

U.S. House of Representatives)
Committee on the Judiciary)
Subcommittee on Commercial)
and Administrative Law)
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Hon. John V. Sullivan
Parliamentarian
U.S. House of Representatives

Testimony
Congressional Review Act

Madam Chair; members of the committee: I appreciate the opportunity to participate in your review of this matter.

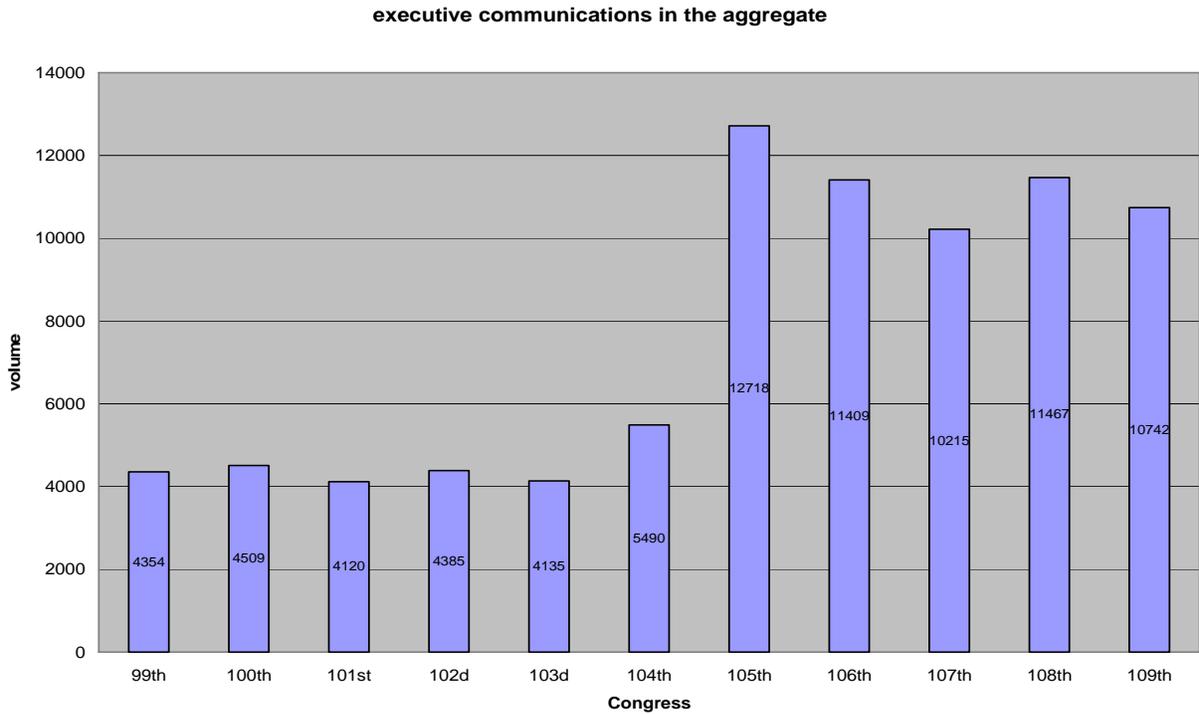
Several laws within the jurisdiction of the Committee on the Judiciary seek to ensure that the exercise of quasi-legislative authority by the executive branch is subject to rigorous scrutiny. Some of these laws have long enabled the public to follow and react to rulemaking actions as they develop. For 11 years now, chapter 8 of title 5, United States Code — colloquially known as the Congressional Review Act (CRA) — has separately focused on Congressional review of executive regulations. I am pleased to help illuminate one part of the factual predicate on which the Committee might judge whether the CRA is optimized to achieve its desired ends.

In the 103d Congress — the last full Congress before the enactment of the CRA — the executive departments transmitted 4,135 communications to the Speaker that warranted referral to committee.¹ In the 109th Congress — the most recent full Congress under the CRA — that number was 10,742.² The following pair of graphs depict the effects of the CRA on executive communications traffic.

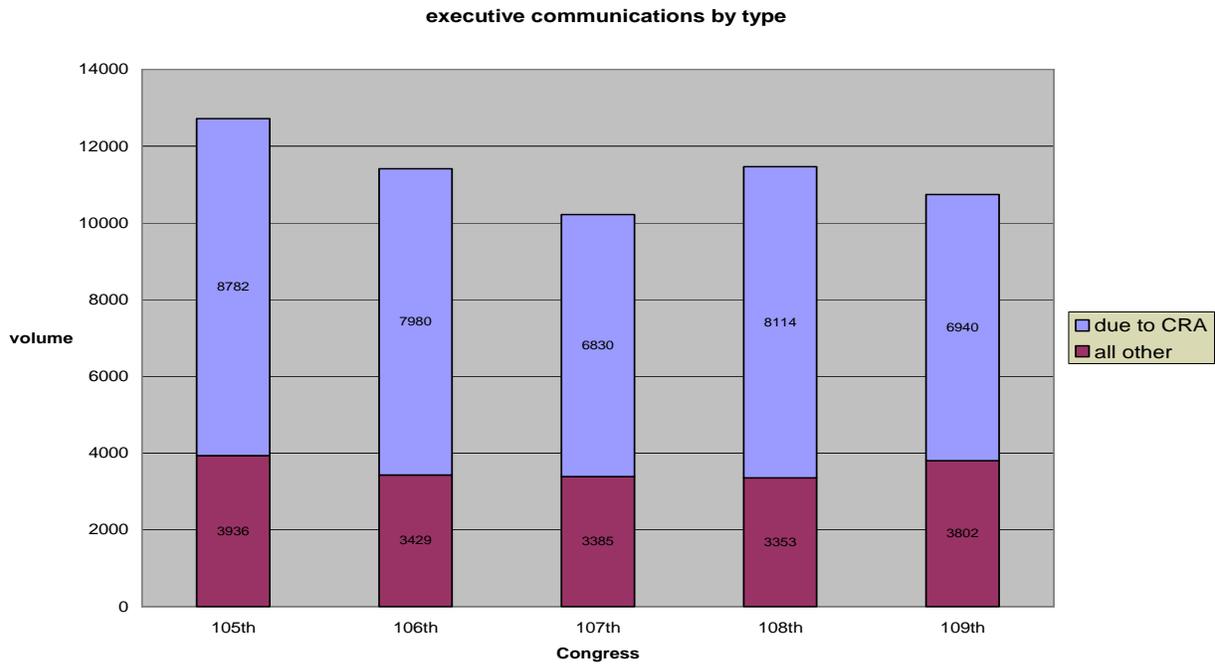
¹ See *Calendars of the United States House of Representatives and History of Legislation*, Final Edition, 103d Congress, 1993-1994, at p. 19-70.

