

3 TUESDAY, OCTOBER 6, 2015

4 United States Senate,
5 Subcommittee on Oversight, Agency Action, Federal Rights,
6 and Federal Courts,
7 Committee on the Judiciary,
8 Washington, D.C.

9 The Subcommittee met, pursuant to notice, at 2:23 p.m.,
10 in room SD-226, Dirksen Senate Office Building, Hon. Ted
11 Cruz, Chairman of the Subcommittee, presiding.

12 Present: Senators Cruz, Hatch, Coons, and Klobuchar.

13 OPENING STATEMENT OF HON. TED CRUZ, A U.S. SENATOR

14 FROM THE STATE OF TEXAS

15 Chairman Cruz. This hearing will come to order. Good
16 afternoon. Welcome. I would like to thank our
17 distinguished panel of witnesses for joining us today. Very
18 glad to have you.

19 In his very first inaugural address, President Thomas
20 Jefferson defined good government as one that "shall
21 restrain men from injuring one another" and "shall leave
22 them otherwise free to regulate their own pursuits of
23 industry and improvement." This pro-liberty standard
24 embraced by our Founding Fathers and the Constitution has
25 served us well.

1 Today, the United States stands as the most powerful
2 and prosperous Nation in history, a beacon of hope to people
3 throughout the world. But there is a growing sense among
4 many that our Nation is in decline.

5 We have now seen years of sluggish economic growth,
6 stagnant household income, the largest percentage of
7 Americans not working since 1977, far too many people who
8 have simply given up any hope of having a job, of starting a
9 business, of having a future. Entrepreneurship, truly one
10 of America's defining traits, is hurting badly. It is a
11 tough time to own a small business in America today.

12 The last several decades have seen a dramatic decline
13 in the rate of business formation. Business deaths now
14 outpace business births. That is a deeply troubling trend
15 in our Nation, one that stands in direct opposition to the
16 promise of America as a land where anyone can start with
17 nothing and achieve anything.

18 And on top of that, the United States now ranks 46th in
19 the world when it comes to the ease of starting a new
20 business--46th. That is hard to imagine. Why is that?
21 What has gone wrong?

22 We are here today to discuss a major part of the
23 problem: Government overregulation. It is axiomatic that
24 the larger and more intrusive Government becomes, the
25 smaller and more docile we, the people, are forced to

1 become. There is no greater obstacle to growth, to
2 opportunity, and prosperity for all Americans than an
3 invasive and bloated Government. Ronald Reagan understood
4 this. "It is no coincidence," he said, "that our present
5 troubles parallel and are proportionate to the intervention
6 and intrusion in the lives that result from unnecessary and
7 excessive growth of Government."

8 The Federal Government and, sadly, many States no
9 longer adhere to the Jeffersonian standard of leaving the
10 people free to regulate their own pursuits of industry and
11 improvement. Instead, they now seemingly regulate
12 everything under the Sun.

13 Fifty-five years ago, there were 13 regulatory Federal
14 Government agencies. Today, there are over 70. Fifty-five
15 years ago, the Code of Federal Regulations contained 23,000
16 pages--a sizable amount. Today, the Code of Federal
17 Regulations takes up an astounding 175,000 pages and 235
18 volumes, all incredibly small print. Somehow the American
19 people are expected to comply with 175,000 pages of
20 regulations that no one person can even begin to understand.

21 This figure dwarfs the number of statutes actually
22 enacted by Congress, the body that the Constitution
23 entrusted with making our laws. Federal statutes today take
24 up over 40 volumes and 50,000 pages--about a quarter the
25 length of the Federal Regulations.

1 Although an inexact science, estimates of Federal
2 regulations are estimated to increase costs up to possibly
3 \$2 trillion a year. Is it any wonder we have the economic
4 stagnation, so many millions hurting, when the Federal
5 Government is putting \$2 trillion a year of cost on small
6 businesses, on those trying to create jobs and opportunity?

7 And, unfortunately, the media far too often writes off
8 overregulation as a trifling issue because they believe it
9 only concerns giant corporations, not everyday people. This
10 hearing is about shining the light on the true people paying
11 the price for Government overregulation.

12 Truth be told, overregulation harms everyone, but it
13 especially harms those who do not have the resources or
14 political connections to get a special exemption, to have a
15 lobbyist, to get a favor from Government, and far too often
16 those are minorities--African Americans, Hispanics, single
17 moms, people who are struggling but want to start a small
18 business, want to stand on their own feet, want to provide
19 for their family. And the burden of Federal regulation
20 makes it harder and harder and harder to do exactly that.

21 Peter Kirsanow is the longest-serving member of the
22 United States Civil Rights Commission. He is an African
23 American, and at a hearing very much like this, held 20
24 years ago, Commissioner Kirsanow said this: "Regulations
25 affect all businesses, but they have a particularly

1 pernicious effect on small businesses, on businesses that
2 are marginally capitalized, are labor-intensive, or are
3 perceived as being credit risks. A disproportionate share
4 of those businesses are owned by minorities and by black
5 Americans."

6 Unfortunately, 20 years later, overregulation remains
7 and has become an even bigger obstacle to the success and
8 prosperity of those who are struggling to achieve the
9 American dream.

10 Revenues for minority-owned small businesses still,
11 unfortunately, lag behind revenues for non-minority-owned
12 businesses. And yet minority-owned businesses must absorb
13 regulatory costs of roughly \$7,000 to \$10,000 per employee,
14 just like any other small business. What this means is that
15 regulatory costs have a more severe impact on the bottom
16 line of minority businesses than other businesses, making it
17 more difficult for minority businesses to grow and hire more
18 employees.

19 The regulation epidemic in this country certainly has
20 not translated into more jobs and prosperity for minorities,
21 especially since President Obama has taken office. The
22 median household income for African Americans and Hispanics,
23 for instance, has remained virtually unchanged since
24 President Obama was elected, meaning that there has been no
25 recovery since the 2008 crash, and poverty rates for African

1 Americans have gone up. African American unemployment
2 remains almost double that of non-minorities, as it has for
3 over 50 years. And there are together roughly a million
4 fewer working-age African Americans and Hispanics employed
5 today than when the President took office.

6 Let me repeat that statistic. There are together
7 roughly 1 million fewer working-age African Americans and
8 Hispanics employed today than when the President took
9 office. That is roughly 1 million lives impacted, plus
10 their children, plus their families, people who want to
11 work, want to provide for their families, and yet are being
12 denied that opportunity.

13 It is estimated that for every additional \$1 million
14 that the Government spends enforcing its regulations, the
15 economy loses 420 private sector jobs.

16 Of course, it does not have to be this way. Curbing
17 excessive Government regulation should not be a partisan
18 issue. We should be able to find a way to stem the tide of
19 red tape, to loosen the burdens on small businesses that are
20 struggling to create opportunities, without weakening
21 essential protections for our society. Not all regulations
22 are bad. But a wall of regulations descending from
23 Washington on small businesses and crushing job creation is
24 making it harder and harder for people who are struggling to
25 achieve the American dream.

1 I want to thank each of you for being here, and I look
2 forward to your testimony. We have today seven witnesses.

3 The first witness, Mr. Michael Barrera, a Kansas City-
4 based attorney with over 30 years of business, legal,
5 nonprofit, and government experience. A graduate of Kansas
6 State and the Texas Law School, he serves as the national
7 economic prosperity manager for The LIBRE Institute, a
8 nonprofit that promotes economic freedom in the U.S.
9 Hispanic community. Before joining LIBRE, Mr. Barrera
10 served as the president and CEO of the U.S. Hispanic Chamber
11 of Commerce and prior to that as the National Ombudsman for
12 the U.S. Small Business Administration.

13 Our second witness is Amit Narang, an expert on the
14 Federal regulatory process. A graduate of the University of
15 Pennsylvania and the American University Washington College
16 of Law, Mr. Narang is a regulatory policy advocate for
17 Public Citizen, a nonprofit public interest organization
18 founded by Ralph Nader.

19 Timothy Sandefur is an Arizona-based attorney who
20 specializes in economic liberty and constitutional law. A
21 graduate of Hillsdale College and Chapman Law School, Mr.
22 Sandefur currently serves as the principal attorney for the
23 Pacific Legal Foundation, where he is the lead attorney in
24 the PLF's Economic Liberty Project.

25 William Scott is the CEO of Tristatz, LLC, a community

1 and economic development consulting company in Selma,
2 Alabama. Educated at Alabama State University and Troy
3 University-Montgomery, Mr. Scott is a former mayor and
4 councilmember of the town of Mosses, Alabama, and a veteran
5 of the United States Army. Thank you, Mr. Scott, for your
6 service.

7 Sabrina Loving is a Chicago-based small business owner.
8 A graduate of Robert Morris College and Roosevelt
9 University, Ms. Loving runs Loving Tax Services,
10 Incorporated, a tax preparation service she started 5 years
11 ago to assist individual and small business clients with
12 their tax returns.

13 Aaron Mair is the 57th president of the Sierra Club,
14 one of the Nation's premier environmental organizations. He
15 became a member in 1999 and has held numerous leadership
16 positions within the organization since 2002.

17 And Harry Alford is a D.C.-based business leader. A
18 former Wisconsin football player and Army officer--thank you
19 for your service as well--Mr. Alford currently serves as
20 president and CEO of the National Black Chamber of Commerce,
21 which he founded with his wife, Kay, over 20 years ago.
22 Prior to founding NBCC, Mr. Alford worked for several
23 Fortune 100 companies.

