Written Testimony of

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Committee on Judiciary
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on

H.R. 4078, the Regulatory Freeze for Jobs Act of 2012

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PUBLIC CITIZEN

Mr. Chairman and Members of the Committee,

Thank you for the opportunity to testify today on H.R. 4078, the Regulatory Freeze for Jobs Act of 2012. I am Robert Weissman, president of Public Citizen. Public Citizen is a national public interest organization with 250,000 members and supporters. For more than 40 years, we have advocated with some considerable success for stronger health, safety, consumer protection and other rules, as well as for a robust regulatory system that curtails corporate wrongdoing and advances the public interest.

Public Citizen co-chairs the Coalition for Sensible Safeguards (CSS). CSS is an alliance of more than 75 consumer, small business, labor, scientific, research, good government, faith, community, health and environmental organizations joined in the belief that our country's system of regulatory safeguards provides a stable framework that secures our quality of life and paves the way for a sound economy that benefits us all. Time constraints prevented the Coalition from reviewing my testimony in advance, and today I speak only on behalf of Public Citizen.

The Regulatory Freeze for Jobs Act would impose a moratorium on all significant regulatory action until the national unemployment rate drops to 6.0 percent. The legislation defines "significant regulatory action" as steps toward issuance of a rule having an impact on the economy of $100 million or more, or which meets other criteria. The legislation exempts action that would repeal a rule, but not to modify it (even if the modification weakened a standard). The legislation authorizes the president to waive the moratorium in certain limited cases (to address an "imminent" threat to human health or safety or other emergency; to enforce criminal laws; for national security; or pursuant to legislation implementing international trade agreements).

Given current unemployment projections, the Act would impose a roughly five-year moratorium on significant regulatory action.[1]

In the current context of scandalously high unemployment, the Committee is right to focus attention on the causes of unemployment and on needed remedies. However, excessive regulation is neither the cause of the jobs crisis nor a meaningful impediment to job creation. The Regulatory Freeze for Jobs Act is the wrong cure for the nation's serious job ailment -- it wouldn't remedy the problem, could well make the problem worse, and would cause devastating side effects.

The first section of this testimony argues that regulation does not have a meaningfully harmful impact on jobs and delivers significant net economic benefits. The second section argues that regulatory failures -- deregulation, underregulation and lack of enforcement -- had a central role in causing the Wall Street crash and the Great Recession. Recognizing the regulatory failures undergirding the current jobs crisis emphasizes the need for new and evolving rules to prevent another job-destroying, Wall Street-

[1] The Congressional Budget Office projects that unemployment will be 6.9 percent by the end of 2015 and 5.6 percent by the end of 2017. Congressional Budget Office. (2012). *The Budget and Economic Outlook: Fiscal Years 2012 to 2022*. Retrieved 24 February, 2012, from http://cbo.gov/publication/42905

induced financial crisis. The third section discusses the vital function of regulation in making our country better and stronger, and shows some of the damage that would be done by a five-year moratorium on significant regulatory action. The fourth section analyzes the ways in which the legislation would, perhaps unintentionally, interfere with a diverse set of government programs and initiatives, including matters such as rules authorizing bird hunting. The conclusion emphasizes that the regulatory system is in need of significant reform, but not in the direction proposed by the Regulatory Freeze for Jobs Act.

I. Regulatory Protections Strengthen the Economy

The central premise of the Regulatory Freeze for Jobs Act is that regulatory protections meaningfully interfere with job preservation and creation. This premise is mistaken.

While regulators commonly do not have job creation as a mission priority, they are mindful of regulatory cost, and by statutory directive or on their own initiative typically seek to minimize costs; relatedly, the rulemaking process gives affected industries ample opportunity to communicate with regulators over cost concerns, and these concerns are taken into account. To review the regulations actually proposed and adopted is to see how much attention regulators pay to reducing cost and detrimental impact on employment. And to assess the very extended rulemaking process is to see how substantial industry is influence over the rules ultimately adopted -- or discarded.

Even where the cost of regulatory compliance is nontrivial, the net job impact may be minimal or even positive; firm expenditures on regulatory compliance typically create new jobs within affected firms or other service or product companies with which they contract.

It is also the case that firms typically innovate creatively and quickly to meet new regulatory requirements, even when they fought hard against adoption of the rules. [2] The result is that costs are commonly lower than anticipated.

The economics literature on regulation does not support the claim that regulation meaningfully impedes job growth. A survey of the literature conducted by the Economics Policy Institute finds a rough consensus: regulation has little direct impact on job creation, and may offer a net positive benefit.[3] A literature review by the Office of Management and Budget, included in the *2011 Report to Congress on the Benefits and Costs of Federal Regulation*, highlights several studies articulating theoretical approaches showing why different forms of regulation -- including labor market, environmental and economic regulation -- might increase or decrease employment and, in general, concludes the empirical

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[2] Mouzoon, N., & Lincoln, T. (2011). *Regulation: The Unsung Hero in American Innovation*. Public Citizen. Retrieved 24 February, 2012, from http://www.citizen.org/documents/regulation-innovation.pdf
[3] Shapiro, I., & Irons, J. (2011). *Regulation, Employment, and the Economy: Fears of job loss are overblown*. Economic Policy Institute. Retrieved 24 February, 2012, from http://www.epi.org/files/2011/BriefingPaper305.pdf

evidence is ambiguous.[4] Addressing the impact of a moratorium on environmental regulations, Congressional Budget Office Director Douglas Elmendorf in Senate testimony last year stated, "On balance, CBO expects that delaying or eliminating those regulations regarding emissions would reduce investment and output during the next few years, because the response to the factors that would tend to boost investment under those circumstances would probably be smaller than the response to the factors that would reduce investment."[5]

Prognostications of job loss and excess cost from specific rules routinely turn out to be significantly overstated, EPI has shown, both in government estimates of the cost of regulatory compliance with new rules and especially in industry claims.[6] Impacted industries have a natural bias to overestimate costs of regulatory compliance, and projections of cost regularly discount the impact of technological dynamism. In the case of acid rain regulations, for example, industry projected costs of $5.5 billion initially, rising to $7.1 billion in 2000; ex-ante estimates place costs at $1.1 billion - $1.8 billion.[7] And, "in the case of the regulation of benzene emissions, control costs were estimated at $350,000 per plant by the chemical industry, but soon thereafter the plants developed a new process in which more benign chemicals could be substituted for benzene, thereby reducing control costs to essentially zero."[8] The last century teaches us that Chicken Little warnings about the costs of the next regulation should be, at the very least, heavily discounted.

Indeed, careful examination of one of the most costly rules issued during the Obama administration -- national standards for mercury, arsenic and other toxic air pollutants emitted by power plants, known as the "toxics rule" -- shows that it will lead to net job creation.[9]

We are, of course, living in a period of shamefully high unemployment and underemployment, and it is absolutely correct to focus attention on job creation. But excessive regulation is neither the cause of the nation's mass unemployment -- actually, to a very considerable extent, the opposite is the case, as

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[4] Office of Management and Budget, Office of Information and Regulatory Affairs. (2011). *2011 Report to Congress on the Benefits and Costs of Federal Regulations on Unfunded Mandates on State, Local, and Tribal Entities*. Retrieved 23 February, 2012, from http://www.whitehouse.gov/sites/default/files/omb/inforeg/2011_cb/2011_cba_report.pdf

[5] Congressional Budget Office. (2011, November 15). *Statement of Douglas Elmendorf: Policies for Increasing Economic Growth and Employment in 2012 and 2013, page 49*. Testimony before the Committee on the Budget, United States Senate. Retrieved 24 February, 2012, from http://budget.senate.gov/democratic/index.cfm/files/serve?File_id=795c2267-9349-4c2c-a488-262dfd346a2c

