



## Memo to the Next President

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A Progressive Vision of  
Government and Protective  
Safeguards

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# Memo to the Next President

A Progressive Vision of Government and Protective Safeguards

## Championing a Positive Vision of Government

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*This myth that government is always the enemy – that forgets that our government is us, that it's an extension of us, ourselves. That attitude is as corrosive to democracy as the stuff that resulted in lead in your water.*

-- President Barack Obama on the Flint, Michigan, drinking water crisis, May 4, 2016

**The next president should articulate a positive vision of government.** For decades, we have been stuck in a debate based on the false premise that markets enhance liberty while government restricts it. That is wrong. Properly organized, government becomes an *agent* of liberty by promoting opportunity, health, and security for all. It is hard to fully enjoy your liberty when a preventable workplace accident puts you in a hospital bed or your children cannot drink water from the tap. Debates about regulation must recognize that the appropriate question is what the mix of markets and government should be, not that markets are always good and government is always bad.

For instance, toxic air pollution poses a public health hazard against which individuals and families would be unable to protect themselves on their own. Saving the bald eagle from the brink of extinction is not something that could have been accomplished through the free market. Wilderness and national parklands sustain precious community resources that history has shown would be imperiled if left unprotected. Though market forces can at times be harnessed to help protect public health and promote conservation, often the most effective way to protect the public and enhance our liberty is through direct government action.

**The next president should remind the public that government is how we as citizens ensure that the market system operates in harmony with our basic social values.** No one questions the importance of a vibrant and growing economy, yet strengthening markets is not the exclusive objective of government. Americans are also concerned with fairness, equity, and the incalculable value of human life. Thanks to social safety net programs – such as food and housing assistance and subsidized health care – millions of Americans who would otherwise be at risk do not go to bed hungry, lacking shelter, or without some access to basic medical care, and the United States is a fairer and more equitable country as a result. Consumer safeguards and public health programs reflect the American values of protecting people

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from those threats against which they cannot adequately protect themselves. In important ways, these safeguards and programs also promote liberty as well by protecting our individual health and well-being, which in turn contribute to our capability to pursue and achieve our full potential. Similarly, pollution control laws give life to the principle that everyone is entitled to be protected from personal intrusions (such as harms to health) to which they have not agreed to be subjected, and that individuals and corporations should take responsibility for actions that impose harms on others.

**The next president should respond forcefully to the decades-long campaign to foster public distrust of governing institutions, which has included systematically depriving it of resources it needs to address public problems effectively.** In recent years, a vocal minority has succeeded in diminishing the effectiveness of government by waging a self-serving campaign to weaken the public's esteem for government and other public institutions, such as by starving the government of the funding it needs to ensure proper implementation of government programs. This in turn triggers a vicious cycle, in which the failure of the democratic tools of self-governance further reinforces public contempt for government, generating pressure for still further funding cuts. Reversing this cycle will require restoring the public's faith in its governing institutions and rebuilding and revitalizing the tools of self-governance.

## Reaffirming the Essential Role of Government Safeguards and Standards

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*Together we discovered that a free market only thrives when there are rules to ensure competition and fair play. Together we resolve that a great nation must take care of the vulnerable and protect its people from life's worst hazards and misfortunates. . . . [W]e have always understood . . . that preserving our individual freedoms ultimately requires collective action.*

-- President Barack Obama, Inaugural Address, January 21, 2013

**The next president should make clear that the implementation of health, safety and environmental legislation is an example of democracy in action.** When agencies implement statutes that protect people and the environment, they are acting pursuant to a statute passed by both chambers of Congress and signed by the president. The legislation reflects a determination by both of the democratically elected branches of the federal government – a majority of the legislature and the president – that (a) there is a pressing national problem that merits the government's attention, (b) government standards are an appropriate response to that problem, and (c) the standards will be more effective if experts in the agencies apply their specialized knowledge and skills to designing the most effective policies for achieving the statutorily specified goal.