24 We will now have an opening statement from Mr. Coons.

25 OPENING STATEMENT OF HON. CHRISTOPHER COONS, A U.S.

1 SENATOR FROM THE STATE OF DELAWARE

2 Senator Coons. Thank you, Chairman Cruz, and thank you
3 for calling this hearing.

4 The foundational principle underlying this hearing,
5 that regulations are inherently harmful to business and our
6 prosperity, I think is highly dubious. A previous Senate
7 Judiciary Committee hearing in this very Congress examined
8 this point, and evidence presented by the OMB suggests that
9 major Federal regulations have a net benefit to our economy
10 of between \$130 and \$800 billion measured over 10 years.
11 That should not be surprising because, since 1981, every
12 economically significant regulation is required to undergo a
13 searching cost-benefit analysis before being put into
14 effect.

15 Rulemaking is also governed by the APA, the
16 Administrative Procedures Act, which guarantees all
17 stakeholders the opportunity to be heard, and courts have
18 not been shy about striking down regulations that run afoul
19 of rulemaking procedures or organic statutes, as evidenced
20 by the Court's decision last term in Michigan v. EPA.

21 Turning, though, to the precise topic of today's
22 hearing, of this hearing, the impact of regulations on
23 racial minorities, I would observe that the argument against
24 regulation is too narrowly focused on looking at the acute
25 costs of regulation and not sufficiently focused on the

1 wide-ranging benefits of regulating some private behavior to
2 minimize injustice and to defuse externalities.

3 The Civil Rights Act of 1964, for example, is thought
4 of as civil rights legislation, which, of course, it is, but
5 also a powerful piece of economic regulation because, prior
6 to its enactment, businesses were free to exercise their
7 economic liberty to refuse to do business with or hire
8 minorities in much of the country, and many businesses did
9 just that.

10 Under the Voting Rights Act of 1965, the Department of
11 Justice served as regulator for 48 years, using that law to
12 block the implementation of some roughly 2,400 proposed
13 discriminatory voting changes. When the Supreme Court
14 struck down a key component of that law, doing away with
15 much of the relevant Federal regulatory framework,
16 unfortunately, several States then moved fairly quickly to
17 enact their own regulations that have the effect widely of
18 disenfranchising voters of color. Anti-equality voting
19 regulations have been enacted to shorten voter registration,
20 early voting periods, implement photo I.D. laws, and purge
21 voter rolls of eligible minority voters.

22 I am proud to cosponsor bipartisan legislation in this
23 Senate, the Voting Rights Advancement Act, which would
24 restore these critical Federal regulations in order to
25 protect the rights of minorities to vote.

1 Federal regulation then prevents discrimination in
2 lending, housing, and education against minorities. In each
3 area, regulation has improved the economic opportunities of
4 African Americans and other racial minorities in America,
5 notwithstanding the claims of civil rights opponents who
6 stated they would interfere with economic liberty.

7 In addition to these transformative laws, there is a
8 host of other Federal regulatory structures outside the
9 civil rights context that have, nevertheless, benefited the
10 health, the safety, and the economic opportunities currently
11 available to Americans of color.

12 The Affordable Care Act, for example, has improved
13 access to private health insurance for nearly 8 million
14 African Americans and 4 million Latinos who have gained
15 coverage since passage of the law, decreasing the uninsured
16 rate in the Hispanic community by roughly 27 percent.
17 Thanks to the ACA, all Americans are today free from
18 discrimination due to preexisting conditions or lifetime
19 caps and fees associated with routine screenings.

20 Now, these improvements will ensure that the chronic
21 rates of disease in minority communities, diseases like
22 diabetes, heart disease, obesity, will have access to
23 affordable and comprehensive health care coverage to address
24 these challenges.

25 Environmental regulations, which are often held up as

1 prime examples of overregulation of business, protect us
2 all, but are especially crucial to minority communities.
3 Due to the vestiges of housing discrimination and a lack of
4 economic opportunities, many minorities have no choice but
5 to live in areas with very high levels of industrial and
6 atmospheric pollution. In the South Bronx, for example,
7 which is overwhelmingly Hispanic and African American,
8 asthma rates are four times the national average due to a
9 heavy concentration of air pollution.

10 A number of studies suggest minorities face 40 percent
11 more exposure to a variety of toxic air pollution
12 components--sulfates, nickel, silicon, vanadium--which are
13 linked to deaths from cardiovascular and lung disease. They
14 are also exposed to much higher levels of other air toxics
15 like aluminum, which is associated with low birth weight.

16 Instead of asking if environmental regulations go too
17 far, perhaps we should be asking in these circumstances and
18 for these particular communities if they go far enough.

19 The case that regulation harms minorities turns a blind
20 eye to the manifold ways in which regulations have been used
21 to promote equality and justice in health care and the
22 environment, as I have already mentioned, but we could also
23 consider workplace safety and payrolls, the ability to fight
24 back as a consumer against unfair trade practices, and
25 indeed in economic terms by producing a level playing field

1 for all businesses.

2 So I look forward to a robust and sustained exchange of
3 views. I join the Chairman in welcoming all the witnesses
4 and thanking you for your service to our Nation in several
5 cases and for being here today. You have a broad range of
6 relevant experiences, and I look forward to that informing
7 our discussion.

8 If I might, I would like to briefly offer a special
9 welcome to Mr. Scott on behalf of your Representative in
10 Congress and my friend, Congresswoman Terri Sewell, who has
11 also joined us here today. I understand, Mr. Scott, you are
12 a former staffer to Ms. Sewell and are currently a business
13 leader in the Black Belt region. So I join in stating that
14 we can and must do more together to provide the minority
15 business community with the tools necessary to succeed, and
16 I look forward to a vigorous debate as to the role of
17 regulations in doing so.

18 Thank you, Mr. Chairman.

19 Chairman Cruz. Thank you, Senator Coons.

20 I would ask each of the witnesses to please rise. If
21 you would raise your right hand. Do you affirm that the
22 testimony you are about to give before this Committee will
23 be the truth, the whole truth, and nothing but the truth, so
24 help you God?

25 Mr. Barrera. I do.

1 Mr. Narang. I do.
2 Mr. Sandefur. I do.
3 Mr. Scott. I do.
4 Ms. Loving. I do.
5 Mr. Mair. I do.
6 Mr. Alford. I do.
7 Chairman Cruz. You may be seated.
8 Mr. Barrera, you may begin.

1 STATEMENT OF MICHAEL BARRERA, NATIONAL ECONOMIC
2 PROSPERITY MANAGER, THE LIBRE INSTITUTE, KANSAS
3 CITY, MISSOURI

4 Mr. Barrera. Thank you, Senator. Mr. Chairman and
5 members of the committee and my fellow panelists, my name is
6 Michael Barrera, national manager of Economic Prosperity for
7 The LIBRE Institute, a nonpartisan, nonprofit organization
8 that educates Hispanics on the importance of economic
9 freedom. Thank you for your invitation to testify regarding
10 the impact of Federal regulations on the minority community.
11 I will focus my comments on the impact on small businesses
12 and the Hispanic community.

13 Americans are suffering under the crushing burden of
14 overregulation, and I stress "overregulation." In 2014,
15 Federal regulations cost nearly \$2 trillion through higher
16 prices and lost productivity. In a 2008 report, the Small
17 Business Administration found that small businesses, those
18 with fewer than 20 employees, bore the largest burden of
19 complying with Federal regulations, facing an annual cost of
20 over \$10,000 per employee. This is 36 percent higher than
21 large firms of more than 500 employees. It should be noted
22 these were the costs 7 years ago and do not include the cost
23 of compliance with the Affordable Care Act and Dodd-Frank.
24 Federal regulations continue to grow as the number of pages
25 in the Federal Register, as was pointed out, grew from

1 23,000 in 1960 to over 175,000 today.

2 Additionally, the NFIB reported that for 65 straight
3 months, small business owners cited regulations as a top
4 impediment to conducting business. Also, 21 percent of
5 small businesses cite regulations as their single most
6 important problem.

7 The U.S. is also losing leadership in business startups
8 as the growth of regulations contributed to the U.S. falling
9 out of the top ten worldwide rankings in the ease of
10 starting a business. In fact, the World Bank found that it
11 is easier to start a new business in Portugal, Romania,
12 Panama, Hungary, and Belarus than in the U.S.

13 One of the most disturbing statistics we found is that
14 business failures now outpace business startups. From 1977
15 to 2008, the number of new startups outpaced the number of
16 failing businesses by about 100,000 a year. Now startups
17 lag behind closures. These trends concern the Hispanic
18 community and our 4 million businesses, many of which are
19 family-owned. Nationally, family-owned businesses account
20 for 50 percent of the U.S. GDP, 60 percent of the country's
21 employment, and 78 percent of all new jobs.

22 Family business is also important in our community.
23 Mass Mutual reports that 89 percent of Hispanic
24 entrepreneurs started their business in order to provide
25 financially for their family and 70 percent of Hispanic

1 business owners plan to pass that business down to their
2 family members. Additionally, 31 percent of Hispanic
3 entrepreneurs hire extended family, people like their
4 siblings, their parents, their cousins, their aunts, and
5 their uncles. As such, the impact of Federal regulations
6 affect both business and family lives. As Federal
7 regulations grow, so does the cost of doing business. This
8 forces entrepreneurs and their families to make difficult
9 choices. Do I spend my time and money complying with
10 Federal and local mandates? Or do I spend it managing and
11 marketing my business, hiring new employees, or working to
12 increase their wages?

13 This testimony is not a blanket rejection of
14 regulation. It is about overregulation. Elected and
15 unelected officials must rededicate themselves to weighing
16 the costs and benefits of each proposed rule before
17 proceeding. This is the law. The burden of proof should be
18 on the regulator to prove that a rule is necessary and will
19 benefit our lives and help businesses to prosper, not on
20 small businesses to prove otherwise.

21 Sadly, something is truly amiss when unelected agency
22 officials pass 16 new regulations for every law passed by
23 you, our elected officials.