[6] Shapiro, I., & Irons, J. (2011). *Regulation, Employment, and the Economy: Fears of job loss are overblown*. pp. 21-27 Retrieved 24 February, 2012, from http://www.epi.org/files/2011/BriefingPaper305.pdf

[7] The Pew Environment Group. (2010, October). *Industry Opposition to Government Regulation*. Retrieved 24 February, 2012, from http://www.pewenvironment.org/uploadedFiles/PEG/Publications/Fact_Sheet/Industry%20Clean%20Energy%20Factsheet.pdf

[8] Shapiro, I., & Irons, J. (2011). *Regulation, Employment, and the Economy: Fears of job loss are overblown*. Economic Policy Institute. Retrieved 24 February, 2012, from http://www.epi.org/files/2011/BriefingPaper305.pdf

[9] Bivens, J. (2012). *The 'Toxics Rule' and Jobs: The job-creation potential of the EPA's new rule on toxic power-plant emissions*. Economic Policy Institute. Retrieved 24 February, 2012, from http://www.epi.org/files/2012/ib325.pdf

discussed below -- nor the barrier to job creation. Indeed, not only do business economists not cite regulation as a significant problem for business, they actually say the regulatory environment is "good" for business.[10] The overriding reason why business -- including particularly small business -- is not hiring is lack of demand. [11]

While the U.S. Chamber of Commerce and industry trade associations regularly complain about regulation and argue that regulation is impeding job creation and injuring small business, that is not what actual small businesses say. They cite lack of demand and uncertainty about when demand will pick up as their primary concerns.

Small business owners listed "government regulation" far down their list of concerns in a survey commissioned by the American Sustainable Business Council, Main Street Alliance and Small Business Majority; the number one and number two identified biggest problems facing their businesses are "uncertainty about the future economy" and "rising costs of doing business," both cited more than three times more frequently than "government regulation."[12] In an informal survey, McClatchy/Tribune News Service found no business owners complaining about regulation.[13] The Chamber of Commerce's survey of small business similarly shows a relatively low ranking of concern about regulation.[14] More than half of small businesses in the Chamber rank "economic uncertainty" atop their list of obstacles to hiring new employees; "too much regulation" is ranked fifth.[15] Similarly, a survey by the National Federation of Independent Businesses found small business owners ranking "poor sales" as the number one problem they face, outdistancing worries about "government regulation," although as the economy has started to improve in recent months, small business respondents to the NFIB survey have expressed less concern about poor sales and more about regulation.[16]

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[10] National Association for Business Economics. (2011, August). *Economic Policy Survey*. Retrieved 24 February, 2012, from http://www.nabe.com/publib/pol/11/08/nabepolicy1108.pdf

[11] See the analysis by Treasury Department Assistant Secretary for Economic Policy Janice Eberly. Eberly, J. (2011, October 24). *Is Regulatory Uncertainty a Major Impediment to Job Growth?* U.S. Department of the Treasury. Retrieved 24 February, 2012, from http://www.treasury.gov/connect/blog/Pages/Is-Regulatory-Uncertainty-a-Major-Impediment-to-Job-Growth.aspx ("If regulatory uncertainty was a major impediment to hiring right now, we would expect to see indications of this in one or more of the following: business profits; trends in the workforce, capacity utilization, and business investment; differences between industries undergoing significant regulatory changes and those that are not; differences between the United States and other countries that are not undergoing the same changes; or surveys of business owners and economists. As discussed in a detailed review of the evidence below, none of these data support the claim that regulatory uncertainty is holding back hiring.")

[12] Small Business Majority. (2011). *Opinion Survey: Small Business owners Believe National Standards Supporting Energy Innovation Will Increase Prosperity for Small Firms*. Retrieved 24 February, 2012, from http://smallbusinessmajority.org/energy/pdfs/Clean_Energy_Report_092011.pdf

[13] Hall, K. G. (2011, 1 September). *Regulations, taxes aren't killing small business, owners say*. McClatchy Newspapers. Retrieved 24 February, 2012, from http://www.mcclatchydc.com/2011/09/01/122865/regulations-taxes-arent-killing.html

[14] U.S. Chamber of Commerce. (2011, July). *Small Business Outlook Survey*. Retrieved 24 February, 2012, from http://www.uschamber.com/sites/default/files/reports/1107usc_summit%20_harrisnteractive.pdf

[15] Ibid.

[16] Dunkelberg, W., & Wade, H. (2012). *NFIB Small Business Economic Trends*. Retrieved 24 February, 2012 from http://www.nfib.com/Portals/0/PDF/sbet/sbet201202.pdf

Insufficient demand is also the primary reason for layoffs. In extensive survey data collected by the Bureau of Labor Statistics, employers cite lack of demand roughly 100 times more frequently as the reason for mass layoffs than government regulation![17]

Reason for layoff: 2008-2010[18]

	2008	2009	2010
Business Demand	516,919	824,834	384,564
Governmental regulations/intervention	5,505	4,854	2,971

Critics of regulation have relied on some muc- touted studies that emphasize the costs of regulation, but these studies are fundamentally flawed and should not inform policy debates. Several studies cite the "cost" of regulation, but neglect to identify correlative benefits. For example, The Heritage Foundation has issued a series of reports on the cost of regulation under the Obama administration. These reports simply ignore the benefits of rules, removing all context from the cost estimate. To take one example, The Heritage Foundation attributes more than a quarter of all costs of regulation issued under the Obama administration to fuel economy standards.[19] Yet Heritage fails to mention that the National Highway Traffic Safety Administration -- the source of Heritage's cost estimate -- found those rules would confer benefits three times as great as the costs.[20]

Another study that replicates this error of counting costs but not benefits is the report issued by Nicole Crain and W. Mark Crain, consultants to the Small Business Administration Office of Advocacy.[21] This study is thoroughly discredited, but the study's groundless conclusions (that regulation costs the U.S. economy $1.75 trillion annually, or more than $10,000 per small business employee) continues to be cited too frequently in policy debates, often without attribution to the original, discredited study. Crain and Crain attribute $1.236 trillion in costs to "economic regulation,"[22] a figure that is entirely derived from a regression analysis correlating ratings on a World Bank "regulatory quality index" -- which is itself

[17] U.S. Department of Labor, Bureau of Labor Statistics. (2011, November). *Extended Mass Layoffs in 2010. Table 6. Reason for layoff: extended mass layoff events, separations, and initial claimants for unemployment insurance, private nonfarm sector, 2008-2010.* Retrieved 24 February, 2012, from http://www.bls.gov/mls/mlsreport1038.pdf
[18] Ibid.
[19] Gattuso, J., Katz, D., & Keen, S. (2010). *Red Tape Rising: Obama's Torrent of New Regulation*. The Heritage Foundation. Retrieved 24 February, 2012, from http://www.heritage.org/research/reports/2010/10/red-tape-rising-obamas-torrent-of-new-regulation
[20] Public Citizen. (2010). *Junk Math: How Public Interest Protection Opponents Count Costs and Ignore Benefits*. Retrieved 24 February, 2012, from http://www.citizen.org/documents/cafebenefits12222010.pdf
[21] Crain, N. V., & Crain, W. M. (2010). *The Impact of Regulatory Costs on Small Firms*. Prepared for Small Business Administration, Office of Advocacy. Retrieved 23 February, 2012, from http://archive.sba.gov/advo/research/rs371tot.pdf
[22] This concept as employed by Crain and Crain includes a range of elements that might properly be considered regulation, but which are not typically part of the regulatory policy debate. This includes matters such as tariffs, antitrust policy, complexity of the tax system, and ease of starting a new business. Ibid.

based on nothing more than survey data from businesses and other sources -- and national GDP per capita. It is remarkable enough to imagine that such a cross-cultural, international regression analysis would yield such a robust result that it should meaningfully inform U.S. policy; even more so, when it yields a total cost vastly out of line with other careful analysis, as well as such unlikely findings as a correlation between increased education and reduced economic growth. It turns out, as the Economic Policy Institute has shown, that with a more complete set of data than used by Crain and Crain -- but still using the same regression equations -- no statistical relationship between "regulatory quality" and GDP exists.[23] Crain and Crain also include a cost for tax compliance -- not typically considered a "regulatory" cost -- which they pin at roughly $160 billion. A number of other fatal flaws bedevil the discredited study.[24]

A more robust system for assessing the impact of regulation on the economy -- though significantly imprecise and heavily biased against the benefits of regulation -- is not to conjure up a theory to which facts are made to conform, or to invent regression analyses that rely on poor data and far too few inputs and that demonstrate regulation to have an overdetermining impact on the overall economy, but to look at the actual impact of actual regulations. Although the federal government issues thousands of regulations every year, most of these are very limited in impact, and the universe of economically significant regulations -- those that would be affected by the Regulatory Freeze act -- is relatively small, identifiable and analyzable. Every year, the Office of Management and Budget analyzes the costs and benefits of rules with significant economic benefit. The benefits massively exceed costs.

