

 DATA FOR *PROGRESS*

# VOTERS SUPPORT USING THE CONGRESSIONAL REVIEW ACT TO REVERSE TRUMP ERA DEREGULATION

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The Congressional Review Act (CRA) was enacted in 1996 as an emergency brake on federal rulemakings that lack broad-based political support. Under the CRA, once a federal regulation has been finalized and published in the compendium of federal regulations known as the Federal Register, Congress has sixty legislative days to vote to disapprove of that regulation. If both houses of Congress vote to disapprove in that time period and the president signs that disapproval, the federal regulation is reversed and the agency that promulgated it cannot release a similar regulation in the future without new congressional authorization to do so. If any step of this isn't successful—say, the president vetoes the disapproval—then the regulation stands. (Notably, the vote under the CRA is not subject to a filibuster under current rules.)

Although not initially conceived as a partisan weapon, the CRA has become one over the last four years. Until 2016, it was used successfully to undo a congressional regulation only *once*, after a Clinton administration rule on ergonomics passed with bipartisan support. However, due to a quirk of the CRA, a regulation that is completed within the last sixty days of one congressional session may be briefly subject to CRA review during the next session of Congress as well. This loophole allows a new presidential administration to undo certain late-term actions of its predecessor, even though it is not at all clear the CRA was intended to be used as a weapon against past administrations.

The Trump administration has used this loophole on numerous occasions. In early 2017, the Trump administration realized the CRA was a way for a Republican-controlled Congress and White House to not only undo regulations passed near the end of the Obama administration but also potentially block future Democratic administrations from trying to release similar rules in the future. As a result, the Trump administration shepherded

fourteen CRA resolutions through the Congress in early 2017. Among the Obama regulations killed were an FCC rule requiring greater privacy protection for telecommunications consumers, an SEC rule requiring companies to disclose when they made potential bribes to foreign governments in connection with drilling projects, a rule limiting the pollution that could be dumped into streams from mountaintop removal mining, and a CFPB rule protecting consumers from abusive arbitration.

Because the Trump administration has continued to roll back Obama administration rules even in fall 2020, a Biden administration has a chance to roll back some of these Trump rollbacks. This session of Congress is still going on, and therefore, exactly when the last sixty legislative days of this session began is still unknown. Only when this Congress has truly concluded on January 2nd, 2021 can we determine when the 60th-to-last legislative day occurred. However, a good rule of thumb is that sixty legislative days prior to the end of a congressional session usually falls in mid-to-late spring. We can have confidence that any rules finished after June 1 of this year can be rolled back under the CRA during 2021 by a Democratic trifecta—i.e., a Democratic presidency and Democratic majorities in the House and Senate.

In an August 2020 survey, Data for Progress tested support for using the CRA to reverse the regulatory action of the Trump administration. We asked voters whether they would want to keep a “new rule,” the Trump-era regulatory rollback, or if they would want to reimplement an older regulation.

Overall, voters are quite supportive of using the CRA to roll back the Trump rollbacks. A majority (65 percent) of voters support returning to an old rule which required oil and gas companies to monitor for and then fix methane leaks.

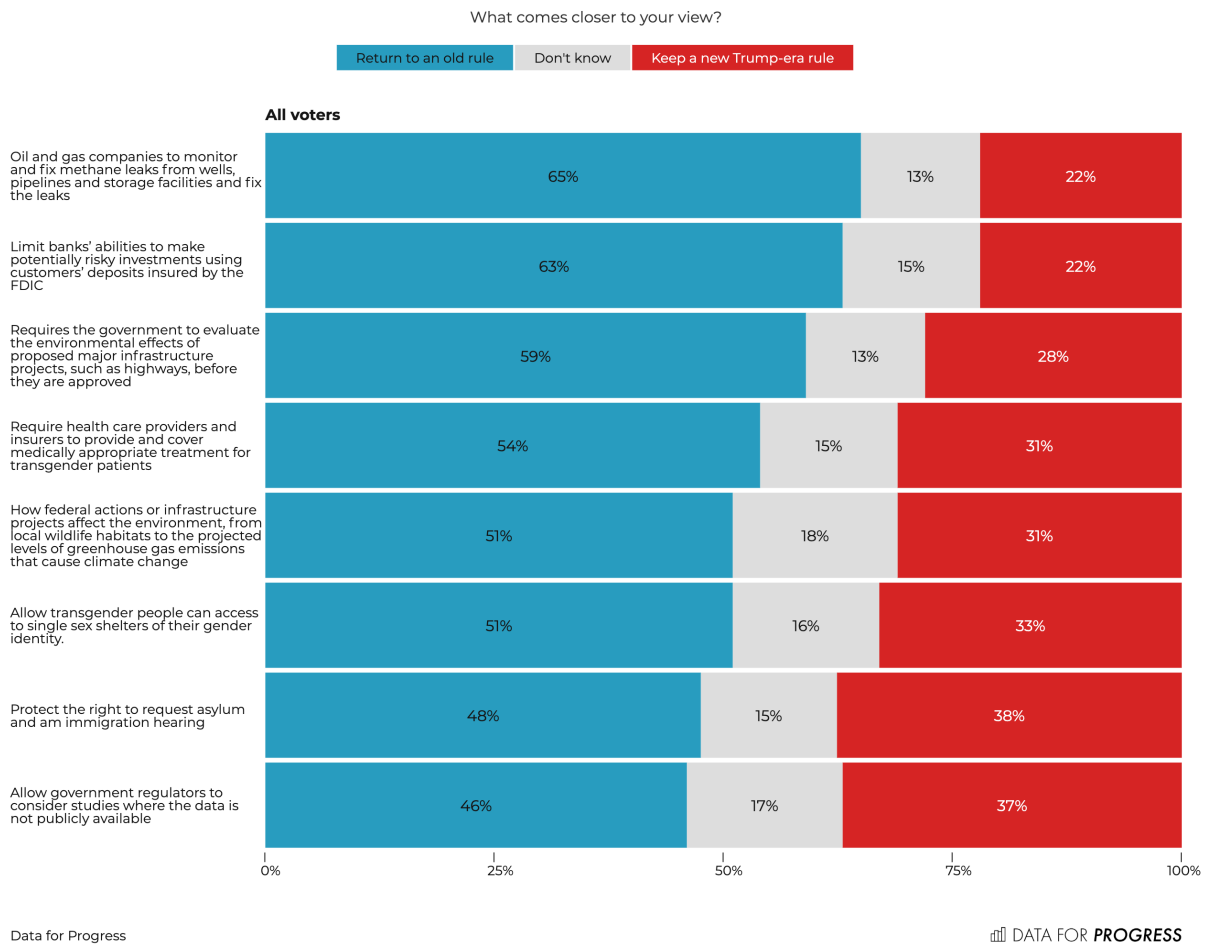
By a 41-percentage-point margin, voters also support a return to the Volker rule, which limits banks' ability to use FDIC-insured deposits for investment purposes. A majority of voters (51 percent) also wants to return to an old rule that allowed people who are transgender to access single-sex shelters that correspond with their gender identity.