24 In conclusion, small businesses employ close to two-
25 thirds of American workers and must be more than a

1 convenient talking point when policymakers discuss reviving
2 our economy. Unfortunately, the vast majority of Americans
3 and entrepreneurs, including Hispanics, will tell you
4 Government rules and regulations are confusing, complex,
5 time-consuming, and expensive. Moreover, many of our
6 businesses are hesitant to contest, complain, unable to
7 defend or advocate for themselves due to the expense, time,
8 and in some cases the intimidation by Federal regulators.

9 It is very important--I heard a great story in North
10 Carolina where a small business talked about, "Mr. Barrera,
11 I cannot reproduce myself. The time I spend complying with
12 Federal rules and regulations, I could be spending that
13 personal time"--he is a personal trainer--"with my
14 customers, researching new ways to help people become
15 healthy. But I spend time with Federal regulation."

16 Polls consistently show the economy and jobs are a top
17 priority--in other words, how to achieve prosperity. I
18 heard another story in Colorado from a business leader. He
19 talked about Government and entrepreneurs' attitude. He
20 summed it up this way: "When elected officials talk about
21 laws that they pass, that is all nice and good. But I would
22 rather they talk about the rules and regulations that they
23 eliminated to make it easier to do business and to live my
24 life."

25 We believe economic freedom, the rule of law, the free

1 market, and a constitutionally limited Government--not
2 excessive regulation or Government cronyism--are the pathway
3 to prosper and the best way for each person to achieve their
4 American dream.

5 Thank you.

6 [The prepared statement of Mr. Barrera follows:]

1 Chairman Cruz. Thank you, sir.

2 Mr. Narang.

1 STATEMENT OF AMIT NARANG, REGULATORY POLICY
2 ADVOCATE, PUBLIC CITIZEN, WASHINGTON, D.C.

3 Mr. Narang. Thank you. Chairman Cruz, Ranking Member
4 Coons, and members of the Subcommittee, thank you for the
5 opportunity to testify today. I am Amit Narang, regulatory
6 policy advocate at Public Citizen's Congress Watch. Public
7 Citizen is a national public interest organization with more
8 than 400,000 members and supporters. For more than 40
9 years, we have successfully advocated for stronger health,
10 safety, consumer protection, and other rules, as well as for
11 a robust regulatory system that curtails corporate
12 wrongdoing and advances the public interest.

13 Regulation which has been adopted to protect the public
14 has been among the greatest public policy success stories in
15 our country's history. Regulations have made our air far
16 less polluted and our water much cleaner. They have made
17 our food and drugs safer. They have made our workplace less
18 dangerous. They have made our financial system more stable
19 when they have been in place. They have protected consumers
20 from unsafe products and from predatory lending practices,
21 and they have made our cars safer.

22 For minorities in particular, regulations have made our
23 society more equal and fair by outlawing discrimination in
24 many contexts, by giving traditionally disenfranchised
25 minorities the opportunity to vote and participate in our

1 democracy, and by combating policies that expose minority
2 populations to higher rates of pollution and environmental
3 toxins.

4 Indeed, the premise of this hearing has it exactly
5 backwards. Regulations have been crucial in providing basis
6 rights and opportunities to minority that otherwise would
7 not have existed. The story of regulation should not only
8 be celebrated but also emulated going forward. And while
9 regulators deserve credit for these successes, the true
10 credit goes to Congress who passed landmark legislation such
11 as the Clean Air Act, the Clean Water Act, the Occupational
12 Safety and Health Act, the Consumer Product Safety Act, the
13 Civil Rights Act, and the Fair Housing Act, laws which gave
14 regulators the authority to protect the public and make our
15 country more equal and fair.

16 On the other hand, when regulatory safeguards have not
17 been in place, regulatory failure has occurred, and our
18 country and economy has suffered. Deregulation of the
19 financial industry led to the greatest recession since the
20 Great Depression, costing our country \$13 trillion and
21 throwing millions out of work and their homes. A lack of
22 adequate offshore drilling safety measures led to the
23 British Petroleum oil spill in the Gulf of Mexico, one of
24 the greatest ecological disasters in our country's history.

25 Tainted food scandals, derailling and exploding oil

1 trains, unsafe children's toys leading to injuries and
2 recalls, chemical spills in critical waterways, oil and gas
3 pipeline ruptures all share a common theme: underregulation
4 of dangerous and unfair business practices due to a
5 misplaced faith in industry's self-regulation.

6 So while it is true that we have made much progress as
7 a country and that regulation has been critical to that
8 progress, it is also clear that there is much progress to be
9 made. This is why it is so important for Congress to avoid
10 making the problem of underregulation worse and instead
11 actively engage in efforts to fix what I agree is a broken
12 regulatory system, a regulatory system that is broken in
13 three ways, and the public, including minorities, is paying
14 the price.

15 First, our regulatory process moves far too slow when
16 implementing new laws intended to protect the public. The
17 examples of regulatory delay touch virtually every area of
18 public protection. The new food safety regulations were
19 finalized over 4 years ago--over 4 years after Congress
20 demanded them. Up to a third of the new Wall Street reforms
21 intended to prevent the next financial crisis still have not
22 been put into place almost 7 years after the financial
23 crash. Five years after the BP oil spill, and we still do
24 not have safety measures in place to fix one of the primary
25 causes of the oil rig explosion that led to the disaster.

1 These delays are the status quo, not the exception, and are
2 a concern across party lines and ideologies.

3 This summer, the R Street Institute, a libertarian,
4 free market-oriented think tank, looked back over the past
5 20 years to see how often regulators were able to meet
6 deadlines established by Congress. The results were deeply
7 troubling. Regulators missed congressional deadlines a
8 shocking 50 percent of the time. Regulatory delay is
9 central to the problem of underregulation.

10 Second, our regulatory system does not have the
11 authority and resources to effectively enforce violation of
12 regulations by bad actors, leading to undercriminalization
13 of white-collar crime. The public is deeply dissatisfied,
14 and rightly so, that virtually no individuals or bank
15 executives have been prosecuted in the aftermath of the
16 financial crisis. Similar situations have unfolded in the
17 wake of the General Motors ignition switch scandal. While
18 GM has paid a fine, no individuals were held accountable,
19 and the lead prosecutor even admitted that "there are gaps
20 in the law" that made it difficult to prosecute individuals.

21 Fines that are no more than the cost of doing business
22 will not deter future illegal behavior that costs lives and
23 costs our economy, and they will surely do nothing to change
24 corporate cultures that lead to this wrongdoing.

25 Finally, our regulatory system must adopt approaches to

1 regulating that are precautionary in nature and seek to
2 prevent threats to the public safety or our economy rather
3 than simply reacting when something goes wrong. Here
4 Congress has taken promising steps in this direction,
5 although more can be done.

6 For example, the Food Safety Modernization Act shifted
7 our food safety regulatory structure from trying to mitigate
8 tainted food outbreaks once they occurred to actually
9 preventing those tainted food outbreaks in the first place.
10 In some respects, the Wall Street reform law, Dodd-Frank,
11 adopts the same approach by requiring banks to be better
12 capitalized and preventing them from engaging in risky
13 activity. When passing new laws intended to protect the
14 public, often in response to crises created by
15 underregulation, Congress should be mindful of adopting laws
16 that are designed to prevent crises, not just react to them.

17 Unfortunately, Congress is considering legislation that
18 would make the problems I just outlined worse. So-called
19 regulatory reform legislation, better termed "deregulatory
20 reform legislation," would further slow down the rulemaking
21 process by adding numerous redundant and unfunded legal and
22 analytical requirements, likely paralyzing rulemaking as a
23 result. In certain instances, legislation will force the
24 least costly rule to regulated industries, and we saw with
25 the Wall Street crash that the least costly rules to Wall

1 Street were the most costly to the public and small
2 businesses.

3 In terms of enforcement, the imposition of new mens rea
4 and criminal intent standards will make it even harder and
5 surely not easier to prosecute Wall Street and corporate
6 executives for future crimes.

7 Public Citizen stands ready to work with lawmakers
8 across the aisle to make our regulatory system work
9 effectively and efficiently for consumers, minorities,
10 working families, and small businesses.

11 Thank you.

12 [The prepared statement of Mr. Narang follows:]

1 Chairman Cruz. Thank you very much.

2 Mr. Sandefur.

1 STATEMENT OF TIMOTHY SANDEFUR, PRINCIPAL ATTORNEY,
2 PACIFIC LEGAL FOUNDATION, SACRAMENTO, CALIFORNIA

3 Mr. Sandefur. Thank you, Senator. I believe economic
4 freedom is the greatest hope for the poor, for immigrants,
5 and for members of minority groups who seek independence and
6 success for themselves and their families. Whenever I think
7 about this subject, I think of the story of Frederick
8 Douglass who described in his autobiography what it was like
9 to escape from slavery to New Bedford, Massachusetts, on the
10 Underground Railroad. He said: "The fifth day after my
11 arrival, I went in search of work. On my way down Union
12 Street, I saw a large pile of coal in front of a house. I
13 went to the kitchen door and asked the privilege of bringing
14 in and putting away this coal. I was not long in
15 accomplishing the job, when the dear lady put into my hand
16 two silver half-dollars. To understand the emotion which
17 swelled my heart as I clasped this money, realizing that it
18 was mine--that my hands were my own, and could earn more of
19 the precious coin--one must have been in some sense himself
20 a slave. I was not only a free man, but a free working man,
21 and no master stood ready at the end of the week to seize my
22 hard earnings."

23 Sadly, overregulation at the Federal, State, and local
24 levels today deprive many Americans of this fundamental
25 human right to economic liberty. I will give just two

1 examples.