² See *Calendars of the United States House of Representatives and History of Legislation*, Final Edition, 109th Congress, 2005-2006, at p. 18-74.

The first graph shows that executive communications have roughly tripled.



The second graph shows that, in each of the past five Congresses, the number of CRA communications has, indeed, been more than twice the number of other executive communications.



These communications transmit regulations promulgated by executive agencies for Congressional review. Under rule XII, they are received by the Speaker. Under rule XIV, the Speaker refers each of them to the committee having jurisdiction over its subject matter. The Speaker delegates to the Parliamentarian the task of identifying a committee of referral — typically the committee having jurisdiction over the enabling statute for a particular rulemaking action.

This flow of paper poses a significant increment of workload for a range of individuals. Although it is relatively easy to identify the appropriate committee of referral for the vast majority of these communications, the sheer volume of them affects not only the parliamentarians who must assess their subject matter but also the individuals who must move the paper and account for dates of transmittal.

Many agencies transmit their communications by courier to ensure timely receipt. These couriers often require a hand-receipt from somebody on the staff of the Speaker or the Parliamentarian. Some agencies have been able to streamline their submissions somewhat; unlike other executive communications, multiple rules submitted by a single agency pursuant to the CRA may be bundled under a single cover letter. But each communication must be logged in by the Office of the Parliamentarian.

In addition to date-stamping each submission, the Office of the Parliamentarian tries to retain outer packaging or other contact information in case the rule — as is not infrequently the case — must be returned to the agency for failure to comply with the CRA or to conform to standards regarding communications transmitted to the Speaker. After documenting the receipt of a communication, a parliamentarian must annotate the committee of referral on each rule.

Every few days, a parliamentarian calls the staff of the Clerk to advise that another batch of submissions is ready to be processed. Two clerks whose sole duty it is to process communications to the House then transport the communications — often voluminous enough to require a hand-truck — to their office, where they are counted and sorted. The clerks then enter all relevant information regarding each rule and its

referral into a database and transmit the same information to the Government Printing Office (for printing in the Congressional Record) and to the Legislative Information Service. Finally, the clerks hand-deliver each rule to the committee of referral.

Of course, this mass of paperwork has a purpose. The fundamental fulcrum of the CRA is that rulemaking agencies must submit proposed regulations to each House of Congress and to the Comptroller General and wait a statutory interval³ before major rules may be given effect. During this interval, Congress may deliberate on whether a proposed regulation might merit legislative disapproval.

However, of approximately 40,000 submissions to the Congress under the CRA to date, only one has been disapproved. Since the 105th Congress, only 43 joint resolutions of disapproval have been introduced in the House and Senate. None of the 25 House joint resolutions passed the House. Three of the 18 Senate joint resolutions passed the Senate. One of those Senate joint resolutions also passed the House. Thus, the disapproval mechanism established by the Act has invalidated one rule.⁴

The Committee may want to assess whether a lesser volume of executive communications traffic might better optimize Congressional oversight of a more selective universe of rulemaking actions. The Act already differentiates among various rules on the basis of their salience. Some additional discrimination might be sensible. The Office of the Parliamentarian will be pleased to continue to consult with the Committee and its staff on initiatives to eliminate duplication of effort and reduce paperwork like those proposed in H.R. 5380 of the 106th Congress.⁵

³ Because of the need to track this interval, the date of receipt of a rule submitted pursuant to the CRA is published in the Congressional Record. With most other executive communications, only the date of referral to committee is published.

⁴ Public Law 107-5.

⁵ H.R. 5380 of the 106th Congress was introduced by Mr. Hyde (for himself, Mr. Conyers, Mr. Gekas, and Mr. Nadler) and referred to the Committee on the Judiciary. It proposed that the CRA be amended to abolish certain agency submissions to Congress and instead to require the Comptroller General to submit weekly reports to each House of rules published in the Federal Register to the end that they be noted in the Congressional Record with a statement of referral to committee.

Madam Chair, I am grateful for your attention and will be pleased to try to answer any questions you might have.

professional history

Parliamentarian, House of Representatives (2004 – present)
Deputy Parliamentarian, House of Representatives (1994 – 2004)
Assistant Parliamentarian, House of Representatives (1987 – 1994)
Counsel, Committee on Armed Services, House of Representatives (1984 – 1987)
Active duty, United States Air Force (1974 – 1984)

education

United States Air Force Academy (B.S., 1974)
Indiana University School of Law (J.D., 1977)

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Supreme Court of the United States (1982)
Supreme Court of Indiana (1977)
Supreme Court of Colorado (1985)
U.S. Court of Appeals for the Armed Forces (1977)