The principle finding of *OMB's 2011 Report to Congress on the Benefits and Costs of Federal Regulation* is:

> The estimated annual benefits of major Federal regulations reviewed by OMB from October 1, 2000, to September 30, 2010, for which agencies estimated and monetized both benefits and costs, are in the aggregate between $132 billion and $655 billion, while the estimated annual costs are in the aggregate between $44 billion and $62 billion. These ranges reflect uncertainty in the benefits and costs of each rule at the time that it was evaluated.[25]

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[23] Irons, J., & Green, A. (2011, 19 July). *Flaws Call For Rejecting Crain and Crain Model*. Economic Policy Institute. Retrieved 24 February, 2012, from http://www.epi.org/page/-/EPI_IssueBrief308.pdf

[24] Eisenbrey, R., & Shapiro, I. (2011, August). *Deconstructing Crain and Crain*. Economic Policy Institute. Retrieved 24 February, 2012, from http://web.epi-data.org/temp727/IssueBrief312-2.pdf; Irons, J. and Green, A., *Flaws Call for Rejecting Crain and Crain Model.;* Shapiro, S. A., & Ruttenberg, R. (2011, February). *The Crain and Crain Report on Regulatory Costs*. Center for Progressive Reform. Retrieved 24 February, 2012, from http://www.progressivereform.org/articles/SBA_Regulatory_Costs_Analysis_1103.pdf ; Copeland, C. W. (2011, April 6). *Analysis of an Estimate of the Total Costs of Federal Regulations*. Congressional Research Service. Retrieved 24 February, 2012, from http://www.progressivereform.org/articles/CRS_Crain_and_Crain.pdf

[25] Office of Management and Budget, Office of Information and Regulatory Affairs. (2011). *2011 Report to Congress on the Benefits and Costs of Federal Regulations on Unfunded Mandates on State, Local, and Tribal Entities*.

In other words, even by OMB's most conservative accounting, the benefits of major regulations over the last decade exceeded costs by a factor of more than two-to-one. And benefits may exceed costs by a factor of 14.

These results are consistent year-to-year:

Total Annual Benefits and Costs of Major Rules by Fiscal Year (billions of 2001 dollars)[26]

Fiscal Year	Number of Rules	Benefits	Costs
2001	12	22.5 to 27.8	9.9
2002	2	1.5 to 6.4	0.5 to 2.2
2003	6	1.6 to 4.5	1.9 to 2.0
2004	10	8.8 to 69.8	3.0 to 3.2
2005	12	27.9 to 178.1	3.8 to 6.1
2006	7	6.3 to 44.8	3.7 to 4.3
2007	12	28.6 to 184.2	9.4 to 10.7
2008	11	7.0 to 24.4	1.2 to 1.5
2009	15	8.6 to 28.9	3.7 to 9.5
2010	18	18.8 to 86.1	6.5 to 12.5

The reason for the consistency is that regulators pay a great deal of concern to comparative costs and benefits (too great a concern, in our view, given the built-in bias of cost-benefit analysis against regulatory initiative[27]). Very few major rules are adopted where projected costs exceed projected benefits, and those cases typically involve direct Congressional mandates.

A final point on this topic: Missing from much of the literature on regulation and jobs are the economically systemic, positive impacts of regulation. Proper regulation can avert catastrophic damage

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[26] Office of Management and Budget, Office of Information and Regulatory Affairs. (2011). *2011 Report to Congress on the Benefits and Costs of Federal Regulations an Unfunded Mandates on State, Local, and Tribal Entities*. *Table 1-3,* p. 19-20. Retrieved 23 February, 2012, from http://www.whitehouse.gov/sites/default/files/omb/inforeg/2011_cb/2011_cba_report.pdf

[27] *See, e.g.*, Shapiro, S. et al., *CPR Comments on Draft 2010 Report to Congress on the Benefits and Costs of Federal Regulations* 16-19 (App. A, Pt. C.) (2010), Retrieved 24 February, 2012, from http://www.progressivereform.org/articles/2010_CPR_Comments_OMB_Report.pdf; Steinzor, R. et al., *CPR Comments on Draft 2009 Report to Congress on the Benefits and Costs of Federal Regulations* 16-19 (App. A, Pt. C.) (2009), Retrieved 24 February, 2012, from http://www.progressivereform.org/articles/2009_CPR_Comments_OMB_Report.pdf; Sinden, A. & Goodwin, J., *CPR Comments on Draft 2008 Report to Congress on the Benefits and Costs of Federal Regulations* 5-8 (2008), Retrieved 24 February, 2012, from http://www.progressivereform.org/articles/2008_Comments_OMB_Report.pdf. For all of the comments on OMB's annual reports to Congress on the benefits and cost of federal regulation produced by CPR Member Scholars and staff, see Ctr. for Progressive Reform, *OMB Reports on the Costs and Benefits of Regulation*, Retrieved 24 February, 2012, from http://www.progressivereform.org/OMBCongress.cfm

not typically captured in prospective cost-benefit analyses, as the BP oil disaster shows.[28] Proper regulation is also essential to enable markets to function efficiently and fairly. As the 2008 Wall Street crash shows, improperly and insufficiently regulated financial markets will fail with devastating consequences for job preservation and the real economy. Regulation also has an important role in promoting innovation and technological dynamism. Environmental and economic realities necessitate the development and deployment of transformative clean energy technologies. Markets alone do not offer sufficient incentive and reward for the timely deployment of such technologies, which promise both great economic savings and very significant job creation.[29]

II. Regulatory Failures Helped Create the Jobs Crisis

The present jobs crisis has particular and identifiable causes: the collapse of the housing bubble and the ensuing financial crash. The crisis also has identifiable culprits: The big banks and Wall Street, which fueled the bubble through practices ranging from issuing predatory mortgage loans to creation of esoteric financial instruments that claimed to convert low-quality loans into top-notch investment opportunities. These practices were enabled not by too much regulation, but by too little. To a very considerable extent, the current jobs crisis should be understood as resulting from regulatory failure: deregulation, underregulation and underenforcement. The job loss stemming from this regulatory failure -- the 8 million jobs shed following the Wall Street crash -- vastly exceed any negative job impacts plausibly linked to regulation.

Recognizing the regulatory failure underpinning the current jobs crisis suggests not only that a regulatory freeze will not contribute to or enable job growth, but that it risks imperiling our economy. An unregulated or under-regulated Wall Street will strongly tend to another crash, presenting the prospect of another major recession. The Dodd-Frank Wall Street Reform and Consumer Protection Act, to be sure, was an inadequate response to the crash -- most notably in its failure to more aggressively confront the problem of too-big-to-fail financial institutions -- but blocking implementation of Dodd-Frank or adoption of other financial regulations would be an invitation for the financial sector to engineer more mass rip-offs of consumers and make our economy more vulnerable to another job-devastating crash.