2 Occupational licensing laws often force people to
3 satisfy expensive and time-consuming educational
4 requirements before they may pursue their trade. Florida,
5 for example, requires people to have a college degree before
6 they can work as an interior designer. In other words, it
7 is illegal for someone to advise me on what color drapes to
8 hang in my living room unless that person has spent 2 years
9 in college at the cost of perhaps tens of thousands of
10 dollars. Since black and Hispanic Floridians are about a
11 third less likely to have a college degree, this restriction
12 makes it much harder for members of these groups to enter
13 this trade.

14 It may not sound like much to you and me to take an
15 exam to get a license, but remember that, in addition to the
16 degree requirement, exams are only administered a few times
17 a year, sometimes far away from where people live, so they
18 have to get transportation and a hotel room and pay the
19 licensing fees. All of this helps make entry-level jobs off
20 limits to those who need them the most. Minority
21 entrepreneurs are less likely to have a license than their
22 white counterparts, and licensing laws drive them into the
23 underground economy where they cannot get loans or insurance
24 or are subject to police harassment, cannot advertise
25 openly, and in general are less likely to succeed.

1 Yet licensing laws are on the increase. The White
2 House reported in August, in a very thorough and long
3 overdue report, that nearly a third of all jobs in America--
4 that is, a third of the American dream--is now off limits
5 without some form of Government permission.

6 My second example is much worse. A certain kind of
7 licensing law called a "certificate of public convenience
8 and necessity" or a "competitor's veto law," which has
9 nothing to do with whether a person is qualified or skilled
10 or honest, but simply forbids people from operating a
11 business unless they first get permission from the companies
12 already operating. This sounds absurd, and it is. But it
13 is the law in most States and most major cities. These
14 competitor's veto laws apply to a wide range of businesses,
15 everything from taxicab and limo companies to moving
16 companies, liquor stores, car dealerships, and hospitals.
17 In all these industries, it is illegal to start a new
18 business unless you first get permission from your own
19 competition. Obviously, these laws create a cartel that can
20 be very hard for members of minority groups to break into.

21 Take my client, Maurice Underwood, for example.
22 Maurice lives in Reno, Nevada, where he wants to start a
23 moving company. But Nevada has the most anticompetitive
24 licensing laws in the Nation. There the law says that even
25 if you are fully qualified and have a squeaky clean record,

1 you cannot run a moving company unless you first prove that
2 you would not compete against the existing moving companies
3 in the State. To get a license, Maurice would have to
4 provide detailed statements from potential customers, hire a
5 lawyer, attend a hearing before the Nevada Transportation
6 Authority, and prove to State bureaucrats that there is a
7 public need for a new moving company, and that a new moving
8 company would "foster sound economic conditions"--whatever
9 that means. Under such vague and anticompetitive
10 restrictions, it is little wonder that people like Maurice
11 find it hard to break into the old-boy network.

12 We at Pacific Legal Foundation challenged that law, and
13 that case is still pending in court. But Federal courts
14 today typically ignore violations of the right to earn a
15 living. Although Supreme Court Justice William Douglas
16 called it the "most precious liberty that man possesses,"
17 courts today typically refuse to enforce that right and
18 allow Federal, State, and local governments to restrict
19 economic opportunity virtually without limit.

20 This should not be a Republican-Democrat issue. I
21 mentioned Justice Douglas endorsing this right, and he was
22 about as a liberal as a Justice can get. Another liberal
23 Supreme Court Justice, John Paul Stevens, warned in the
24 1980s of the danger of businesses using licensing laws to
25 prevent competition against themselves.

1 Like all restrictions on economic freedom, these laws
2 have a disproportionate impact on members of minority groups
3 because they lack the political influence necessary to get
4 the Government to do their will. They turn to courts to
5 protect their rights, and thanks to the theory of judicial
6 restraint, courts typically cover their eyes and ignore
7 these violations. That is what happened in Florida when
8 courts refused to protect the rights of entrepreneurs who
9 wanted to be interior designers and upheld that State's
10 power to impose absurd and unnecessary licensing laws.

11 In my written testimony, I have suggested ways Congress
12 could at today to protect the rights of America's wealth-
13 creating entrepreneurs. Most restrictions on economic
14 liberty are at the State and local levels, and the 14th
15 Amendment gives Congress the power to protect people against
16 State governments violating their rights. Congress should
17 forbid States from imposing unnecessary, burdensome
18 licensing requirements on interior designers, for example,
19 and abolish competitor's veto laws across the board. We
20 would never tolerate such laws when it comes to freedom of
21 speech or freedom of religion, and yet we tolerate them when
22 it comes to the right to earn a living without unreasonable
23 Government interference, the most precious liberty that man
24 possesses.

25 [The prepared statement of Mr. Sandefur follows:]

1 Chairman Cruz. Thank you, sir.

2 Mr. Scott.

1 STATEMENT OF WILLIAM C. SCOTT, SENIOR CONSULTANT,
2 EMERGING CHANGEMAKERS, AND CHIEF EXECUTIVE
3 OFFICER, TRISTATZ, LLC, MOSSES, ALABAMA

4 Mr. Scott. Good afternoon, Chairman Cruz, Ranking
5 Member Coons, and distinguished members of the Judiciary
6 Subcommittee on Oversight, Agency Action, Federal Rights,
7 and Federal Courts. I am William Scott, and I serve as the
8 president and CEO of Tristatz, a community and economic
9 businesses. We provide services to mid-tier and small
10 businesses who provide service solutions to Federal, State,
11 and local government, nonprofits, and commercial markets. I
12 thank you on their behalf for giving me the opportunity to
13 speak and appear before you about the organizations and
14 their opportunities in America.

15 I would be remiss to not acknowledge the Honorable
16 Terri Sewell of the 7th Congressional District of Alabama,
17 who is my Congresswoman. For almost 11 years, I have
18 focused my career on providing economic development and
19 resources to small business. I am the host of the top-rated
20 Small Business radio show, and my name is "The Business
21 Doctor" that reaches over 150,000 and the former mayor and
22 councilmember of the town of Mosses in Lowndes County,
23 Alabama. Over the years, I have worked for the United
24 States Department of Commerce as a partnership specialist
25 and as a Black Belt Outreach Coordinator for The Honorable

1 Congresswoman Terri Sewell of the 7th Congressional District
2 of Alabama.

3 I have completed 12 years of dedicated and decorated
4 service in the United States Army. Helping people and
5 providing quality service is my primary goal in life. My
6 diverse experience allows me to understand issues from
7 multiple perspectives.

8 Though I work with small businesses in economically
9 distressed communities with majority black populations, it
10 is not just these entrepreneurs in Alabama that I represent.
11 According to Fortune, the number of businesses owned by
12 African American women grew 322 percent since 1997, making
13 black females the fastest growing group of entrepreneurs in
14 the United States.

15 So while some politicians say that Federal regulations
16 are stifling small business growth, the statistics and I am
17 here to tell you that that is not the case. A national poll
18 conducted for the American Sustainable Business Council
19 found that "lack of demand"--and not regulation--is the
20 biggest problem that small businesses face. Small business
21 owners see regulations as a necessary part of a modern
22 economy, 86 percent, and believe they can live with
23 regulations if they are fair and reasonable, 93 percent.

24 I understand firsthand needs of black entrepreneurs in
25 our community, and I can tell you that regulations play an

1 important role in meeting the needs of our businesses and
2 protecting our communities.

3 I am also the senior consultant for Emerging
4 ChangeMakers Network in Alabama. Emerging ChangeMakers
5 worked in the areas of leadership and social entrepreneur
6 building among historically marginalized communities. We
7 provide professional business consultation to developing and
8 growing small business owners and to owners who believe that
9 you do not have to choose between growing businesses and
10 social and environmental protection.

11 In fact, our businesses in Alabama understand that we
12 do better because of these protections because they create a
13 level playing field for competition. Much of our work
14 involves accessing capital for our business clients. The
15 success of this effort follows closely their own investment
16 of personal and sweat equity. Therefore, our clients
17 understand that there is a great need for good regulation
18 like Dodd-Frank that protects their investment of hard work
19 and money from the risky behavior of the big banks that led
20 to the Great Recession, which devastated small businesses
21 around the country.

22 Our small business clients also know that the success
23 of their businesses depends on the health of their
24 communities. That is why regulations to protect our
25 communities from chemical and environmental disasters, which

1 disproportionately impact minority communities, is important
2 to us. Environmental Protection Agency regulations are not
3 stopping black entrepreneurship. They protect our community
4 so that our businesses can have a future. Regulations are
5 needed to create the conditions under which society as a
6 whole can prosper so their financial health and
7 environmental protection can exist to support the growing
8 economy.

9 That is why I and Emerging ChangeMakers is a part of
10 the larger efforts of the American Sustainable Business
11 Council and over 250,000 businesses that they represent to
12 advance smart regulations that protect our communities and
13 the environment, as we grow our businesses, create good
14 jobs, and build a vibrant economy.

15 I am on the ground with black entrepreneurs and small
16 business owners every day. If you want to really help them,
17 then provide more resources for professional business
18 consultations to minority-owned businesses and provide more
19 resources for compliance assistance and making sure that
20 those small businesses providing services under Federal
21 contracts get paid on time. Efforts to slow down regulation
22 to deregulate are not being a friend to African American
23 small businesses.

24 Thank you for the opportunity to be before you.

25 [The prepared statement of Mr. Scott follows:]

1 Chairman Cruz. Thank you, sir.

2 Ms. Loving?

1 STATEMENT OF SABINA LOVING, PRESIDENT AND OWNER,
2 LOVING TAX SERVICES, INC., CHICAGO, ILLINOIS

3 Ms. Loving. I thank the Chairman and this Committee
4 for the opportunity to testify today.

5 My name is Sabina Loving. I am the owner and president
6 of Loving Tax Services, an independent tax preparation firm
7 on Chicago's South Side. I am the "Loving" in the Loving v.
8 IRS lawsuit that successfully challenged an IRS power grab
9 that would have posed national licensing on tax preparers.

