's inauguration when the President-elect's team eschewed the normal transition planning following the November 2016 election (Berman 2016; Davis, Mazzetti & Haberman 2016).[68] Because the top layers of agencies in the United States are filled by political appointees, it takes competent White House leadership to ensure these positions are filled soon after a President takes office and that excessive turnover in these positions is avoided. But it took a considerable time for the Trump Administration to get its appointed heads of agencies confirmed by the Senate (Tau 2017; Ba & Sullivan 2019). Some of President Trump's appointees seemed to be selected based predominantly on fealty to the President rather than on a combination of loyalty as well as experience and managerial skill (Allen & Vitali 2018; Schulkin & Brooks 2020). The heads of several agencies—EPA, Health and Human Services, and Interior, for example—found themselves mired in scandal from nearly the outset of the Administration, which distracted from the pursuit of substantive policy work and often ended up with firings or resignations (Mangan 2018). President Trump not infrequently picked public battles with his own agency heads. Turmoil and in-fighting characterized much of the Trump Administration. Many agencies were staffed by acting agency heads (O'Connell 2020), and the Trump Administration saw "record setting" turnover in agency leadership positions (Tenpas 2019). None of these features were highly conducive to the accomplishment of significant deregulatory change.

At some agencies, President Trump's political appointees took an antagonist approach to career staff or froze them out of the process, making it harder to get work done. Starting with presidential advisor Steve Bannon's early pledge to bring about a "deconstruction of the administrative state," complaints about the "deep state" persisted throughout the Trump years from the President on downwards. The Trump Administration made no secret of its antipathy toward career staff (Sellers, Dillon & Brown 2018). But these staff members are the ones best positioned to understand how to achieve an administration's goals and to deliver on achieving them.[69] Shutting career staff out of decisions and distancing them from the implementation of those decisions only made it harder for the Trump Administration to accomplish its deregulatory goals.

The evidence of the Trump Administration's high level of losses in court reinforces the notion that the Trump Administration generally lacked the acumen needed to achieve its

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[68] As a political newcomer from outside traditional Republican quarters, and someone facing opposition from a substantial number of traditional Republican elites, President Trump may have actually needed still greater transition planning than usual, and the lack of that planning may have contributed to delays in filling agency positions.

[69] Civil servants may also at times effectively impede an agency's political leadership in pursuing objectives they perceive as antithetical to the agency's mission (e.g., Golden 2000; Nou 2019) or their performance may otherwise suffer in such circumstances (Spenkuch, Teso & Xu 2021).

deregulatory goals. Despite administrative law doctrines that tend to call for courts to give considerable deference to administrative agencies—doctrines that, in other administrations, enable government agencies to prevail in most legal challenges—the Trump Administration lost in court more than 80 percent of the time.[70] The Trump Administration frequently engaged in what Adler (2018) has described as "quick-and-dirty deregulatory efforts." It should hardly be surprising that an Administration that lacked strong professional leadership and effective internal management failed to do more by way of advancing its deregulatory goals through the rulemaking process.[71]

4.C. Symbolism Over Substance

For Donald Trump, the apparent public acceptance of his deregulatory deception may have been what mattered to him most of all. His goal may well have been, in other words, to have created the appearance of having massively rolled back regulation, rather than having in fact to achieve any ambitious deregulatory goals.

Based on Trump's background, there is good reason to think that he prioritized symbolism over substance. Before assuming the presidency, he was a reality television star and a real estate salesman. His pre-presidential career depended on cultivating media attention and making major announcements of new businesses, such as casinos and hotels, and other gimmicks that bore his name: a Trump University, a Trump wine, and Trump steaks. By making exaggerated sales pitches about new business ventures, Trump and his organization were constantly seeking to make money, secure new loans, and stay ahead of debtors. On multiple occasions, this strategy failed and Trump declared bankruptcy (Grant and Berzon 2016). Yet as long as Trump was able to project an image of opulence and financial success, he had for the most part over the years been able to convince others to lend him money or buy his products and services (Barstow et al. 2018, Buettner et al. 2020, Cassidy 2019).