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[28] In addition to the loss of human life with the explosion of the Deepwater Horizon platform, the oil disaster imposed billions in economic damage. BP has paid more than $6 billion in compensation under the Gulf Coast Claims Facility it established. Many other claims are pending. Gulf Coast Claims Facility. (2012). *Overall Program Statistics: Status Report as of February 23, 2012*. Retrieved 24 February, 2012, from http://www.gulfcoastclaimsfacility.com/GCCF_Overall_Status_Report.pdf Proper regulation could have averted the disaster.

[29] Pollin, R., Wicks-Lin, J., & Garret-Peltier, H. (2009, June). *Green Prosperity: How Clean-Energy Policies Can Fight Poverty and Raise Living Standards in the United States*. Political Economy Research Institute, University of Massachusetts Amherst. Retrieved 24 February, 2012, from http://www.peri.umass.edu/fileadmin/pdf/other_publication_types/green_economics/green_prosperity/Green_Prosperity.pdf

There is by now a very considerable literature, and a very extensive Congressional hearing record, that documents in granular detail the ways in which regulatory failure led to financial crash and the onset of the Great Recession. "Widespread failures in financial regulation and supervision proved devastating to the stability of the nation's financial markets," concluded the Financial Crisis Inquiry Commission. "The sentries were not at their posts, in no small part due to the widely accepted faith in the self-correcting nature of the markets and the ability of financial institutions to effectively police themselves. More than 30 years of deregulation and reliance on self-regulation by financial institutions, championed by former Federal Reserve Chairman Alan Greenspan and others, supported by successive administrations and Congresses, and actively pushed by the powerful financial industry at every turn, had stripped away key safeguards, which could have helped avoid catastrophe. This approach had opened up gaps in oversight of critical areas with trillions of dollars at risk, such as the shadow banking system and over-the-counter derivatives markets. In addition, the government permitted financial firms to pick their preferred regulators in what became a race to the weakest supervisor."[30]

Here I highlight just a few of the regulatory failures that contributed to the financial crash, by way of illuminating the need for a robust financial regulatory system that prevents excessive concentration and interconnection among firms, protects consumers, promotes transparency and facilitates systemic stability.

Repeal of the Glass-Steagall Act. The Financial Services Modernization Act of 1999 formally repealed the Glass-Steagall Act of 1933 (also known as the Banking Act of 1933) and related laws, which prohibited commercial banks from offering investment banking and insurance services. The 1999 repeal of Glass-Steagall helped create the conditions in which banks created and invested in creative financial instruments such as mortgage-backed securities and credit default swaps, investment gambles that rocked the financial markets in 2008. More generally, the Depression-era conflicts and consequences that Glass-Steagall was intended to prevent re-emerged once the Act was repealed. The once staid commercial banking sector quickly evolved to emulate the risk-taking attitude and practices of investment banks, with disastrous results. "The most important consequence of the repeal of Glass-Steagall was indirect -- it lay in the way repeal changed an entire culture," notes economist Joseph Stiglitz. "When repeal of Glass-Steagall brought investment and commercial banks together, the investment-bank culture came out on top. There was a demand for the kind of high returns that could be obtained only through high leverage and big risk taking."[31]

Unregulated Financial Derivatives. The 2008 crash proved Warren Buffet's warning that financial derivatives represent "weapons of mass financial destruction" to be prescient.[32] Financial derivatives amplified the financial crisis far beyond the unavoidable troubles connected to the popping of the

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[30] The Financial Crisis Inquiry Commission. (2011, January). *Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States*. Retrieved 24 February, 2012, from http://www.gpoaccess.gov/fcic/fcic.pdf, p. xviii

[31] Stiglitz, J. (2009). Capitalist fools. *Vanity Fair, 51*(1).

[32] Buffett, W. (2003). *Report to Shareholders, February 21, 2003*. Berkshire Hathaway. Retrieved 24 February, 2012, from http://www.berkshirehathaway.com/letters/2002pdf.pdf

housing bubble. AIG made aggressive bets on credit default swaps (CDSs) that went bad with the housing bust, and led to a taxpayer-financed rescue of more than $130 billion. AIG was able to put itself at such risk because its CDS business was effectively subject to no governmental regulation or even oversight. That was because first, high officials in the Clinton administration and the Federal Reserve, including SEC Chair Arthur Levitt, Treasury Secretary Robert Rubin, Deputy Treasury Secretary Lawrence Summers and Federal Reserve Chair Alan Greenspan, blocked the Commodity Futures Trading Commission (CFTC) from regulating financial derivatives;[33] and second, because Congress and President Clinton codified regulatory inaction with passage of the Commodity Futures Modernization Act, which enacted a statutory prohibition on CFTC regulation of financial derivatives.

The SEC's Voluntary Regulation Regime for Investment Banks. In 1975, the SEC's trading and markets division promulgated a rule requiring investment banks to maintain a debt-to-net capital ratio of less than 12 to 1. It forbade trading in securities if the ratio reached or exceeded 12 to 1, so most companies maintained a ratio far below it. In 2004, however, the SEC succumbed to a push from the big investment banks -- led by Goldman Sachs, and its then-chair, Henry Paulson -- and authorized investment banks to develop their own net capital requirements in accordance with standards published by the Basel Committee on Banking Supervision. This essentially involved complicated mathematical formulas that imposed no real limits, and was voluntarily administered. With this new freedom, investment banks pushed borrowing ratios to as high as 40 to 1, as in the case of Merrill Lynch. This super-leverage not only made the investment banks more vulnerable when the housing bubble popped, it enabled the banks to create a more tangled mess of derivative investments -- so that their individual failures, or the potential of failure, became systemic crises. On September 26, 2008, as the crisis became a financial meltdown of epic proportions, SEC Chair Christopher Cox, who spent his entire public career as a deregulator, conceded "the last six months have made it abundantly clear that voluntary regulation does not work."[34]

Failure to Prevent Predatory Lending. Preventing predatory lending practices would not have prevented the housing bubble and the subsequent financial meltdown, but it would have taken some air out of the bubble and softened the economic crisis -- and it would have saved millions of families and communities across the country from economic ruin. Predatory lending was easily avoidable through sound

[33] After the collapse of Long-Term Capital Management, Born issued a new call to regulate financial derivatives. "This episode should serve as a wake-up call about the unknown risks that the over-the-counter derivatives market may pose to the U.S. economy and to financial stability around the world," Born told the House Banking Committee two days later. "It has highlighted an immediate and pressing need to address whether there are unacceptable regulatory gaps relating to hedge funds and other large OTC derivatives market participants." But what should have been a moment of vindication for Born was swept aside by her adversaries, and Congress enacted a six-month moratorium on any CFTC action regarding derivatives or the swaps market. In May 1999, Born resigned in frustration. Born, B. (1998). *Testimony of Brooksley Born, Chairperson, Commodity Futures Trading Commission Concerning Long-Term Capital Management Before the U.S. House of Representatives Committee on Banking and Financial Services.* Retrieved 23 February, 2012, from http://www.cftc.gov/opa/speeches/opaborn-35.htm.

[34] Faoila, A., Nakashima, E., & Drew, J. (2008, October 15). *What Went Wrong*. The Washington Post. Retrieved 24 February 2012, from www.washingtonpost.com/wp-dyn/content/story/2008/10/14/ST2008101403344.html

regulation, but regulators failed to act. On the one hand, regulators failed to use then-existing authority to crack down on abusive lending practices. The Federal Reserve took three formal actions against subprime lenders from 2002 to 2007.[35] The Office of Comptroller of the Currency, with authority over almost 1,800 banks, took three consumer-protection enforcement actions from 2004 to 2006.[36] On the other hand, federal regulators refused to issue appropriate regulatory rules to stem predatory lending, despite persistent advocacy by consumer groups. By way of contrast, action at the state level showed that predatory lending rules could significantly limit abusive loans.[37]

Poorly Regulated Credit Ratings Firms. The credit rating firms enabled pension funds and other institutional investors to enter the securitized asset game, by attaching high ratings to securities that actually were high risk -- as subsequent events revealed. The credit ratings firms have a bias toward offering favorable ratings to new instruments because of their complex relationships with issuers,[38] and their desire to maintain and obtain other business dealings with issuers. This institutional failure and conflict of interest might and should have been forestalled by the SEC, but the Credit Rating Agencies Reform Act of 2006 gave the SEC insufficient oversight authority. In fact, under the Act, the SEC was required to give an approval rating to credit ratings agencies if they adhered to their own standards -- even if the SEC knew those standards to be flawed.