10 I am a small businesswoman trying to stay afloat in the
11 economy while helping people with their tax preparation and
12 building up my community. I should have the right to earn
13 an honest living doing what I love, and so should my
14 employees. Equally important, my customers--not the IRS--
15 should be the ones who decide who prepares their taxes.

16 You almost never hear the IRS or anyone else who
17 advocates for tax preparer licensing talking about me or my
18 co-plaintiffs when they talk about the Loving case. It is
19 almost as though they forget that we are real people who
20 were actually being harmed by the anticompetitive IRS
21 licensing scheme. But there are about 300,000 independent
22 tax preparation entrepreneurs like me, many of whom would
23 have been forced to close their businesses.

24 So today I would like to share my story with you to
25 help you understand how overregulation affects real

1 entrepreneurs like me, why I sued the IRS, and why Congress
2 should not give the IRS new power to license tax preparers.

3 I am a native of Chicago who is blessed to earn a
4 living doing what I love: helping people with their taxes.
5 In 2011, I opened my business, Loving Tax Services, on
6 Chicago's South Side, where there are high unemployment and
7 foreclosure rates. My business was the first to occupy its
8 storefront in at least a dozen years. I have been fortunate
9 enough to employ several people in my community and bring
10 money back into our neighborhood.

11 Ever since I was young, I wanted be an accountant and
12 work with numbers. I dreamed of one day being able to start
13 my own business. I worked hard to make my dream a reality.
14 I worked full-time as an accountant for major financial
15 firms for nearly a decade. The economic downturn hit my
16 industry so hard, so I decided to take this as an
17 opportunity to realize my American dream. I put myself to
18 work as an independent tax preparer while earning a master's
19 degree. I formed Loving Tax Services in 2010, and I never
20 looked back.

21 Tax preparation is a seasonal industry, and my business
22 model depended on flexibility. Fortunately, I was able to
23 find qualified people who could assist me seasonally.

24 But just as my business was taking off, I learned that
25 the IRS was going to force tax preparers to jump through a

1 bunch of hoops in order to allow them to continue earning a
2 living preparing taxes.

3 For the first time in 100 years, the IRS was imposing a
4 license to prepare tax returns. We would have to pass an
5 IRS-mandated exam and complete continuing education
6 requirements each year. The license would give the IRS
7 great control over tax preparers, making us dependent on the
8 most powerful Federal agency for our livelihoods.

9 It also imposed additional costs and burdens on my
10 business, which I would have to pass on to my customers in
11 the form of higher prices. I pride myself on offering lower
12 prices than the major tax firms. I did not want to raise my
13 prices, but I could not afford to make any lower profits.

14 Higher prices meant fewer customers, but if my business
15 shrank, I would not be able to hire people to help me during
16 the tax season. That would put me at a competitive
17 disadvantage to the major tax firms which were likely to get
18 my customers I was going to lose.

19 This licensing requirement did not apply to everyone.
20 CPAs and attorneys were exempt, even if they had never taken
21 a course in tax law or tax preparation. Even though I had a
22 decade of experience in accounting, I was not a CPA, so I
23 was not exempt. Powerful industry groups lobbied for
24 another exemption. Anyone who was being supervised by an
25 attorney or a CPS could also prepare returns without a

1 license. I wanted the opportunity to hire more employees
2 and supervise them as tax preparers so I could expand my
3 business and serve more of my community. But I did not
4 write the rules, so I did not get a special exemption.

5 I knew that this new license would not do anything to
6 protect consumers. There are already all sorts of laws on
7 the books that do just that. Instead, it protects big tax
8 preparation chains and CPAs from competition by smaller
9 businesses like mine, many of whom would have been forced to
10 close or shrink their businesses. The end result would be
11 fewer options and higher prices for taxpayers. So that is
12 why I sued the IRS, and I was represented pro bono by
13 lawyers at the Institute for Justice. Thankfully, we won.

14 But the IRS and big tax preparation chains keep pushing
15 for Congress to expand IRS power. After we won the case,
16 several bills were introduced that would authorize tax
17 preparer licensing. Just 2 weeks ago, the Senate Finance
18 Committee announced one proposal. But a national license
19 for tax preparers was a bad policy then, and it is a bad
20 policy now. It is anticompetitive, anticonsumer, and will
21 hurt small businesses like mine. I urge the Senate not to
22 give the IRS any more power and to vote against any bill
23 that would authorize the IRS to license tax preparers.

24 Thank you very much for this opportunity to testify.

25 [The prepared statement of Ms. Loving follows:]

1 Chairman Cruz. Thank you, Ms. Loving, for that
2 powerful testimony.

3 Mr. Mair?

1 STATEMENT OF AARON MAIR, PRESIDENT, SIERRA CLUB,
2 WASHINGTON, D.C.

3 Mr. Mair. Chairman Cruz and Ranking Member Coons,
4 thank you for inviting me here today to testify about the
5 importance of environmental protections and public health
6 safeguards in ensuring the safety and well-being of all
7 Americans, especially the communities of color who carry
8 disproportionate risk of harm caused by pollution.

9 I speak today as the first elected African American
10 president in the 123-year history of the Sierra Club. The
11 Sierra Club is the Nation's largest grassroots environmental
12 organization with 2.4 million members and supporters. In
13 addition to helping people from all backgrounds explore
14 nature, the Sierra Club works to promote clean energy
15 safeguard health in our community. It protects wildlife and
16 it preserves our remaining wild spaces.

17 In addition, I have been an advocate for clean water,
18 clean air, and environmental justice for over 31 years,
19 including work as a resident in Arbor Hill, Albany, New
20 York, against a waste incinerator that was causing
21 respiratory illness in the community.

22 Also, I am a father, a husband, and a public health
23 analyst for the State of New York. Part of the reason I am
24 here today is because some of the fossil fuel corporations
25 are spending a lot of money to scare people of color and

1 low-income families into believing that new clean air and
2 clean water safeguards like the Clean Power Plan will hurt
3 them. These corporations and their CEOs are terrified that
4 holding dirty industries accountable would cut into their
5 enormous profits. They want low-income and minority
6 communities to think that these regulations will hurt us,
7 but nothing could be further from the truth.

8 Recently, the National Black Chamber of Commerce, an
9 organization represented here today and heavily funded by
10 the fossil fuel industry, released a bogus report claiming
11 that the Clean Power Plan would hurt African American and
12 Hispanic communities. This is just the latest example of
13 polluters desperately trying to confuse leaders of color and
14 trick them into sabotaging their best interests and the
15 interests of our communities by opposing this essential
16 plan.

17 Unfortunately, these dirty energy companies and those
18 that amplify their information are jeopardizing the health
19 of tens of thousands of kids across the country, and they
20 should be ashamed. Fortunately, most of us are not buying
21 what these companies are selling. Polls show that African
22 Americans lead the country in support for tackling the
23 climate crisis. A whopping 85 percent have said they want
24 to see an international climate agreement. Similarly, the
25 polls show that 90 percent of Latinos want to strengthen the

1 Clean Air and Clean Water Act and 85 percent want to reduce
2 smog and air pollution.

3 It is no surprise that the opponents of the Clean Air
4 and Clean Water Act are fighting against us at every step of
5 the way, just as they have done with virtually every
6 safeguard ever proposed--acid rain protections, Clean Air
7 Act. We have heard the same talking points from the same
8 industry. They said the sky was falling, but the truth is
9 the air just got cleaner.

10 What is shocking is the big way polluters are using
11 smoke and mirrors to try and confuse communities of color.
12 Big polluters desperately want black and Hispanic voters to
13 believe that the President's clean air protections will
14 raise their electric bills and cost us jobs, when in reality
15 the protections will save lives and actually lower these
16 costs.

17 At the same time, all that is going on, thanks to
18 people in movements like Black Lives Matter and Fight for
19 15, the call for racial and economic justice is getting
20 louder and stronger. But while we are out on the streets
21 fighting for equality, our kids are being poisoned by the
22 air they breathe. Environmental injustices are taking black
23 lives.

24 The overwhelming evidence shows that low-income areas
25 and communities of color do not receive equal protection

1 from environmental harm, despite suffering the greatest
2 exposure to toxic pollutants. Lacking political power,
3 these communities are frequently chosen as sites for
4 polluting facilities or feel compelled to accept them as a
5 source of jobs despite the health hazards they pose.

6 I know this firsthand by my experience in shutting down
7 the incinerator in Albany. Industry and local government
8 brushed us off for 10 years, but through sheer persistence,
9 we were able to prevail.

10 Because these communities often lack access to adequate
11 health care, community residents face an increased risk of
12 respiratory and cardiovascular illness, cancer, birth
13 defects that can last long after these facilities have
14 ceased to operate.

15 Despite the promise of jobs, such pollution actually
16 causes economic harm, driving down property values and
17 discouraging investment needed to keep communities healthy.
18 Sadly, African Americans are more likely to live near
19 environmental hazards like power plants and be exposed to
20 hazardous air pollution, including higher levels of nitrogen
21 oxide, ozone, particulate matter, and carbon dioxide while
22 their white counterparts do not. The presence of these
23 pollutants increase rates of asthma, respiratory illness,
24 cardiovascular disease, and puts newborn at risk and causes
25 missed days of work and school. We just cannot afford this.

1 African American kids already have the highest rate of
2 asthma in the Nation, and our infant mortality rate is
3 nearly double that of the national rate. Conditions in
4 which we are born, grow, work, and live are determined by
5 the difference in our health outcomes, and it is essential
6 to recognize that these circumstances are shaped by the
7 inequalities in the powers and the resources at the local
8 and national and global levels. Helping disadvantaged
9 communities succeed in the forefront of strong and just and
10 a clean green economy will benefit them and all Americans.