**The next president should emphasize the incalculable benefits that government safeguards have produced for the American people, including:**

- When combined, the estimated benefits for the most significant government standards exceed the estimated costs by a ratio of about 8 to 1.<sup>1</sup>
- The Environmental Protection Agency (EPA) estimates that the benefits of Clean Air Act safeguards exceed costs by a 25-to-1 ratio.<sup>2</sup> The agency estimates Clean Air Act rules saved 164,300 adult lives in 2010 and will save 237,000 lives annually by 2020.<sup>3</sup> EPA regulations phasing out lead in gasoline have prevented millions of children from suffering severe cognitive impairment.<sup>4</sup>
- The National Highway Traffic Safety Administration's vehicle safety standards have reduced the traffic fatality rate from nearly 3.5 fatalities per 100 million vehicle miles traveled in 1980 to 1.41 fatalities per 100 million vehicle miles traveled in 2006.<sup>5</sup>

*The National Highway Traffic Safety Administration's vehicle safety standards have reduced the traffic fatality rate from nearly 3.5 fatalities per 100 million vehicle miles traveled in 1980 to 1.41 fatalities per 100 million vehicle miles traveled in 2006.*

*The failure to regulate hazards related to the workplace, the environment, product and food safety, and more, and the failure to enforce existing safeguards to address such hazards, results in thousands of deaths, tens of thousands of injuries, and billions of dollars in economic damages every year.*

- An Endangered Species Act recovery program developed by the U.S. Fish and Wildlife Service helped increase the bald eagle population from just 400 nesting pairs in 1963 to 10,000 nesting pairs in 2007, enabling the Service agency to remove the bird from the Endangered Species List.<sup>6</sup>

**The next president should remind the American people that they ultimately bear the costs that result from the failure to establish protective safeguards.**

The failure to regulate hazards related to the workplace, the environment, product and food safety, and more, and the failure to enforce existing safeguards to address such hazards, results in thousands of deaths, tens of thousands of injuries, and billions of dollars in economic damages every year. Sometimes, the damages reach a catastrophic scale. The 2010 BP oil spill caused tens of billions of dollars in damages.<sup>7</sup> The Wall Street collapse of 2008 may have caused trillions. Adopting and enforcing standards to prevent future catastrophes will almost always be far less expensive and less painful than cleaning up damage to lives, property, and the environment later.<sup>8</sup> Regulatory opponents love to complain about the costs of safeguards for American corporations, but they rarely if ever discuss the costs and disruption that the American public must endure when safeguards are blocked or delayed.

Looking forward, we face a future in which unproven technologies such as nanomaterials have the potential to become commonplace, requiring effective new protections. Ten years from now and beyond, we will face emerging regulatory challenges that are impossible to predict today. What is clear, however, is that new risks continue to emerge as the U.S. economy evolves and technologies advance. As in the past, a vital role for government will be anticipating such risks and taking the necessary steps to adequately protect public health and the environment.

**The next president should forcefully rebut the myth advanced by some corporate interest groups and lawmakers that federal regulatory activity has become excessive and overly burdensome.** The best available evidence confirms that strong regulatory protections are consistent with both job growth and a sound economy:

- Dozens of retrospective evaluations of government standards by the EPA and the Occupational Safety and Health Administration (OSHA) have found that these standards were still necessary and that they did not produce significant job losses or have adverse economic impacts for affected industries, including small businesses.<sup>9</sup>
- Clean Air Act regulations helped contribute to a 68-percent reduction in total emissions of criteria pollutants such as ground-level ozone and fine particulate matter between 1970 and 2011. During this same period, U.S. gross domestic product grew 212 percent.<sup>10</sup>

- A comprehensive book-length study looked at the economy-wide employment impacts of regulation and concluded that “to date the empirical work suggests that regulation plays relatively little role in affecting the aggregate number of jobs in the United States.”<sup>11</sup> Researchers evaluating OSHA’s Cotton Dust Standard found evidence that the rule led the textile industry to modernize its facilities. The investments in new equipment increased the industry’s productivity and profitability, enabling it to invest in additional job creation.<sup>12</sup>

**The next president should recognize that excessive procedural requirements unnecessarily prevent agencies from implementing reasonable safeguards.** The EPA, the Food and Drug Administration, OSHA, and other protector agencies should be accountable for their actions, and administrative procedures help to ensure that they are, but it is also important that the procedures not be so onerous and time-consuming that these agencies are unable to carry out even their basic statutory missions. The administrative process is now so ossified that more extensive rulemakings commonly require at least four to eight years – and sometimes more than a decade – to complete.<sup>13</sup>

**The next president should explain how budget cuts have so undermined protector agencies that they are no longer able to keep people safe.** Given that these agencies’ budgets comprise such a small portion of the overall federal budget, the budget cuts they have endured cannot be linked to any legitimate effort to protect governmental solvency. Rather, it appears that these cuts are at least in part motivated by a desire to prevent the agencies from protecting the public in ways that impose costs on favored corporate interests.<sup>14</sup> Budget cuts have contributed to the ossification of rulemaking by robbing agencies of the resources that they need to overcome the thick web of procedures with which they must comply. In some cases, new vital safeguards are started but never completed. When they are completed, political opposition and inadequate resources can prevent agencies from implementing and enforcing the safeguards effectively. In too many cases, agencies simply lack the resources to carry out routine inspections, monitor industry compliance efforts, or write and review permits. And the persistent inability to hold corporations accountable for violating regulatory requirements only encourages industry scofflaws to shirk their compliance responsibilities.