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[35] Tyson, J., Torres, C., & Vekshin, A. (2007, March 22). *Fed Says It Could Have Acted Sooner on Subprime Rout*. Bloomberg. Retrieved 24 February, 2012, from http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a1.KbcMbvIiA&refer=home

[36] Torres, C., & Vekshin, A. (2007, March 14). *Fed, OCC Publicly Chastised Few Lenders During boom*. Bloomberg. Retrieved 24 February, 2012, from http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a6WTZifUUH7g&refer=us

[37] Li, W., & Ernst, K. (2006). *The Best Value in the Subprime Market: State Predatory Lending Reforms*. Center for Responsible Lending. Retrieved 24 February, 2012 from http://www.responsiblelending.org/mortgage-lending/research-analysis/StateEffectsToolkit.pdf

[38] The CEO of Moody's reported in a confidential presentation that his company is "continually 'pitched' by bankers" for the purpose of receiving high credit ratings and that sometimes "we 'drink the Kool-Aid.'" A former managing director of credit policy at Moody's testified before Congress that, "Originators of structured securities [e.g., banks] typically chose the agency with the lowest standards," allowing banks to engage in "rating shopping" until a desired credit rating was achieved. The agencies made millions on mortgage-backed securities ratings and, as one member of Congress said, "sold their independence to the highest bidder." Banks paid large sums to the ratings companies for advice on how to achieve the maximum, highest quality rating. "Let's hope we are all wealthy and retired by the time this house of cards falters," a Standard & Poor's employee candidly revealed in an internal email obtained by congressional investigators.

Other evidence shows that the firms adjusted ratings out of fear of losing customers. For example, an internal email between senior business managers at one of the three ratings companies calls for a "meeting" to "discuss adjusting criteria for rating CDOs [collateralized debt obligations] of real estate assets this week because of the ongoing threat of losing deals." In another email, following a discussion of a competitor's share of the ratings market, an employee of the same firm states that aspects of the firm's ratings methodology would have to be revisited in order to recapture market share from the competing firm.

See, Weissman, R., & Donahue, J. (2009, March). *Sold Out: How Wall Street and Washington Betrayed America*. Essential Information and Consumer Education Foundation. Retrieved 24 February, 2012, from http://wallstreetwatch.org/reports/sold_out.pdf

For purposes of evaluating the Regulatory Freeze and Jobs Act, the details of the regulatory failures that led to financial crash and Great Recession are less important than two overarching points: first, the cause of the current jobs crisis was too little regulation and too little enforcement, not too much regulation; and second, legislation that impedes financial regulators from issuing rules to control an overly complex, centralized and reckless financial sector risks enabling another financial meltdown with the attendant devastating jobs impact.

III. Regulatory Protections Make Our Country Stronger, Safer and More Just

Health, safety, environmental, financial and other regulatory protections make our country stronger, safer and more just. The Regulatory Freeze and Jobs Act would impede our ability to strengthen our nation, adjust to changing problems and technologies, act on new evidence of harms and threats to public and environmental well-being, and leave our country more vulnerable to economic shocks like the Great Recession.

As discussed above, one underlying premise of the Act that we believe mistaken is that regulation impedes job creation. Another premise that we believe deeply misplaced is that the country can afford a lengthy regulatory moratorium.

Rhetorical debates and cost-benefit abstractions can obscure the dramatic gains our country has made due to regulation. Regulation has:

- Made our food safer.[39]
- Saved tens of thousands of lives by making our cars safer.[40]
- Made it safer to breathe, saving hundreds of thousands of lives annually.[41]
- Protected children's brain development by phasing out leaded gasoline and dramatically reducing average blood levels.[42]

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[39] American Public Health Association. (2010, November 30). *APHA Commends Senate for Passing Strong Food Safety Legislation*. Retrieved 24 February, 2012, from http://www.makeourfoodsafe.org/tools/assets/files/APHA_Senate-Passage-Food-Act_FINAL2.pdf

[40] NHTSA's vehicle safety standards have reduced the traffic fatality rate from nearly 3.5 fatalities per 100 million vehicles traveled in 1980 to 1.41 fatalities per 100 million vehicles traveled in 2006. Steinzor, R., & Shapiro, S. (2010). *The People's Agents and the Battle to Protect the American Public: Special Interests, Government, and Threats to Health, Safety, and the Environment*: University of Chicago Press.

[41] Clean Air Act rules saved 164,300 adult lives in 2010. In February 2011, EPA estimated that by 2020 they will save 237,000 lives annually. EPA air pollution controls saved 13 million days of lost work and 3.2 million days of lost school in 2010, and EPA estimates that they will save 17 million work-loss days and 5.4 million school-loss days annually by 2020. *See* U.S. Environmental Protection Agency, Office of Air and Radiation. (2011, March). *The Benefits and Costs of the Clean Air and Radiation Act from 1990 to 2020*. Retrieved 23 February, 2012, from http://www.epa.gov/oar/sect812/feb11/fullreport.pdf.

[42] EPA regulations phasing out lead in gasoline helped reduce the average blood lead level in U.S. children ages 1 to 5. During the years 1976 to 1980, 88 percent of all U.S. children had blood levels in excess of 10µg/dL; during the years 1991 to 1994, only 4.4 percent of all U.S. children had blood levels in excess of that dangerous amount.

- Empowered disabled persons by giving them improved access to public facilities and workplace opportunities, through implementation of the Americans with Disabilities Act.[43]
- Guaranteed a minimum wage, ended child labor and established limits on the length of the work week.[44]
- Saved the lives of thousands of workers every year.[45]
- Saved consumers and taxpayers billions of dollars by facilitating generic competition for medicines.[46]
- Protected the elderly and vulnerable consumers from a wide array of unfair and deceptive advertising techniques.[47]
- For half a century in the mid-twentieth century, and until the onset of financial deregulation, provided financial stability and a right-sized financial sector, helping create the conditions for robust economic growth and shared prosperity.[48]

These are not just the achievements of a bygone era. Regulation continues to improve the quality of life for every American, every day. Ongoing and emerging problems and a rapidly changing economy require the issuance of new rules to ensure that America is strong and safe, healthy and wealthy. Consider a small sampling of rules recently issued, pending, or that are or should be under consideration, but which would likely be (or would have been) blocked for a half a decade or more by the Regulatory Freeze and Jobs Act:

Office of Management and Budget, Office of Information and Regulatory Affairs. (2011). *2011 Report to Congress on the Benefits and Costs of Federal Regulations an Unfunded Mandates on State, Local, and Tribal Entities*. Retrieved 23 February, 2012, from http://www.whitehouse.gov/sites/default/files/omb/inforeg/2011_cb/2011_cba_report.pdf

[43] National Council on Disability. (2007). *The Impact of the Americans with Disabilities Act*. Retrieved 24 February, 2012, from http://www.ncd.gov/publications/2007/07262007

[44] There are important exceptions to the child labor prohibition; significant enforcement failures regarding the minimum wage, child labor and length of work week (before time and a half compensation is mandated). But the quality of improvement in American lives has nonetheless been dramatic. Lardner, J. (2011). *Good Rules: 10 Stories of Successful Regulation*. Demos. Retrieved 24 February, 2012, from http://www.demos.org/sites/default/files/publications/goodrules_1_11.pdf

[45] Deaths on the job have declined from more than 14,000 per year in 1970, when the Occupational Safety and Health Administration was created to under 4,500 at present. *See* AFL-CIO Safety and Health Department. (2011, April). *Death on the Job: The Toll of Neglect*. Retrieved 23 February, 2012, from http://www.aflcio.org/issues/safety/memorial/upload/dotj_2011.pdf Mining deaths fell by half shortly after creation of the Mine Safety and Health Administration. Weeks, J. L., & Fox, M. (1983). Fatality rates and regulatory policies in bituminous coal mining, United States, 1959-1981. *American journal of public health, 73*(11), 1278.