11 In closing, whether you are talking about new pollution
12 protections against smog, carbon pollution, mercury, or
13 other toxic metals that pollute our air and water, it is
14 important to remember that nearly every major environmental
15 public health safeguard, polluters have predicted dire
16 economic outcomes that never actually will happen.

17 We are living in an alternate universe if we seriously
18 took every instance that they said that these regulations
19 will be the most expensive regulations in history. We have
20 got to look at the facts and not look at self-serving
21 polluter propaganda.

22 Thank you.

23 [The prepared statement of Mr. Mair follows:]

1 Chairman Cruz. Thank you, sir.

2 Mr. Alford?

1 STATEMENT OF HARRY C. ALFORD, PRESIDENT AND CHIEF
2 EXECUTIVE OFFICER, NATIONAL BLACK CHAMBER OF
3 COMMERCE, WASHINGTON, D.C.

4 Mr. Alford. Good afternoon, Chairman Cruz, Ranking
5 Member Coons, and distinguished members of the Subcommittee.
6 My name is Harry C. Alford, and I am the president and CEO
7 of the National Black Chamber of Commerce. The NBCC
8 represents 2.4 million black-owned businesses within the
9 United States, 140 chapters within the United States, and w
10 have over 80 chapters offshore representing four different
11 continents. We are the largest black business organization
12 in the world.

13 I am here to testify about the harmful and adverse
14 effects of overregulation on minorities and their
15 communities. As the hearing title suggests, the continuous
16 stream of unreasonable and overreaching regulations that
17 have come out of the Federal Government over the last few
18 years has led to the denial of countless opportunities for
19 minorities. Employment opportunities, income opportunities,
20 and housing opportunities for minorities--all of these are
21 being compromised by an ever growing number of Federal
22 regulations.

23 At the onset, I think it is important to be clear about
24 something: The National Black Chamber understands and
25 appreciates the importance of regulations within our

1 society. Regulations help keep our workers protected, our
2 water and air cleaner, our food safer, and our consumer
3 products reliable, to name a few. What we do not support
4 are regulations that are based upon erroneous and opaque
5 analysis and process. The rulemaking process--and the
6 regulations that come out of it--should involve
7 transparency, notice, sound science, quality data, and
8 reliable cost-benefit analysis. Without a doubt, there are
9 multiple new regulations that potentially will harm the
10 economic opportunities of minorities; but for today's
11 hearing, I am going to focus on two regulations from the
12 Environmental Protection Agency to illustrate my point.

13 First, there is the EPA's new rule on regulating
14 greenhouse gas emissions from existing power plants--often
15 referred to as the "Clean Power Plan." While increased
16 costs often come with increased regulation, the Clean Power
17 Plan in particular seems poised to escalate energy costs for
18 blacks and Hispanics in the United States, including
19 individuals, families, and minority-owned businesses.

20 In light of these concerns, the National Black Chamber
21 of Commerce undertook an effort to examine the potential
22 economic and employment impacts of the EPA's carbon
23 regulations, including the Clean Power Plan, on minorities
24 and low-income groups. On June 11, 2015, the National Black
25 Chamber of Commerce released a study on the threat of the

1 EPA carbon regulations to low-income groups and minorities.
2 I note that since then, the EPA released the final Clean
3 Power Plan rule, which has differences from the proposal.
4 Nevertheless, we believe that the findings of our study are
5 illustrative of the rule's potential economic impacts.

6 The National Black Chamber's study found that the
7 proposed Clean Power Plan would impose severe and
8 disproportionate economic burdens on poor families,
9 especially minorities. In particular, the proposed rule
10 would impose the most harm on residents of seven States with
11 the highest concentrations of blacks and Hispanics. These
12 communities already suffer from higher unemployment and
13 poverty rates compared to the rest of the country, yet the
14 EPA's regressive energy tax threatens to push minorities and
15 low-income Americans even further into poverty.

16 Now, we have got statistics which you have written
17 there. I am not going to go through those now. I want to
18 move on to the National Ozone Air Quality Standard.

19 The second regulation that I want to address today is
20 that ozone proposed rule. Just last week, the EPA finalized
21 a new ozone standard--tightening it from 75 parts per
22 billion to 70 parts per billion. While the agency adopted
23 the higher end of the range under consideration, a 70 ppb
24 ozone standard still will increase the number of areas in
25 the country in "nonattainment." This nonattainment

1 classification will severely limit economic and employment
2 opportunities in the affected areas. Unfortunately, this
3 tightened ozone standard likely will hurt not only the
4 Nation as a whole, but will disproportionately affect
5 America's urban, low-income, and minority businesses.

6 If a community comes in below the 70 parts per billion
7 standard, it will be deemed "in attainment," and the usual
8 amounts of construction, infrastructure projects,
9 development, and other elements of a healthy and growing
10 economy can continue. These activities create jobs and
11 generate revenue. On the flip side, the EPA wields a heavy
12 stick for communities that are deemed in "nonattainment."
13 It can step in and overrule State decisions to issue
14 permits, stopping development and growth, with no
15 consideration of the financial impact or loss of jobs. Air
16 permits, in particular, can be difficult to obtain because
17 companies building or expanding facilities will have to show
18 ozone reductions from other sources. These offsets can be
19 expensive and hard to obtain. For example, in the Houston
20 area, offset prices are \$175,000 per ton of nitrogen oxide
21 and \$275,000 per ton of volatile organic compounds.

22 In conclusion, the National Black Chamber of Commerce
23 and its members value and support clean air, clean water,
24 and environmental quality, and we recognize the importance
25 of regulations protecting those things. We also value and

1 support economic growth, job creation, and prosperity for
2 our individual members and this country as a whole. These
3 are not mutually exclusive goals, and one does not have to
4 be sacrificed for the other.

5 We appreciate the Committee holding this hearing and
6 highlighting these critical issues. Thank you for the
7 opportunity to testify, and I look forward to answering any
8 questions. And the National Black Chamber of Commerce is
9 going to roll on and make this a better and better Nation.
10 Thank you.

11 [The prepared statement of Mr. Alford follows:]

1 Chairman Cruz. Thank you, Mr. Alford. I want to thank
2 each of the witnesses for your very fine testimony. I think
3 this hearing has powerfully illustrated that many of the
4 people paying the biggest price for the economic stagnation
5 we have seen for the last 6-1/2 years are the most
6 vulnerable among us; that overregulating is stifling
7 opportunity for people who want to achieve the American
8 dream.

9 Indeed, the numbers are sobering. If you compare
10 overall median income in this country in 2009, it was just
11 over \$54,000. But in 2013, it had dropped to \$51,939. That
12 is a decrease for the average family of \$2,120, or 4
13 percent, median income has gone down. I would contrast that
14 to what occurred during the 8 years of Ronald Reagan's
15 administration when the Federal Government did not engage in
16 overregulation, and, indeed, President Reagan pulled back
17 the regulatory burden on small businesses. During those 8
18 years, median income for the average American family
19 increased \$5,555, or 12 percent. That is a real difference
20 for an average family, whether your household income drops 4
21 percent or goes up 12 percent.

22 But, indeed, the contrast is even starker when you look
23 at minority households. Under President Obama, between 2009
24 and 2013, the median income for African American households
25 has dropped \$789, roughly 2.2 percent. In contrast, under

1 President Reagan, between 1981 and 1989, the median income
2 for African American households rose \$5,008. That is 18
3 percent.

4 It is worth thinking about for everyone here who is
5 concerned about allowing those who are struggling to have an
6 opportunity to achieve the American dream, the marked
7 difference for black families, your median income dropping
8 2.2 percent versus rising 18 percent under Reagan's economic
9 policies.

10 And looking to the Hispanic community, under President
11 Obama the median income for Hispanic families has dropped
12 between 2009 and 2013 \$349, roughly 0.8 percent. In
13 contrast, under President Reagan, between 1981 and 1989, the
14 median income for Hispanic families rose \$2,160, roughly 5.7
15 percent.

16 These policies make a real difference in the lives of
17 millions of Americans who are struggling. An extra \$5,000 a
18 year for a family that is trying to make ends meet makes an
19 enormous difference.

20 I would note in the Hispanic community there are
21 roughly 2.3 million Hispanic small business owners, roughly
22 one in eight Hispanic households is a small business owner.
23 This is something I know personally because my household was
24 one of them. My father, who came as an immigrant from Cuba
25 with nothing, with \$100 in his underwear, who could not

1 speak English, who washed dishes making 50 cents an hour, he
2 and my mother, when I was a little boy, they started a small
3 business together. The Hispanic community is a tremendously
4 entrepreneurial community, and yet these barriers are making
5 it harder and harder for Hispanics and African Americans and
6 anyone who wants a better dream, a better opportunity for
7 their family to start small businesses and to survive.

8 And so, Mr. Barrera, as the former president of the
9 U.S. Hispanic Chamber of Commerce, can you describe some of
10 the challenges that your members faced in dealing with
11 regulations, red tape, and Government bureaucracy?

12 Mr. Barrera. Thank you, Senator, for the question. I
13 believe a lot of them are facing what we are calling this
14 "overregulation." I know I have heard people talk here
15 today about regulation that everybody is against. I do not
16 think that is what we are saying. What we are saying is
17 overregulation is killing initiative. It is killing people
18 to go and achieve much more.