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## Building a 21st Century Regulatory System that Works for the People

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*Our regulatory system has become so heavily tilted in favor of powerful corporations that it is often now more attentive to narrow corporate interests than to the broader public interest.*

The American people need a new and better regulatory system – one that is capable of and focused on protecting people and the environment. Our regulatory system has become so heavily tilted in favor of powerful corporations that it is often now more attentive to narrow corporate interests than to the broader public interest. The result is that landmark statutes that enjoy broad public support – the Clean Air Act, the Federal Food, Drug, and Cosmetic Act, the Occupational Safety and Health Act, and other public interest laws that Congress has enacted over the past several decades – are not being implemented as intended. Meanwhile, the public continues to bear the high costs of corporations’ polluting and other harmful activities, and corporations continue to remain unaccountable for many of the harms their activities are causing.

**Our regulatory system offers a proven and realistic way to make progress on protecting public health, safety, the environment, and our financial security.** For the foreseeable future, continued political gridlock will likely prevent Congress from pursuing timely and effective legislative responses to public threats of harm. Instead, if any such protections are to come, they will have to be achieved by the next president through the regulatory system under existing statutory authority.

**Our civil justice system offers an important backup to protecting public health, safety, the environment, and our financial security.** The opportunity for individuals to sue to protect themselves and the environment is a crucial backup to the regulatory system. Industry interest groups have funded a massive campaign to prevent citizens from suing to obtain redress for irresponsible and dangerous corporate behavior and to deter such behavior in the future. The next president must fight efforts to add new barriers to bringing legitimate lawsuits and ensure that the public has access to the courts for vindicating its rights.

**Accordingly, the next president should promise to revitalize the regulatory system.** In particular, the next president must leverage the full extent of his or her authority to rebuild our system of regulatory safeguards. The next president should:

- Work to ensure that each agency has adequate budgetary resources, equipment, and personnel to fulfill its statutory mission.
- Demand that Congress provide and muster public support for enhanced or updated legal authorities to better address any gaps in regulatory safeguards that relate to each agency's statutory mission.



- Press for enhanced or updated legal authorities to address any new and emerging threats that relate to each agency's statutory mission.
- Eliminate all unnecessary and burdensome analytical and procedural requirements that unduly delay agency action and waste agency resources.
- Appoint qualified experts with a demonstrated commitment to the public interest to relevant leadership posts within agencies.
- Preserve agency expert-driven discretion against interference from political officials within the White House.
- Promote regulatory decision-making that prioritizes public protections over narrow, private economic concerns, to the extent consistent with applicable statutory authority.
- Refuse to allow scientific uncertainty to serve as a justification for regulatory inaction in the face of significant threats of harm, to the extent consistent with applicable statutory authority.
- Strongly defend agency actions against political and other self-serving attacks.
- Enhance transparency measures for key decision points in the rulemaking process to guard against regulatory capture.
- Preserve individual access to the courts by vetoing legislation that cuts off the ability of citizens to sue corporations whose actions harm health, safety, or the environment and blocking efforts by regulatory agencies to preempt or block such lawsuits.
- Take affirmative steps to ensure that the opportunities for individuals, families, and small businesses to participate in the regulatory system are at or near parity with those enjoyed by large corporations and trade associations, including, when appropriate, measures to restrict or limit the participation of large corporations and trade associations.

## Endnotes

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<sup>1</sup> OFFICE OF MGMT. & BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, DRAFT 2014 REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND UNFUNDED MANDATES ON STATE, LOCAL, AND TRIBAL ENTITIES 11, *available at* [https://www.whitehouse.gov/sites/default/files/omb/inforeg/2014\\_cb/draft\\_2014\\_cost\\_benefit\\_report-updated.pdf](https://www.whitehouse.gov/sites/default/files/omb/inforeg/2014_cb/draft_2014_cost_benefit_report-updated.pdf).