[46] Through regulations facilitating effective implementation of the Drug Price Competition and Patent Term Restoration Act of 1984 ("Hatch-Waxman"), including by limiting the ability of brand-name pharmaceutical companies to extend and maintain government-granted monopolies. Troy, D. E. (2003). *Drug Price Competition and Patent Term Restoration Act of 1984 (Hatch-Waxman Amendments)*. Statement before the Senate Committee on the Judiciary. Retrieved 23 February, 2012, from http://www.fda.gov/newsevents/testimony/ucm115033.htm

[47] See 16 CFR 410-460.

[48] See Stiglitz, J. E. (2010). *Freefall: America, free markets, and the sinking of the world economy*: WW Norton & Co Inc.; Kuttner, R. (2008). *The Squandering of America: how the failure of our politics undermines our prosperity*: Vintage.

- **Fuel efficiency standards.** Pursuant to the Energy Policy and Conservation Act, the Energy Independence and Security Act and the Clean Air Act, the National Highway Safety and Transportation Agency and the Environmental Protection Agency have proposed new automobile and vehicular fuel efficiency standards. The new rules, on an average industry fleet-wide basis for cars and trucks combined, establish standards of 40.1 miles per gallon (mpg) in model year 2021, and 49.6 mpg in model year 2025. The agencies estimate that fuel savings will far outweigh higher vehicle costs, and that the net benefits to society from 2017-2025 will be in the range of $311 billion to $421 billion. The auto industry was integrally involved in the development of these proposed standards, and supports their promulgation. The Regulatory Freeze moratorium would prevent the adoption of the new fuel efficiency standards. While industry might adopt some fuel efficiency improvements in the absence of regulation, such a supposition is speculative and not supported by recent decades' history, and it's a virtual certainty that overall fuel efficiency performance will be substantially worse in the absence of new regulation. The costs would be high not just to the environment and human health, but to consumer pocketbooks. Our economy will be more efficient and stronger with the rules in place.
- **Food safety rules.** In 2010, with support from both industry and consumer groups, and in response to a series of food contamination incidents that rocked the nation, Congress passed the Food Safety Modernization Act. The Act should improve the safety of eggs, dairy, seafood, fruits, vegetable and many processed and imported foods, but its effective implementation depends on rulemaking. FDA has proposed a series of implementing rules establishing food safety programs and standards. These are delayed at OMB -- a problem in its own right -- but would be put on hold for likely half a decade under the Regulatory Freeze legislation. As recent outbreaks of listeria in cantaloupe and other products evidence, such a delay will likely cost lives. Not so incidentally, it will also have major harmful economic impact on the agriculture and food industries and job creation and preservation in those industries.
- **Energy efficiency standards.** Pursuant to the Energy Security and Independence Act, the Department of Energy currently has proposed energy efficiency standards for a range of products, including Department of Energy energy efficiency standards for a range of products, including Metal Halide Lamp Fixtures, Commercial Refrigeration Equipment, and Battery Chargers and External Power Supplies, Walk-In Coolers and Walk-In Freezers, Residential Clothes Washers.[49] Under the Regulatory Freeze act, adoption of all of these standards would be delayed for a half decade. Such a delay would injure the U.S. economy and undermine job creation. The Department of Energy estimates the net savings from implementation of the Energy Security and Independence Act to be $48 billion - $105 billion (in 2007 dollars).[50] Meanwhile, the Federal Trade Commission is undertaking a labeling rulemaking on energy efficiency, to protect consumers from misleading and deceptive claims about energy savings

[49] List of Regulatory Actions Currently Under Review. Available at: http://www.reginfo.gov/public/jsp/EO/eoDashboard.jsp

[50] U.S. Department of Energy. (2007). *Energy Independence and Security Act of 2007 Prescribed Standards*. Retrieved 23 February, 2012, from http://www1.eere.energy.gov/buildings/appliance_standards/m/eisa2007.html

from product purchases.[51] This would likely be caught in the Regulatory Freeze act net, with consumers significantly harmed and no plausible beneficial impact on job creation or maintenance.

- **Rules to avert workplace hazards.** By way of example, consider the case of beryllium, a toxic substance to which workers in the electronics, nuclear, and metalwork sector are exposed. The current OSHA beryllium standard, based on science from the 1950s, allows workers to be exposed at levels that are ten times higher than those allowed by Department of Energy for nuclear power plant workers. Public Citizen petitioned OSHA to update the standard in 2001. In response, the agency began a rulemaking in November 2002. It is a testament to major problems in the regulatory process that OSHA has still not issued appropriate rules. OSHA's estimates show that, if it were enacted nine years ago, the standard would have prevented 4,194 cases of chronic beryllium disease (a potentially fatal respiratory ailment), 5,413 cases of beryllium sensitization (a condition that often leads to chronic beryllium disease) and 216 cases of lung cancer.[52] There is indeed very good reason under the current regime to be skeptical that this rule will be issued in the next five years, even as failure to act causes the loss of hundreds of lives among exposed workers and the long-existing health evidence should compel action. Under the Regulatory Freeze act, however, it is a certainty that the rule would not be issued; workers would needlessly be exposed to dangerous beryllium levels, and many would die or become seriously sick as a result. A number of other needed and pending OSHA rules would meet the same fate, with similar deadly consequences for workers.
- **Controls on Wall Street.** As discussed above, the 2008 financial crash was a direct result of regulatory failures. These failures including inadequate regulation of mortgages and other consumer financial products, on the one hand, and esoteric financial products and the markets on which they trade, on the other. Another critical failure was permitting the rise of too-big-to-fail financial institutions, traceable both to the failure to enforce existing rules and policies, and the repeal and nonissuance of important rules. Few people are entirely satisfied with the Dodd-Frank legislation -- Public Citizen is highly critical of a number of important omissions -- but the Act does include an array of very important reforms that will make our financial system fairer and more stable -- if properly implemented through robust rulemaking. To take three examples:
    - **The Volcker Rule:** While Dodd-Frank failed to revitalize the Glass-Steagall separation between commercial and investment banking, or to break up the too-big-to-fail financial institutions, it does include the consequential Volcker Rule. The Volcker Rule aims to prohibit institutions regulated under the Bank Holding Company Act (now including the largest remaining traditional investment banks, Goldman Sachs and Morgan Stanley) from engaging in proprietary trading -- the kind of activity that exposes taxpayer-protected depository institutions to excessive risk, creates institutional complexity and

[51] Federal Trade Commission. (28 November 2011). *Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule").* Federal Register. Vol. 76, No. 228. Retrieved 23 February, 2012, from http://ftc.gov/os/fedreg/2011/11/111118appliancelabelingfrn.pdf

[52] U.S. Occupational Safety and Health Administration. (2007). *Preliminary Initial Regulatory Flexibility Analysis of the Preliminary Draft Standard for Occupational Exposure to Beryllium*.

conflicts of interest, and heightens the fragility and riskiness of both individual institutions and the overall financial system. The Volcker Rule is perhaps Dodd-Frank's most important provision to contain the size of too-big-to-fail institutions and reduce systemic complexity and risk. The provision could not be implemented under the Regulatory Freeze act.

