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The Ruse of Regulatory Reform

Obama assures business leaders that he feels their pain. They don't believe him.

President Obama's speech to the U.S. Chamber of Commerce last week did anything but signal a rapprochement with America's demoralized private sector. The Chamber has tirelessly assailed the Obama EPA's many new rules, which burden industries with onerous regulations and could cost more than a trillion dollars yearly. Obama's attempts to mollify the organization — chiefly by touting a review of federal regulations that is not likely to bring relief from any of them — fell flat.

Most of the president's speech to the Chamber was typical: He scolded businesses for not being thankful that he had preserved existing tax rates, and berated them for not investing precisely where and how he wanted them to. The only tangible relief he offered was the delay of new EPA greenhouse-gas rules for "biomass" — which affect probably far fewer than 1 percent of private businesses.

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This speech to the Chamber was one in a series of what appear to be carefully designed, symbolic overtures to the private sector — overtures along the not-so-economically-astute lines of "I really like business and I get it that you must have profits." A revealing item in this series is the president's January 18 executive order on "Improving Regulation and Regulatory Review," which ordered the

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forementioned review of business regulations. The order begins with the usual rhetoric that that “our regulatory system must protect public health, welfare, [safety](#) and the environment while promoting economic growth . . . and job creation” — but it also says the system must use the least burdensome tools and “take into account benefits and costs” to avoid chilling job creation. This language is reminiscent of Ronald Reagan, who first required cost-benefit analysis of proposed rules in 1981. In presenting the order to the public, Obama echoed Reagan even more closely, writing in the *Wall Street Journal* that America’s free markets are “the greatest force for prosperity the world has ever known.” He directed his agencies to find the “proper balance between free commerce” and necessary regulations.

The order reads as if an ardent champion of [limited](#) government wrote it, *except for one glaring caveat*. When calculating costs and benefits, the order instructs, agencies should consider “values that are difficult or impossible to quantify, including equity, human dignity, fairness and distributive impacts.” This loophole swallows the entire review. How might the amorphous, politically charged value of “fairness” figure into a debate about a proposed rule for industrial boilers that would cost \$1.2 billion and put 798,000 jobs at risk? The injection of “values” into cost-benefit analyses replaces reasoned analysis with the preferred policy of the executive branch. This is especially true because the order tasks the agencies themselves with conducting the reviews. If Congress will not redistribute income according to this administration’s preferred formula, then “redistributive impacts” evidently can be addressed through agency rulemaking.

Notions of fairness and redistributive impacts already have reared their head in some of EPA’s rulemakings of the last two years. In a July 2010 memo, EPA administrator Lisa Jackson issued new regulatory guidance directing EPA to integrate environmental justice “into the fabric of EPA process” so that each EPA action has “a particular focus on disadvantaged or vulnerable groups.” Indeed, social justice was part of EPA’s justification for the endangerment finding that greenhouse gases are pollutants harmful to human health. Climate change, EPA claimed, will “add further stress to an existing host of social problems in cities” that “accentuate disparities . . . in the American health care system.” With this progression from carbon dioxide to inner-city problems to health care, EPA creates a smooth, extra-legal path to unlimited federal jurisdiction, with values as the impetus.

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