In this way, Trump's business modus operandi, or "core competency," has been described as more than mere hucksterim but even more unseemly as one of "profiting from misrepresentation and deceit and, potentially, fraud" (Davidson 2018). A few weeks after the 2016 presidential election, for example, Trump agreed to a $25 million settlement of class action litigation over allegations of false advertising over Trump University (Winter & Clark 2018). He and his business organization have reportedly been under a fraud investigation by the New York Attorney General and the Manhattan District Attorney (Mashayekhi 2021). Throughout his presidency, Trump exhibited a propensity to traffic in falsehoods and exaggerations (Kessler 2021)—culminating in

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[70] Data on this litigation track record are from the New York University Law School's Institute of Policy Integrity, https://policyintegrity.org/trump-court-roundup. Drawing on this data, Davis Noll (forthcoming) reports that, "[w]hile prior administrations prevailed in approximately 70% of legal challenges to agency regulations, the Trump administration's success rate is currently 17%." Numerous other studies of litigation outcomes over one major agency's rulemakings (EPA) confirms that the government wins most of the time (Coglianese & Walters 2020b, p. 1026-1027). By contrast, the Trump Administration lost 93 percent of the EPA challenges listed in the Institute of Policy Integrity dataset.

[71] Whatever else might be their virtues or vices, the so-called ossifying features of the administrative process appear to have been sufficient to impede certain efforts by the Trump Administration that were poorly analyzed if not even rash. As a normative matter, this might well offer support for embracing, rather than denouncing, the very administrative procedures and judicial review that have been criticized as fostering the ossification of rulemaking. Scholars have noted that judicial review and agency procedures can foster care in agency rulemaking (Seidenfeld 1997; Croley 2007; Nielson 2018; Shapiro 2018-2019; Livermore & Revesz 2020).

his final months of a "big lie" that the 2020 presidential election was rigged, a falsehood which he continues to spread.

In addition to his general propensity for stretching and contradicting the truth, Trump as President exhibited little interest in the substance of policy. For the President as well as his appointees, greater value seemed to be placed on announcements that could grab the headlines than on the hard work needed to turn those headlines into actual accomplishments. For this reason, Trump reportedly relished the opportunity to sign an executive order, creating the appearance of actually achieving action even if reality never came to match appearance (Kadei 2017, Paarlberg 2017).

Admittedly, the Trump Administration was able to exploit at least a patina of reality to help sustain its deregulatory deception. The repeal of 14 Obama-era regulations under the Congressional Review Act in 2017 provided an early fig leaf for the Trump Administration to use to claim actual success. These 14 resolutions of disapproval that Trump signed were indeed real, and they represented far more regulatory reversals under the Congressional Review Act than any other President had signed. This gave the Trump Administration a grain of truth upon which all future exaggerated claims could be built. The President and his supporters had little need to mention that these 14 repeals represented only the tiniest percentage of the Obama regulatory record, and that only two of the 14 repealed Obama rules had ever been expected to have had significant economic impacts. Making these 14 regulatory repeals sound like a great accomplishment simply set the stage for making even more minor actions sound much more significant than they really were.[72]

The Trump Administration, of course, is hardly the first to have tried to foster public impressions, and even misimpressions, that cast its efforts in a favorable light to voters and supporters. Symbolism has always been a major part of normal politics (Edelman 1985). As Justice Kagan has noted, "Presidents have a large stake in ensuring an administration that works, *at least in the eyes of the public*" (Kagan 2001, p. 2339 emphasis added). She emphasized that Presidents seek "to be, *and be perceived as*, successful leaders" (Kagan 2001, p. 2339 emphasis added). For President Trump, though, the perceptions likely mattered more than actual accomplishments. In this respect, he appears to have been an outlier among politicians in terms of the degree to which he seemed to care almost exclusively about image over reality. It was thus likely sufficient to be able to achieve simply a little deregulation and then to proceed to make it seem like massive deregulation.[73]

That strategy appears not only to have worked but it was proved inherently easier to achieve than actually delivering massive deregulatory change. Relatively few in the media or the public have a sufficient understanding of the regulatory process to put into perspective a mere 14 repeals under the Congressional Review Act (only two of which were economically significant), or to be able to gather the data to test the Administration's many boasts. Successfully creating a deception

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[72] In late 2017, the Administration also issued a semiannual regulatory agenda that deleted numerous entries for planned future regulations that had been languishing. These were not repeals of regulations but deletions of entries for potential new regulations. Nevertheless, their deletion contributed to an early public misperception that the Trump Administration had taken many rules off of the books.