<sup>2</sup> ENVTL. PROTECTION AGENCY, THE BENEFITS AND COSTS OF THE CLEAN AIR ACT FROM 1990 TO 2020, 7-9 (Mar. 2011), *available at* <http://www.epa.gov/oar/sect812/feb11/fullreport.pdf>.

<sup>3</sup> These air pollution controls also saved 13 million days of work loss and 3.2 million days of school loss in 2010. By 2020, they will save 17 million work loss days and 5.4 million school loss days. *Id.* at 5-25 (Table 5-6).

<sup>4</sup> This regulation helped reduce the average blood lead level in U.S. children aged one to five from 14.9 micrograms of lead per deciliter ( $\mu\text{g}/\text{dL}$ ) of blood during the years 1976 to 1980 to 2.7  $\mu\text{g}/\text{dL}$  during the years 1991 to 1994. Because of its harmful effect on children's brain development and health, the Centers for Disease Control and Prevention considers blood lead levels of 10  $\mu\text{g}/\text{dL}$  or greater to be dangerous to children (though the agency notes that there is no "safe" level of lead in the bloodstream). According to CDC estimates based on a sample of the U.S. population, during the years 1976 to 1980, 88 percent of U.S. children aged one to five had blood lead levels greater than or equal to 10  $\mu\text{g}/\text{dL}$ ; during the years 1991 to 1994, the CDC estimated that only 4.4 percent of children in this age range had blood lead levels at or in excess of 10  $\mu\text{g}/\text{dL}$ . The most recent CDC population sample data, covering the years 2007 to 2010, reveals even more progress – only an estimated 0.8 percent of U.S. children aged one to five had blood lead levels greater than or equal to 10  $\mu\text{g}/\text{dL}$ . U.S. Evtl. Protection Agency, *Learn About Lead*, <https://www.epa.gov/lead/learnabout-lead> (last visited June 1, 2016); Rena Steinzor et. al., *A Return to Common Sense: Protecting Health, Safety, and the Environment Through "Pragmatic Regulatory Impact Analysis"* 17-18 (Ctr. for Progressive Reform, White Paper 909, 2009), *available at* [http://www.progressivereform.org/articles/PRIA\\_909.pdf](http://www.progressivereform.org/articles/PRIA_909.pdf); U.S. Ctrs. for Disease Control & Prevention, *Blood Lead Levels in Children Aged 1–5 Years — United States, 1999–2010*, 62 MORBIDITY & MORTALITY WEEKLY REPORT (MMWR) 245, 245-48 (2013), <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6213a3.htm> (last visited June 3, 2016). Critically, given that these estimates are based on population samples, they may not accurately capture certain segments of the population that are disproportionately burdened by lead poisoning, including people of color and the urban poor. To the extent that this is the case, these estimates, particularly the most recent ones, may undercount the number of children aged one to five with blood lead levels that are greater than or equal to 10  $\mu\text{g}/\text{dL}$ . It is also critical to reemphasize that most public health officials do not recognize a blood lead level of 10  $\mu\text{g}/\text{dL}$  to be "safe" and that many public health officials agree that there is no "safe" blood lead level.

<sup>5</sup> RENA STEINZOR & SIDNEY SHAPIRO, THE PEOPLE'S AGENTS AND THE BATTLE TO PROTECT THE PUBLIC: SPECIAL INTERESTS, GOVERNMENT, AND THREATS TO HEALTH, SAFETY, AND THE ENVIRONMENT 12 (2010).

<sup>6</sup> Press Release, Fish & Wildlife Serv., U.S. Dept. of the Interior, Bald Eagle Soars Off Endangered Species List Secretary Kempthorne: The Eagle has Returned (June 28, 2007), *available at* <http://www.fws.gov/news/ShowNews.cfm?newsId=72A15E1E-F69D-06E2-5C7B052DB01FD002>. The successful conservation of the Bald Eagle is due in part to regulations issued by the Fish and Wildlife Service under the Endangered Species Act and the Bald and Golden Eagle Protection Act, as well as to regulations issued by the EPA to ban DDT, a harmful pesticide that impaired the eagle's ability to reproduce.