  - **Consumer protections:** Dodd-Frank created the Consumer Financial Protection Bureau, charging the agency with the single mission of protecting consumers and empowering it to issue new consumer protection rules. Given the very considerable extent to which the financial industry has constructed a business model around trickery and unjust fees, there are many potential rules that it may issue. These may concern matters including: requiring mortgage lenders to consider borrowers' ability to pay; prohibiting banks from charging excessive overdraft fees or tricking consumers into opting in to unreasonable overdraft fee harvesting schemes; eliminating forced arbitration provisions in consumer financial contracts; banning unfair practices in the payday loan industry; prohibiting kickbacks to auto dealers who steer buyers into overpriced loans; stopping student loan companies from tricking students into taking high-priced private loans before they exhaust cheaper federal loans.[53] Under the Regulatory Freeze act, the CFPB would be shackled from advancing these needed consumer protections.
  - **Position limits in commodities markets:** Consumers are rightfully angry about rising prices for gasoline. There are many factors explaining the rise in price, and some of them cannot be addressed by governmental action. But some can. Speculation on the oil commodity markets is likely responsible for 20 percent or more of the price of oil. Even Goldman Sachs suggests that legal speculation may be adding 65-70 cents to the price of a gallon of gasoline. Speculators, in other words, are imposing a private tax on us, with the proceeds of this Wall Street-imposed tax going to Wall Street interests, giant oil companies and foreign oil interests. Dodd-Frank instructed the Commodity Futures Trading Commission to impose position limits on speculators, limiting the portion of the market that could be controlled by individual traders. The CFTC, unfortunately, has adopted an inadequate rule; and Wall Street interests have sued the agency to block implementation even of this inadequate rule. Under the Regulatory Freeze act, however, we would be forced to accept the Wall Street-imposed private tax for 5 years, at very significant cost to consumers, the overall economy and job creation.
- **Generic competition for biotech medicines.** An overlooked component of the Affordable Care Act was the creation of a process for the Food and Drug Administration to grant regulatory approval for generic biologic pharmaceutical products -- essentially generic versions of biotech medicines. Because the molecular composition of biologic drugs is more complicated than traditional medicines, FDA had adopted the position that, with some exceptions, it could not

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[53] National Consumer Law Center. (2010). *An Agenda for the Consumer Financial Protection Bureau: Challenges for a New Era in Consumer Protection*. Retrieved 24 February, 2012, from http://www.nclc.org/images/pdf/regulatory_reform/pr-cfpb-agenda.pdf

grant regulatory approval for biologics under its previously existing authority. In an important provision of the Affordable Care Act -- supported by the biotech industry -- FDA was explicitly granted such authority. The provision wrongly grants extended monopolies to brand-name biologic manufacturers, but belated generic competition is better than none. Implementation of the new regulatory pathway for biogenerics, however, depends on issuance of rules by the FDA. Under the Regulatory Freeze act, FDA would likely be prevented from such action for a half a decade, pointlessly and needlessly costing consumers and taxpayers billions of dollars.

- **Crib safety.** Pursuant to the Consumer Product Safety Improvement Act of 2008, the Consumer Product Safety Commission (CPSC) finalized updated safety standards for cribs that halted the manufacture and sale of traditional drop-side cribs, required stronger mattress supports, more durable hardware and regular safety testing. These new crib safety standards mean "that parents, grandparents, and caregivers can now shop for cribs with more confidence -- confidence that the rules put the safety of infants above all else."[54] Under the Regulatory Freeze act, the CPSC would have been prevented from taking such action for half a decade, with the result that some families would have been experienced the preventable tragedy of a lost or seriously injured baby.[55]

In short, the costs of the Regulatory Freeze act would be very high. The act would forestall needed progress across the American panorama. If the legislation were made law, Americans would needlessly be exposed to more dangerous products; we would needlessly be forced to breathe dirtier air; we would needlessly be forced to spend more on gasoline; we would needlessly be subject to financial tricks and rip-offs; we would needlessly be forced to confront more hazardous conditions at work; we would needlessly pay more for biologic pharmaceuticals; we would needlessly be forced to live with a riskier financial system and a greater risk of another financial implosion; and much more. The act, in short, would weaken America.

IV. A Regulatory Freeze Would Impede Everyday Governmental Action, Including Issuance of Bird Hunting Rules

The Regulatory Freeze for Jobs Act is vast in its scope, with implications perhaps exceeding the intentions of its drafters. A significant portion of the government's work depends on rulemaking and regulation. As drafted, the legislation imposes a moratorium on all "significant regulatory actions" until unemployment drops to 6.0 percent. Significant regulatory action is broadly defined, and the

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[54] Consumer Federation of America. (2011, June 28). *Senators, CPSC, Consumer Advocates Applaud Strong Crib Safety Standards to Prevent Infant Deaths and Injuries*. Retrieved 24 February, 2012, from http://www.consumerfed.org/pdfs/crib-standards-press-release-6-28-11.pdf

[55] U.S. Product Safety Commission. (2011, June 27). *Statement of Commissioner Nancy Nord On The Vote To Extend The Compliance Date For The New Crib Standard.* Retrieved 24 February, 2012, from http://www.cpsc.gov/pr/nord06272011.pdf The crib standard is only the second major rule issued by this agency in its entire history. (A major rule has an impact on the economy of over $100 million. The only other CPSC major rule dealt with the flammability of mattresses.)

moratorium is subject to very limited exceptions: to combat "an imminent threat to health or safety or other emergency;" to enforce criminal laws; to ensure national security; or to comply with terms of an international trade agreement.

Under this legislative rubric, many regulatory actions that do not fit the popular conception of "regulation" would be halted. Consider this selection of recent and prospective rules that would have been or will be affected:

- **Bird hunting.** Every year, the Fish and Wildlife Service analyzes massive amounts of data and public comments to determine the appropriate bird hunting season for each state. The Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds rule[56] tells hunters which birds they can hunt, how many of them they can take, where they can do it, and when the season begins. This is a significant regulatory action that would be caught in the Regulatory Freeze net.
- **Stop loss pay for service members.** In 2009, Retroactive Stop Loss Special Pay Compensation[57] rule was implemented to pay back the debt we owe to soldiers who stayed for prolonged periods in Iraq and Afghanistan. This rule pays $500 per month of stop loss, and includes partial months. This is a significant regulatory action that would be caught in the Regulatory Freeze net.
- **Compensation for veterans.** Agent Orange left many returning soldiers returning from Vietnam with lifelong debilitating illnesses. In 2010, the Department of Veterans Affairs (VA) expanded the list of ailments[58] attributable to Agent Orange and for which veterans could receive benefits. The VA also decided that it should create a schedule of back benefits for Vietnam veterans still suffering from these newly added diseases and for widows of sufferers. More than 85,000 Vietnam vets and their families will be eligible for these benefits.[59] The rule written by the VA will give retroactive payments to sufferers of these newly added diseases and will allow 69,957 previously denied living veterans to receive payments that will greatly improve their living conditions. This is a significant regulatory action that would have been caught in the Regulatory Freeze net.
- **Medicare reimbursement rates.** Every year, the Centers for Medicare & Medicaid Services publish new Medicare payment schedules for provision of medical care by physicians, hospitals,

[56] Fish and Wildlife Service. (24 September 2010). *Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds.* Federal Register. Retrieved 23 February, 2012, from: http://www.federalregister.gov/articles/2010/09/24/2010-23754/migratory-bird-hunting-late-seasons-and-bag-and-possession-limits-for-certain-migratory-game-birds

[57] See, for example, U.S. Department of Defense. (16 April 2010). *Retroactive Stop Loss Special Pay Compensation.* Federal Register. Retrieved 23 February, 2012, from: http://www.federalregister.gov/articles/2010/04/16/2010-8739/retroactive-stop-loss-special-pay-compensation#p-29

[58] U.S. Department of Veterans Affairs. *Veterans' Diseases Associated with Agent Orange*. Retrieved 23 February, 2012, from: http://www.publichealth.va.gov/exposures/agentorange/diseases.asp

[59] U.S. Department of Veterans Affairs. (31 August 2010). *Diseases Associated with Exposure to Certain Herbicide Agents*. Federal Register. Retrieved 23 February, 2012, from: http://www.federalregister.gov/articles/2010/08/31/2010-21556/diseases-associated-with-exposure-to-certain-herbicide-agents-hairy-cell-leukemia-and-other-chronic#p-81

home health workers and others. These schedules are significant regulatory actions that would be caught in the Regulatory Freeze net.

