

**Prepared Statement by Senator Chuck Grassley of Iowa  
Chairman, Senate Judiciary Committee  
Hearing on “Examining the Federal Regulatory System to Improve Accountability,  
Transparency and Integrity”  
June 10, 2015**

Good morning. The Senate has a constitutional duty to conduct oversight of the Executive Branch to ensure that the federal regulatory system remains accountable to the People, and transparent in its operations. Today’s hearing gives us a chance to take a broad look at where things stand.

We all remember from civics class that under our constitutional separation of powers, Congress makes the laws, the Executive Branch enforces the laws, and the Judicial Branch interprets those laws.

If only it were that straightforward.

According to professor of law Jonathan Turley at George Washington University, “Our carefully constructed system of checks and balances is being negated by the rise of a fourth branch, an administrative state of sprawling departments and agencies that govern with increasing autonomy and decreasing transparency.”

The Federal Register indicates there are over 430 departments, agencies, and sub-agencies in the federal government. And the pronouncements of this ever-expanding administrative state impact nearly every aspect of Americans’ daily lives.

The data support that fact. The 113th Congress, for example, enacted just under 300 laws. Over the same two-year period, the federal bureaucracy finalized over 7,000 regulations. Just looking at these numbers, there’s no denying that unelected bureaucrats are the real law-making force in this country.

In 1946, Congress recognized the growing power of the federal bureaucracy and enacted the Administrative Procedure Act (or “APA”) to help ensure that regulations are crafted in an open, accountable and transparent manner—and that agency actions are reviewable by the courts to ensure compliance with the law.

Among the protections built into the APA is the public notice-and-comment rulemaking process, whereby Americans can weigh-in on proposed regulations, and agencies must objectively take those concerns into account when crafting a final rule. This process is supposed to provide a meaningful opportunity for the public to hold regulators accountable, and to help insure that regulations are crafted in the public interest—rather than tailored to special interests. The Judiciary Committee has primary jurisdiction over the APA, and we need to improve our oversight of it.

Unfortunately, we see repeated efforts today by agencies to undermine the public's role in the rulemaking process—and tactics that render the notice-and-comment process a mere formality. Some agencies are resorting to litigation tactics, known as sue-and-settle, to speed up the rulemaking process and to keep affected members of the public—and even the States—away from the table when key regulatory decisions are negotiated behind closed doors.

These tactics often result in consent decrees or settlement agreements between an agency and like-minded interest groups, committing the agency to actions that haven't been publicly scrutinized. In February, I introduced the Sunshine for Regulatory Decrees and Settlements Act, a bill that would shine light on these tactics and provide much-needed transparency before regulatory decisions are finalized.

But that's just one part of the issue.

We also see agencies going through the motions of notice-and-comment rulemaking, yet the public's role in the process appears to be anything but meaningful. The EPA's recently finalized Waters of the U.S. (or "WOTUS") rule stands out as a sweeping example of this problem.

Instead of attempting to address the legitimate concerns raised during the open comment period, the EPA and its allies in the professional advocacy community pushed a narrative that portrayed critics of the rule as misinformed, nutty, or in favor of water pollution.

Agencies are supposed to remain objective during the notice-and-comment period. But EPA's efforts to drive support for its own rule—while belittling the concerns of the public—indicate that it had a clear end-goal in mind, regardless of public opinion or the rule's impact.

According to a recent New York Times article, "the EPA's tactics in supporting the rule are clearly designed to move public opinion, at a time when Congress was considering legislation to block the agency from putting the rule into effect."

I share the concerns of folks across Iowa with the WOTUS rule. Its sweeping scope has left farmers in limbo about what they can and cannot do on their own land. And the indifferent attitude the EPA took toward agriculture is a real concern for my constituents who understand the impact that agriculture has on the state's economy.

More broadly, it's a real concern for just how unaccountable our regulatory system has become.

Congress recognized early on the threat of agency overreach. And accordingly, the APA provides for judicial review over the administrative state.

However, as the influence and reach of the administrative state has grown, it seems like the ability and willingness of the federal courts to hold it accountable has diminished. Over 30 years ago, the Supreme Court articulated the now-famous Chevron doctrine, whereby federal courts largely defer to an agency's legal interpretation of a statute it administers.

And recently, the Supreme Court determined that such heavy deference extends even to an agency's interpretation of the scope of its own jurisdiction.

Placing such questions of law into the hands of those who also write and enforce laws raises serious concerns. As James Madison correctly observed, "the accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many... may justly be pronounced the very definition of tyranny."

So it's important that we consider these issues carefully, taking into account both the practical realities of our modern system of government and the separation of powers in our Constitution.

It's equally important that Congress recognize its own responsibility in the expansion of the administrative state. For too long, Congress has delegated in broad strokes, asking the agencies to sort out the details. If Congress is going to ask courts to tackle the tough questions, it needs to be willing to do so itself by reasserting its lawmaking power—and by speaking clearly and precisely when it chooses to use that power.

What's clear is that the status quo is not acceptable. Today, small businesses and entrepreneurs operate in a regulatory environment that provides little relief from excessive red-tape, and one that offers little certainty upon which to base risk and investment. Agencies are falling far short of their duties to weigh the costs and benefits of new regulations, and there's little the courts can do to hold them to account. And regulations with hundreds of millions—and even billions—of dollars in impact are being imposed on the U.S. economy, all without a sufficient check by Congress.

In order to promote job growth and the American economy, we all must do better.

Today we're going to take a closer look at these and other concerns that have been raised. And we're going to ask what Congress can do to restore accountability and transparency in the federal regulatory system.

Now, I'll turn to the Ranking Member for his opening remarks.