<sup>7</sup> See Aaron Smith, *BP: We've Spent \$2 Billion on Clean-Up*, CNNMONEY, June 21, 2010, *available at* [http://money.cnn.com/2010/06/21/news/companies/bp\\_oil\\_spill/index.htm](http://money.cnn.com/2010/06/21/news/companies/bp_oil_spill/index.htm). In June of 2010, Credit Suisse predicted that the total costs would be around \$37 billion, with \$23 billion in clean-up costs and \$14 billion in settlement claims. Linda Stern, *Gulf Oil Spill Could Cost BP as Much as \$37 Billion*, MONEYWATCH.COM, June 8, 2010, *available at* <http://moneywatch.bnet.com/economic-news/blog/daily-money/gulfoil-spill-could-cost-bp-as-much-as-37-billion/728/>.

<sup>8</sup> OFFICE OF MGMT & BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, FISCAL YEAR 2012: ANALYTICAL PERSPECTIVES: BUDGET OF THE U.S. GOVERNMENT 47 (2011), *available at* [www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/spec.pdf](http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/spec.pdf). The Congressional Budget Office (CBO), which employs a different methodology for calculating

## Endnotes (cont'd)

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costs than does the OMB, estimates the costs of TARP to be \$19 billion. CONG. BUDGET OFFICE, REPORT ON THE TROUBLED ASSET RELIEF PROGRAM—MARCH 2011, 1 (2011), *available at* <http://www.cbo.gov/ftpdocs/121xx/doc12118/03-29-TARP.pdf>. *See also* BARBARA BUTRICA, KAREN E. SMITH, & ERIC TODER, HOW WILL THE STOCK MARKET COLLAPSE AFFECT RETIREMENT INCOMES? 1 (The Urban Institute, Older Americans' Economic Security Report No. 20, 2009), *available at* [http://www.urban.org/uploadedpdf/411914\\_retirement\\_incomes.pdf](http://www.urban.org/uploadedpdf/411914_retirement_incomes.pdf).

<sup>9</sup> Sidney Shapiro et al., *Saving Lives, Preserving the Environment, Growing the Economy: The Truth About Regulation* 10, 20-30 (Ctr. for Progressive Reform, White Paper 1109, 2011), *available at* [http://www.progressivereform.org/articles/RegBenefits\\_1109.pdf](http://www.progressivereform.org/articles/RegBenefits_1109.pdf).

<sup>10</sup> U.S. Env'tl. Protection Agency, Clean Air Act Overview: The Clean Air Act and the Economy, <https://www.epa.gov/clean-air-act-overview/clean-air-act-and-economy> (last visited June 20, 2016).

<sup>11</sup> CARY COGLIANESE, ADAM M. FINKEL & CHRISTOPHER CARRIGAN, DOES REGULATION KILL JOBS? (2013).

<sup>12</sup> OCCUPATIONAL SAFETY & HEALTH ADMIN., OFFICE OF PROGRAM EVALUATION, REGULATORY REVIEW OF OSHA'S COTTON DUST STANDARD 22, 35-38 (2000), *available at* [https://www.osha.gov/dea/lookback/cottondust\\_final2000.pdf](https://www.osha.gov/dea/lookback/cottondust_final2000.pdf).

<sup>13</sup> Richard J. Pierce, Jr., *Waiting for Vermont Yankee III, IV and V? A Response to Beermann and Lawson*, 75 GEO. WASH. L. REV. 902, 912 (2007). A Review of Regulatory Reform Proposals: A Hearing before the S. Comm. on Homeland Sec. & Gov't Aff., 114th Cong. 8 (statement of Sidney A. Shapiro, Fletcher Chair in Admin. L., Wake Forest U. School of L., Vice President, Ctr. for Progressive Reform), *available at* [http://progressivereform.org/articles/Shapiro\\_SenateRegReform\\_091615.pdf](http://progressivereform.org/articles/Shapiro_SenateRegReform_091615.pdf).

<sup>14</sup> STEINZOR & SHAPIRO, *supra* note 5, at 54-71.

## About the Center for Progressive Reform

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Founded in 2002, the Center for Progressive Reform is a 501(c)(3) nonprofit research and educational organization comprising a network of scholars across the nation dedicated to protecting health, safety, and the environment through analysis and commentary. CPR believes sensible safeguards in these areas serve important shared values, including doing the best we can to prevent harm to people and the environment, distributing environmental harms and benefits fairly, and protecting the earth for future generations. CPR rejects the view that the economic efficiency of private markets should be the only value used to guide government action. Rather, CPR supports thoughtful government action and reform to advance the well-being of human life and the environment. Additionally, CPR believes people play a crucial role in ensuring both private and public sector decisions that result in improved protection of consumers, public health and safety, and the environment. Accordingly, CPR supports ready public access to the courts, enhanced public participation, and improved public access to information.