These results suggest that voters are receptive to robust regulations. While this is no doubt a complex policy, voters are responsive when the stakes of rules are clarified, and they want the

government to take action to, for instance, protect the environment and ensure that people can receive the healthcare they need.

While Democrats should use the CRA to undo several Trump administration rollbacks, they shouldn't see it as a panacea. There is real risk, for instance, that the GOP may use the CRA to restrict future regulatory actions that lack explicit congressional authorization. If Democrats use the CRA in the way we outline in this memo, lawsuits are sure to follow, and, as of this writing, the CRA has never been the subject of litigation.

## Voters Support The Use Of The CRA To Overturn Trump's Regulatory Actions



Nonetheless, while use of the CRA entails some risk and generates some sizable unknowns it may provide Democrats with a real opportunity to undo some of the damage of the Trump era. And Democrats should keep in mind during a Biden Administration that anything finished close to the next presidential election is at risk of itself being rolled back if the Republicans managed to win that election with the House and Senate. Any party making use of the CRA, it needs to remember that it can also be used against it in the future. For a Biden administration, time will be of the essence.

## AUTHORSHIP

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## METHODOLOGY

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On August 26, 2020, Data for Progress conducted a survey of 1,239 likely voters nationally, using web-panel respondents. The sample was weighted to be representative of likely voters by age, gender, education, race, and voting history. The survey was conducted in English. The margin of error is +/- 2.6 percentage points.

### *What comes closer to your view?*

- ▶ Return to an old rule where the government analyzes and discloses the extent to which proposed federal actions or infrastructure projects affect the environment, from local wildlife habitats to the projected levels of greenhouse gas emissions that cause climate change.
- ▶ Keep a new rule that limits public review of federal infrastructure projects to speed up the permitting of freeways, power plants and pipelines and to not consider climate change at all when starting new infrastructure projects.

- ▶ Don't know

### *What comes closer to your view?*

- ▶ Return to an old rule that requires oil and gas companies to monitor and fix methane leaks from wells, pipelines and storage facilities and fix the leaks.
- ▶ Keep a new rule that does not require oil and gas companies to install technology to monitor and fix methane leaks from their wells, pipelines, and storage facilities.

- ▶ Don't know

*What comes closer to your view?*

- ▶ Return to an old rule in which government regulators may consider studies where the data is not publicly available because people offered personal health information and other private data under confidentiality agreements.
- ▶ Keep a new rule that would restrict the type of research that can be used to draft environmental and public health regulations to cases where the data used is publicly available.
- ▶ Don't know

*What comes closer to your view?*

- ▶ Return to an old rule where the right to apply for asylum upon entering the United States is protected, with potential migrants being entitled to a hearing with an immigration judge.
- ▶ Keep a new rule that overhauls the U.S. asylum system by raising the standard migrants need to meet, with those claiming to be targeted by gangs or "rogue" government officials would be more likely to be denied and those seeking protection on the basis of their gender would see their ability to seek asylum limited. Migrants also would not be entitled to a full hearing in which an immigration judge could hear their claims under the proposal.
- ▶ Don't know

*What comes closer to your view?*

- ▶ Return to an old rule that requires health care providers and insurers to provide and cover medically appropriate treatment for transgender patients.
- ▶ Keep a new rule that eliminates protections for transgender patients against discrimination by doctors, hospitals and health insurance companies.
- ▶ Don't know

*What comes closer to your view?*

- ▶ Return to an old rule where transgender people can access to single sex shelters of their gender identity.
- ▶ Keep a new rule that allows homeless shelters to deny transgender people access to single sex shelters of their gender identity.
- ▶ Don't know

*What comes closer to your view?*

- ▶ Return to an old rule that limited banks' abilities to make potentially risky investments using customers' deposits insured by the Federal Deposit Insurance Corporation (FDIC).
- ▶ Keep a new rule that lifted certain restrictions on banks' abilities to make potentially risky investments using customers' insured deposits .
- ▶ Don't know

*What comes closer to your view?*

- ▶ Return to an old rule that requires the government to evaluate the environmental effects of proposed major infrastructure projects, such as highways, before they are approved.
- ▶ Keep a new rule that does not require the government to evaluate the environmental effects of proposed major infrastructure projects, such as highways, before they are approved.
- ▶ Don't know