[73] For discussion of the symbolic payoffs of critiques of regulation, see Coglianese (2020) and Thorlin (2020).

of massive deregulation could be, and was, pulled off more easily than actually accomplishing massive deregulation.

5. Conclusion

Deregulation was widely celebrated by the Trump Administration as one of its most important policy accomplishments. The Administration claimed both that the magnitude of its deregulatory efforts far outpaced those of prior presidential administrations and that these efforts delivered substantial economic gains that drove historic economic and jobs growth, at least prior to the COVID outbreak. Yet none of the Administration's claims hold up under scrutiny. They were a mix of the exaggerated, cherry-picked, false, and indefensible. The Trump Administration never rolled back regulations at anything close to the rate it claimed and households in the United States never gained thousands of dollars annually from these efforts.

Admittedly, all politicians engage in the art of the political spin to some degree. But giving the Trump Administration's claims about deregulation closer scrutiny has been justified given the degree to which Administration officials made deregulation central to their policy narrative as well as the extent to which even informed observers have accepted the parts of that narrative pertaining to regulation. For regulatory scholars, this scrutiny has also cast a spotlight on a type of political strategy—what we have called the deregulation deception—that the Trump Administration seemed to have mastered. Other politicians elsewhere in the world have exploited this strategy to some degree (Coglianese 2020). The basic idea is for elected officials to make it appear to their constituents as if regulation is a problem and that the officials are working to solve it by rolling back unnecessary and burdensome regulations. Because regulatory knowledge among members of the public, and even among elites, is quite limited, the deregulation deception is a relatively easy strategy to pursue. Even eliminating a modest number of insignificant regulations can be convincingly made to look like a major accomplishment. All sorts of positive economic trends, or even just aspirations, can then be ascribed to deregulation. By revealing the deception, we hope not only to correct the historical record about the Trump Administration but also to invite further scrutiny of the use of deregulation as a symbolic political strategy.

Although we have approached our review by remaining close to the specific claims made by members of the Trump Administration, we are not unmindful of claims that the Administration did *not* make, such as about the societal benefits lost by its deregulatory efforts. Even though these efforts were relatively modest, we do not wish to overlook nor understate any of their adverse consequences—nor the consequences simply from the Administration's slowdown in the adoption of new regulations or from a reduction in the enforcement of existing regulations. In the context of climate change, for example, the Trump Administration did weaken various limits on greenhouse gas emissions that might have kept the United States moving forward in addressing one of the most significant and challenging problems confronting the nation and the world. Even without rule rollbacks, the consequences in terms of merely a loss of time and momentum in U.S. climate action cannot be disregarded.[74] Yet these types of harms—that is, the costs of deregulation or a reduction in regulatory vigilance more generally—were missing entirely from the claims made

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[74] Furthermore, a full accounting of deregulation would also take into account measures other than the elimination of rules. Reduced enforcement of regulations can also have negative consequences on social welfare, especially for those on the bottom of the income distribution (Lipton and Ivory 2017; EDGI 2018). In addition, the granting of waivers or exceptions can also undermine the efficacy of regulation (Coglianese, Scheffler & Walters 2021).

by President Trump and and other White House officials about the Administration's deregulatory agenda. The Trump Administration not only overstated what it delivered by way of deregulation but it did next to nothing to acknowledge negative effects from the limited actions it did take. That, too, was part of the deregulation deception.

In seeking to illuminate why an administration so vocal about its antipathy toward regulation did not end up doing more than it did, we have suggested that the real goal might not have been so much as to effectuate historic rollbacks of regulation but simply to make it seem as if massive deregulation had occurred. We have noted that massive levels of deregulation could never be possible without legislative changes and that, in any event, the regulatory rollbacks that are legally possible are potentially harder to undertake, at least politically, than imposing new regulations. And absent administrative and managerial acumen, even the legally permissible deregulatory measures will be hard for an administration to implement to any substantial degree.

The failure of the Trump Administration to have effectuated ambitious, historic levels of deregulation might well be read by some observers as an affirmation of the current regulatory process in the United States. That process seemed particularly well-suited to frustrate the achievement of policy goals by any administration that prizes style over substance, that dismisses expertise, and that lacks standard levels of administrative skill. In the end, even though the Trump Adminstration did succeed in consummating a deregulation deception, it failed to accomplish its ambitiously stated deregulatory goals. Its actual record bore no resemblance to the rhetoric which has shaped broader perceptions of the Trump Administration's policy legacy.

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