- **Immigration visas and fees.** In 2010, the Department of Homeland Security issued a new fee schedule for visas and immigrant benefits[60], and adopted a fee for travel authorizations for nonimmigrant aliens entering the United States under a visa waiver program.[61] This schedule is a significant regulatory action that would have been caught in the Regulatory Freeze net.
- **Pell grants.** In 2009, the Department of Education issued new regulations concerning eligibility and other rules relating to the issuance of Pell, TEACH, Academic Competitiveness and National Science and Mathematics to Retain Talent and other grants. These regulations are significant regulatory actions that would have been caught in the Regulatory Freeze net.[62]
- **Pharmaceutical approval standards.** Every five years, Congress reauthorizes the Prescription Drug and User Fee Act (PDUFA), which establishes the framework for Food and Drug Administration approval of new medicines and for the level of user fees to be paid by industry for FDA review, as well as the Medical Device User Fee Act, which functions similarly for medical devices. Both acts are set to be reauthorized this year. Implementation of the legislation, which historically has been supported by the regulated industries and is formally negotiated with industry, depends on FDA regulation. Such regulation likely would be a significant regulatory action that would be caught in the Regulatory Freeze net.[63]
- **Preventing prison rape.** Pursuant to the Prison Rape Elimination Act of 2003, the Attorney General has proposed rules that aim to prevent prison rape. This regulation is a significant regulatory action that would be caught in the Regulatory Freeze net (although it might conceivably be subject to a waiver if the president determined it necessary to enforce criminal laws).[64]
- **Medical examiner registry.** Pursuant to the most recent transportation act, the Federal Motor Carrier Safety Administration aims to propose a rule to establish a national registry of certified medical examiners responsible for certifying that truck drivers meet physical qualification

[60] U.S Department of Homeland Security. (8 October 2010) *Department of Homeland Security: U.S. Citizenship and Immigration Services Fee Schedule, GAO-11-104R.* Retrieved 23 February, 2012, from: http://www.gao.gov/decisions/majrule/d11104r.htm

[61] U.S Department of Homeland Security. (20 August 2010) *Department of Homeland Security, U.S. Customs and Border Protection: Electronic System for Travel Authorization (ESTA): Travel Promotion Fee and Fee for Use of the System, GAO-10-1010R.* Retrieved 23 February, 2012, from: http://www.gao.gov/decisions/majrule/d101010r.htm

[62] U.S. Department of Education. (23 November 2009). *Student Assistance General Provisions; Teacher Education Assistance for College and Higher Education (TEACH) Grant Program; Federal Pell Grant Program; Academic Competitiveness Grant Program and National Science and Mathematics Access to Retain Talent Grant Program*. Federal Register. Retrieved 23 February 2012, from: http://www.gpo.gov/fdsys/pkg/FR-2009-11-23/pdf/E9-28050.pdf

[63] U.S Department of Health and Human Services. (1 August 2011). *Prescription Drug User Fee Rates for Fiscal Year 2012.* Federal Register. Retrieved 24 February, 2012, from http://www.gpo.gov/fdsys/pkg/FR-2011-08-01/pdf/2011-19332.pdf

[64] U.S. Department of Justice. (3 February 2011). *National Standards to Prevent, Detect, and Respond to Prison Rape.* Federal Register. Retrieved 23 February, 2012, from: http://www.gpo.gov/fdsys/pkg/FR-2011-02-03/pdf/2011-1905.pdf

standards. This regulation would be a significant regulatory action that would be caught in the Regulatory Freeze net.[65]

- **Family and medical leave for military service personnel.** The Department of Labor is proposing rules to ensure the Family and Medical Leave Act is applied fairly to military service personnel. This regulation would be a significant regulatory action that would be caught in the Regulatory Freeze net.[66]

These examples highlight the overreach of the Regulatory Freeze act. As the regulatory policy debate has heated up, perhaps some of the more textured understanding of how regulation works in practice -- and its centrality to government carrying out its core functions -- has been lost. As drafted, the Regulatory Freeze act would halt a wide range of governmental programs and initiatives not likely to be the target of the legislation's supporters. However, there is no obvious fix to this problem; it is a direct result of the ill-advised broad brush approach of the legislation.

V. Strengthening the System of Regulatory Safeguards to Strengthen America

To say that it would be a grave error to impose a 5-year moratorium on regulation is not to say that all is well with the regulatory system. It is in need of substantial reform to ensure that it serves the broad public interest, not the narrow commercial interests of regulated corporations. Many of the high-profile examples of regulatory failure in recent years -- the Wall Street crash, the BP oil disaster, the Massey mine explosion, and others -- evidence both the need for stronger rules to limit corporate wrongdoing, and stronger enforcement of existing rules. Those examples of regulatory failure also highlight the very serious problem of regulated industries exerting undue influence over the regulatory process itself.

Congress could meaningfully improve the functioning of the regulatory system by working to ensure stronger enforcement of existing rules. In too many cases, it pays for corporations to violate the law, because penalties for regulatory violations are too small. As one step forward, Congress should act to make it a crime for businesses to recklessly expose consumers or workers to deadly products or working conditions.[67] Congress should also increase the enforcement budgets of regulatory agencies, and hold those agencies accountable for enforcing the law. And citizens should be given some direct authority to enforce regulatory standards, loosely following the model of the False Claims Act.

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[65] 49 CFR Ch. 111, Part 390 (1 October 2011). *Federal Motor Carrier Safety Regulations; General.* Retrieved 23 February, 2012, from: http://www.gpo.gov/fdsys/pkg/CFR-2011-title49-vol5/pdf/CFR-2011-title49-vol5-part390.pdf

[66] Proposed rule can be found at: U.S. Department of Labor. Wage and Hour Division. (15 February 2012.) *Notice of Proposed Rulemaking, 29 CFR Part 825 RIN 1215 -- AB76, RIN 1235 -- AA03. The Family and Medical Leave Act.* Federal Register. Retrieved 23 February, 2012, from: http://www.regulations.gov/#!documentDetail;D=WHD-2012-0001-0001

[67] See, for example, the Dangerous Products Warning Act, H.R. 322, introduced by Rep. John Conyers.

Congress should also prioritize addressing the problem of regulatory capture and excessive corporate influence over the regulatory process. Too many agencies are too cozy with the industries they are supposed to regulate. These relationships undermine effective rulemaking and enforcement, and fuel public frustration with our government. Progress could be made in addressing regulatory capture and undue industry influence with stronger revolving door (and reverse revolving door) rules for regulators. Another positive step would be to prevent regulated parties from meeting with staff at the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) about pending rules, or to adopt new rules relating to such meetings.[68]

It is not the position of Public Citizen that all is well with the regulatory process. But for all its flaws, the regulatory system has made, and continues to make, our country stronger, safer and more prosperous. We need to improve the regulatory system, not bring new rulemaking to a halt.

[68] The Center for Progressive Reform has documented that OIRA meets with regulated parties five times more frequently than with public interest representatives; and that rules that were the subject of meetings were 29 percent more likely to be changed during the review than those that were not the subject of meetings. Steinzor, R., Patoka, M., & Goodwin, J. (2011). *Behind Closed Doors at the White House: How Politics Trumps Protection of Public Health, Worker Safety, and the Environment*. Center for Progressive Reform. Retrieved 24 February, 2012, from http://www.progressivereform.org/articles/OIRA_Meetings_1111.pdf