19 What we have seen from the Hispanic community, a lot of
20 them are being forced to open businesses because they do not
21 have jobs. Many have become part-time workers, and they
22 need to go into business in order to survive. So most of
23 them want--most people, they want to comply with the rules
24 and regulations. They do not want to cheat. They want to
25 do the right thing. But it is becoming so confusing

1 nowadays that they do not know which way to turn. They want
2 to be able to provide for their families and be a great
3 business and be a great partner with their customers. They
4 spend so much time, like some of the examples we heard
5 today, trying to comply and not make any mistakes. They do
6 not know which way to turn. One of the best examples I can
7 say that they have problems with, "Do I need to get a
8 lawyer? Do I need to get an accountant? Do I need to go to
9 Washington, D.C.? I do not have money for any of that. I
10 need to be able to do business."

11 That is probably the best way to respond to your
12 question at this point.

13 Chairman Cruz. You know, one of the things I have
14 tried to do in my time in the Senate is host small business
15 roundtables across the State of Texas, bring small business
16 owners and listen to their concerns. And every one of these
17 roundtables, I just open it up and say, "Share the biggest
18 issues that are weighing on your heart, the biggest
19 challenges you are facing." I have never held a small
20 business roundtable in the State of Texas where at least
21 half of the small business owners did not list Obamacare as
22 the single biggest impediment to their small business
23 surviving and creating jobs, the consistency with which
24 small business owners say that over and over again. And, of
25 course, small businesses produce two-thirds of all new jobs,

1 so if small businesses are being hammered, that in turn has
2 a direct result on the jobs that are available to people.

3 One study by the American Action Forum finds that
4 Obamacare is reducing small businesses between 20 and 99
5 employees pay, the salary you are taking home, by at least
6 \$22.6 billion annually, and that the laws, regulations, and
7 increasing premiums have reduced employment by more than
8 350,000 jobs nationwide.

9 In Texas, for example, the study finds that workers and
10 businesses with 50 to 99 workers are seeing upwards of
11 \$1,000 less in take-home pay and a nearly 20-percent
12 increase in premiums because of Obamacare. And Texas small
13 businesses with 20 to 49 employees have shed nearly 30,000
14 jobs since Obamacare came into effect.

15 Mr. Barrera, can you talk about the impact of Obamacare
16 on small businesses?

17 Mr. Barrera. We have seen the same thing. In fact,
18 there was a business in Texas, a restaurant owner. He
19 actually forgo opening a second restaurant because of the
20 expenses of Obamacare. It is not because they do not want
21 the people insured, but the way it was written, it is so
22 confusing for people, and nobody has been able to find this
23 answer: Why did we drop the work week from 40 hours to 30
24 hours? And small businesses are not dumb. They are there
25 to make a profit. And so when you start raising the cost of

1 hiring people and imposing more costs like Obamacare on
2 them, they are going to find another way to cut costs. And
3 as we all know, businesses, when they want to cut costs,
4 they cut employees. Well, like it or not, that is what the
5 first expense they are going to do.

6 So I would like to know, and I think a lot of
7 businesses I talk to, they would like to know why did we
8 drop the hours from the 40-hour work week to the 30-hour
9 work week? Because that is all it has done, is hurt more
10 people and cause more part-time jobs. And the scariest
11 thing are the children and the teenagers, because now
12 because we have got a lot of retirees and people who used to
13 work full-time, they are now part-time, which has pushed out
14 the youth. So that has hurt a lot of people.

15 Chairman Cruz. Ms. Loving, I want to thank you for
16 your particularly powerful testimony. That is testimony I
17 think every American should watch. And the nightly news
18 should put your testimony on television because it tells a
19 uniquely American story of struggling to create a business
20 and facing powerful interests coming against you.

21 I want to ask you, Ms. Loving, who gets hurt by
22 overregulation and by occupational licensing laws putting
23 barriers to forming a small business?

24 Ms. Loving. Thank you, Senator Cruz. The consumers
25 get hurt because it creates barrier to entry for small

1 businesses. So bigger firms can absorb costs, where an
2 extra \$1,000 to my bottom line is significant because I am
3 dealing with a limited number of resources. And if there is
4 not enough competition, then consumers are stuck with the
5 big firms. They have fewer choices. There are fewer
6 options, and it becomes a monopoly of sorts. So they have
7 no other options but to pay exorbitant fees for tax prep
8 fees that really do not do anything special for them at all.

9 Chairman Cruz. And you mentioned also that these
10 regulations benefited the rich and powerful, those with
11 lobbying influence in Washington, those who had law degrees
12 or accounting degrees. But for someone that wanted to start
13 a business in the South Side of Chicago, you did not have
14 the same lobbyists working on your behalf.

15 Ms. Loving. I do not have the same resources, so,
16 therefore, I do not have people coming to Congress and
17 talking to the elected officials on my behalf. And it just
18 me, and there are 300,000 people just like me.

19 Chairman Cruz. Well, thank you for telling your story,
20 and thank you for standing up to the power of Government and
21 the power of big money and lobbying trying to put barriers
22 in the way to your starting your business, your creating
23 jobs, and your helping your community.

24 Ms. Loving. I appreciate being invited.

25 Chairman Cruz. Mr. Alford, I want to ask a final

1 question.

2 Mr. Alford. Yes, sir.

3 Chairman Cruz. The National Black Chamber of Commerce,
4 you described a study that you recently did on the EPA's
5 climate change regulations, and, in particular one result of
6 that study caught my attention, which is that the National
7 Black Chamber of Commerce concluded that the EPA's new rules
8 could cost as many as 125,000 African Americans in Texas
9 their jobs and an even more astounding 325,000 Hispanics in
10 Texas their jobs. Those are staggering numbers, and those
11 are numbers in the minority community.

12 Mr. Alford. Yes, sir.

13 Chairman Cruz. People that want to have a fair chance
14 to achieve the American dream. Mr. Alford, what would you
15 suggest that a politician who supports these rules say to
16 the 125,000 African Americans in Texas who will lose their
17 jobs under them, to the 325,000 Hispanics who will lose
18 their jobs, how should a politician justify his or her
19 support for rules costing them their livelihood?

20 Mr. Alford. Honestly, I want to be honest and looking
21 at it as it is, for what it is, and smile or try to justify
22 it. There are 10 million nationally, 10 million jobs
23 nationally, and we have not rebounded from 2008. And people
24 who get billions of dollars from environmental
25 organizations, and we have to scrub along and, you know,

1 make \$20,000 here, \$20,000 there, but we carry the weight.
2 But one of the strangest thing that happened, sir, last week
3 I was in Paris working on a plan with our Paris chapter to
4 where we have got a \$80 billion commitment from some
5 philanthropists in France that are going to fund electrical
6 projects in Africa. And we are going to do this with the
7 African American contractors, engineers, infrastructure, and
8 take it over to Africa and start lighting up the villages
9 and such.

10 The interesting thing is, though, the French are very
11 strong on the Kyoto Treaty, very strong on environmentalism,
12 but their approach is if it cannot be done, it cannot be
13 done. We have to wait until the technology gets up. They
14 do not put a gun to your head and say, "You have got to do
15 this or go out of business." And that is what I thought was
16 very interesting, that they have a common-sense approach to
17 it. We are going to put in a clean Africa electrical grid,
18 and we are going to be friendly to the Earth. But if we
19 tried to do that here in this country under our rules, they
20 would stop us dead in the tracks.

21 Chairman Cruz. Thank you, sir.

22 Senator Coons?

23 Senator Coons. Thank you, Chairman Cruz. I am going
24 to defer my questioning to Senator Klobuchar given the press
25 of her time and schedule, if I might.

1 Senator Klobuchar. Thank you very much, Senator Coons,
2 and thank you, Chairman Cruz, and thank you, Senator Hatch.
3 As I look at Senator Coons and Senator Hatch, I think about
4 the regulatory work we have done together since I have
5 gotten here. I represented businesses for years in the
6 private sector on regulatory issues, so I understand some of
7 the issues you are talking about, Mr. Alford, and that is
8 why Senator Coons and I teamed up on doing something on the
9 Foreign Corrupt Practices Act, on immigration, and Senator
10 Hatch and I have done a lot of work with medical devices and
11 trying, not only on the tax side but also the regulatory
12 side, to make it easier for our businesses.

13 At the same time, as a prosecutor and then as a mom, I
14 have seen how you need some regulations in place to protect
15 the safety and health of our citizens, to protect our clean
16 air and water, whether it is working on lead in children's
17 toys--which I know you are aware of, Mr. Mair, a bipartisan
18 bill that we passed, the formaldehyde work I did with
19 Senator Crapo--that there are times when you need
20 regulations in place to protect the people that we are
21 supposed to be representing.

22 So, Mr. Narang, I think I would start with you in terms
23 of if you want to talk just very briefly about an example of
24 regulations that you think have helped people, that you
25 think is important for the minority communities.

1 Mr. Narang. Sure. Thank you, Senator. So I want to
2 refer to a current topic and a current issue of concern for
3 minority communities, and that is predatory lending. We are
4 seeing higher rates of predatory lending abuse of minorities
5 than the general public, and that should be a concern. I
6 know it is a concern for the minority community. And so I
7 am glad--and Public Citizen supports strong measures from
8 the Consumer Financial Protection Bureau that will address
9 predatory lending schemes that are costing minorities
10 sometimes their livelihoods. They are definitely resulting
11 in significant costs to our economy.

12 Senator Klobuchar. I guess that is a good segue to Mr.
13 Scott, because as I was hearing Senator Cruz talk about some
14 of those economic numbers, I think we know that part of the
15 difficulty was during a recession that minorities were
16 inordinately hit with foreclosures and other things because
17 of what was going on in the financial industry. Do you want
18 to comment either on that or what you see as some rules that
19 would be helpful to the minority community in terms of
20 business as an entrepreneur yourself? I really want to ask
21 what it was like working for Congresswoman Sewell, but I
22 will leave that for later. So go ahead.

