



EMBARGOED FOR RELEASE

Tuesday, August 3, 2010 at 10:00 a.m. ET

Contact: Ben Somberg, 202.658.8129

Industry's 'Capture' of Federal Agencies Pervasive as Regulatory Failures Pile Up, Administrative Law Expert Tells Congressional Panel

Proposes Four Actions For Congress to Address Problem

(Washington) - Industries have effectively "captured" portions of federal regulatory agencies, weakening health and safety protections for the American public, argued Sid Shapiro, Vice-President of the Center for Progressive Reform, speaking before a congressional committee Tuesday. Shapiro, a professor at Wake Forest University School of Law, testified before the Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts.

"When Congress passes and the president signs legislation, the failure to achieve these commitments devalues the democratic processes that produced the legislation and the commitments made in those laws," Shapiro said in his prepared testimony. Shapiro said: "From the BP oil spill to the West Virginia mine disaster to Toyota's speeding car debacle, we've seen lately what happens when federal regulators aren't getting the job done."

Shapiro described three primary types of "agency capture" that pervade federal regulatory agencies:

- **Political Capture** occurs when an agency fails to protect the public and the environment because regulators friendly to industry block regulatory efforts or do not enforce the laws and regulations then in effect.
- **Representational Capture** occurs when industry representatives regularly appear before an agency, offering detailed comments and criticisms, while the agency seldom, if ever, hears from public interest groups or members of the public. Empirical studies have repeatedly shown that this imbalance is significant.
- **Sabotage Capture** occurs when regulatory critics create roadblocks that slow or prevent regulation even in future administrations that seek to protect the public and the environment. This type of capture is more subtle and difficult for the public to perceive, and is most prominently exhibited today as the defunding of the regulatory agencies and the politicization of rulemaking by the White House.

Shapiro presented four recommendations for Congress:

- **Improved Oversight.** Regulatory agencies cannot adequately police themselves, and public interest groups lack the resources to match up with industry in terms of advocacy before agencies and the courts. Congress should institute more systematic oversight.
- **Linking Oversight and Appropriations.** Congress has sometimes cut the budgets of regulatory agencies, even as their responsibilities grow with an expanding economy.

Congress has failed to study the impacts of these cuts, and without this information, it is not in a position to consider what tradeoffs are involved when agencies lack the resources they need, and whether refunding them is a higher priority than other items in the budget.

- **Positive Metrics.** The deterioration of regulatory government has gone relatively unnoticed because Congress lacks a good means for measuring the performance of the regulatory agencies. Congress should therefore require the development of rigorous and concise “positive metrics,” which are measurements of agency performance that would alert Congress and the public when health and safety agencies have been captured.
- **True-Up Budget Estimates.** The congressional dialogue over funding would be improved if agencies were required to make it clear how much money it would really take to implement their mandates. Current agency budgets are typically far short of what is required to meet agencies’ statutory obligations, and as a result, Americans are inadequately protected from a variety of hazards. “True-up estimates” would focus on the resources the government itself would need, calculated in constant dollars over a decade-long period, to do the work necessary to protect the public and the environment.

Shapiro's full testimony will be available at:

http://www.progressivereform.org/articles/Shapiro_AgencyCapture_080310.pdf

The Center for Progressive Reform (www.progressivereform.org) is a nonprofit research and educational organization dedicated to protecting health, safety, and the environment through analysis and commentary. Visit CPR on the web at www.progressivereform.org and read CPRBlog at www.progressivereform.org/cprblog.

#