23 Mr. Scott. Sure. I think that there are regulations
24 that help us, you know, that work along with business
25 owners, that are not stifling or that are holding businesses

1 back in any kind of way, but that help with clean food.
2 Since I a lot of times deal with farmers, and a lot of times
3 we deal with putting seeds in the ground that have
4 nourishment towards coming into our bodies, and having
5 regulations in place that require--and having those
6 nutrients in place, they help with our life as a whole,
7 because if we do not have things in place, we will not
8 actually be here today. And I look at, too, within--looking
9 in this room, we have wood that is in here, that this
10 building, this table, and everything that is made out of
11 wood. Without regulation, would we have clean wood in here
12 or would it be contaminated? The carpet that we walk on,
13 would the carpet be the quality that it is, or would it just
14 tear up as soon as it is put down?

15 So I think that those regulations, when working along
16 with business owners, can be something that is beneficial to
17 everybody.

18 Senator Klobuchar. Thank you.

19 Mr. Mair, I think we have seen the studies and the
20 numbers and you brought them up about how minorities are
21 inordinately hurt by environmental problems or toxic waste
22 sites and things like that. Do you want to elaborate on
23 that?

24 Mr. Mair. Yes. Again, the question was: Who gets
25 hurt? And who gets hurt happens to be the very communities

1 that folks are here claiming that this so-called policy or
2 proposal would benefit. It is a cruel irony. But, you
3 know, seven out of ten African Americans live in areas that
4 are unsafe and were three times more likely to be admitted
5 to hospitals for asthma. And, more importantly, when we
6 talk about what are the benefits of the Clean Power Plan, we
7 are talking about a \$54 billion estimated worth in public
8 health benefits and climate benefits. We are talking about
9 3,600 fewer premature deaths. We are talking about 90,000
10 fewer asthma attacks in children, 1,700 heart attacks, 1,700
11 fewer hospital admissions.

12 So when we are talking about benefits, the benefits are
13 real and tangible. And the data, again, support this.

14 Senator Klobuchar. Thank you so much.

15 Just two last things I wanted to mention. One, I will
16 not go into it. Maybe I will ask you about it later in
17 writing. But Senator Collins and I last year introduced
18 something called the "SCORE Act"--she is a Republican
19 Senator from Maine--to look back 5 years later at some of
20 these rules and regulations to see how they have affected
21 the economy and ways to look and see if we need to make
22 changes, to look at things in a measured way. So I would
23 ask you to look at that.

24 But I guess I just wanted to end with one set of rules
25 that I think cries out for change, and that is, immigration

1 reform. And I know that the Hispanic Chamber, in which you
2 are involved, has been a supporter, as well as the Chamber
3 of Commerce in general, and we worked really hard on the
4 Senate bill. And particularly Senator Hatch and I worked on
5 this issue of entrepreneurs and bringing in entrepreneurs.
6 The fact that 90 of our Fortune 500 companies were formed by
7 immigrants, 200 of them were formed by immigrants and kids
8 of immigrants, 30 percent of our U.S. Nobel Laureates were
9 born in other countries, yet we literally allow for
10 unlimited visas for Wild hockey players. You may not cover
11 our team, Mr. Barrera, or be a fan, but that is our
12 professional hockey team. So all the hockey players can
13 come in from Canada, but the Mayo Clinic cannot bring in a
14 doctor because their spouse cannot work for 7 years, or 3M
15 cannot bring in an engineer. And I just wondered if quickly
16 you two on either end here could just comment on your views
17 on getting immigration reform done from that entrepreneurial
18 standpoint.

19 Mr. Barrera. Well, I think when it comes to workers,
20 we have to improve our legal immigration system, and we need
21 reform. I do not think anybody here would deny that. So we
22 need to work on legal immigration so we get the best
23 workers. This is a country of immigrants, so we agree that
24 we have to have some kind of immigration reform that takes
25 into account getting the workers that the businesses need.

1 Whether they be hockey players or people in the agriculture,
2 we need to have immigration reform, and the LIBRE Institute
3 stands ready to assist in any type of reform.

4 Senator Klobuchar. Mr. Alford?

5 Mr. Alford. America is not--what we need is a program
6 that is logical and people can follow and have some
7 integrity about it. But 80 percent of the black retail
8 businesses in New York City are owned and operated by the
9 Africans or Caribbeans. They come to work, they come with
10 their skills, and we should welcome them with open arms.

11 Senator Klobuchar. Okay. Thank you very much. I also
12 would note it is one of Grover Norquist's top priorities
13 because it brings the debt down so significantly if we pass
14 comprehensive immigration reform. So I will leave you with
15 that note. Thank you for being here.

16 Chairman Cruz. Thank you very much.

17 Senator Hatch?

18 Senator Hatch. Well, thank you, Mr. Chairman.

19 Mr. Barrera, I will direct this question at you, but I
20 want to make a few comments before I actually form the
21 question.

22 Federal regulations today impose by some estimates a
23 burden of about \$1.88 trillion on the economy. That is
24 roughly \$15,000 for every single household in this country.
25 It is more than corporate and individual income taxes

1 combined. Too much regulation, especially too much outdated
2 regulation, means higher prices, smaller paychecks, and
3 fewer jobs for hardworking Americans. And we know that the
4 communities that are struggling the most with the costly
5 rules that I think this administration and Washington
6 bureaucrats keep piling up are the ones that can least
7 afford to do so.

8 Now, every President since Jimmy Carter has agreed on
9 the need to review our regulatory burden to make sure that
10 it is no more intrusive and burdensome. That is absolutely
11 necessary. Nevertheless, regulations keep accumulating year
12 after year. The Code of Federal Regulations is now more
13 than 175,000 pages and contains more than 200 volumes. And
14 according to a study by the American Action Forum, the Obama
15 administration's efforts to review old rules actually added
16 more than \$23 billion in costs to the economy and nearly 9
17 million hours of paperwork.

18 Now, to turn this longstanding bipartisan commitment to
19 streamline our regulatory burden into a reality, we need to
20 take the responsibility of clearing out all regulations away
21 from the bureaucrats who keep failing at the job. And that
22 is why I have introduced the SCRUB Act, which uses the
23 successful model of the independent BRAC Commission and
24 applies it to get rid of a big chunk of regulatory overreach
25 and burden.

1 Now, I just wonder if you agree with me that, far from
2 providing small businesses with relief from our crushing
3 regulatory burden, the Obama administration's regulations
4 have made the business environment much more challenging,
5 especially for minority-owned businesses. And do you agree
6 with me that simply relying on Washington bureaucrats to get
7 rid of their own bad regulation is like asking the
8 proverbial bunch of foxes to guard the chicken coop?

9 Mr. Barrera. Thank you for your question, Senator. I
10 think what most minority businesses and businesses in
11 general--you know, we used to talk about--my dad used to
12 like to talk about this. He goes, you know, "When you work
13 with Government, I do not want your handout. I am not even
14 concerned about your hand up. I do not even want your
15 handshake when it comes to regulators. I just really want
16 you to get out of my way because I want to have the freedom
17 to do business the best way I can." And regulators, like we
18 talked about, for every law passed, they pass 16 new
19 regulations for every law passed. How can people do that?
20 And they keep piling on one and the other. I can almost
21 guarantee you that any law that we have now, it is already
22 there. We do not need to go do more and do not need any
23 more new regulations, because I can guarantee you, it is
24 already there.

25 But I do agree that we need to go in and see what we

1 have so we know what we have got to get rid of. And I think
2 one of the best quotes I ever heard is from Colorado. You
3 know, it is all fine and great when we pass new laws, but
4 come and tell me what you got rid of, because the more you
5 get rid of, that gives me more freedom to do business.

6 And I think everybody on this panel would agree we are
7 not against regulation. We want clean air. We want safe
8 food. Nobody is against that. But it is the overregulation
9 that is really depressing the freedom and spirit and
10 ingenuity and hard work, attitudes of true Americans to
11 prosper. We have talked about some of the other things
12 going on here. A lot of the problems that we have here are
13 due to poverty. And poverty occurs because there is no
14 economic ability to get out of poverty. So if you keep
15 depressing businesses, particularly small businesses, to
16 prosper, you are only going to hurt poverty, and we need to
17 work on that.

18 Senator Hatch. Well, thank you.

19 Mr. Sandefur, we have heard extensive testimony about
20 the explosive growth of Federal regulations and their
21 troubling effect on economic opportunity, especially in
22 minority communities. Now, despite these harmful effects,
23 regulations keep piling up, as both Mr. Barrera and I have
24 been saying, making the situation worse and worse with each
25 passing year.

1 Now, this massive accumulation of regulations is due in
2 large part to the fact that the current process by which
3 agencies make regulations is utterly broken, from curtailing
4 the opportunity for meaningful input by the public to
5 flouting the legal requirements for transparency and
6 accountability.

7 Now, given this mess, the courts are often the only
8 practical means of holding this out-of-control bureaucracy
9 accountable. But doesn't excessive deference by courts to
10 agencies critically limit that opportunity to hold the
11 agencies accountable? Instead, hasn't this deference
12 allowed the agencies to expand the scope of their power
13 dramatically, allowing them to pile up more and more
14 damaging regulations?

15 Mr. Sandefur. Oh, yes, Senator, absolutely. The
16 problem is that courts defer so excessively to the
17 administrative agencies that agencies have become basically
18 a fourth branch of Government, unelected, hired--many of
19 these administrative agencies are staffed by members of
20 Government unions so you cannot even fire them if you have
21 to--who write regulations, investigate potential violations
22 of those regulations, and then punish people for violating
23 those regulations in violation of the constitutional
24 principle of separation of powers. And courts not only
25 defer to their decisionmaking in general, but they defer to

1 their findings in ways that violate basic rules of due
2 process.

3 So, for example, a lot of the time administrative
4 agencies will hold informal hearings, and the evidence that
5 they are allowed to receive--they are not bound by the
6 Federal Rules of Evidence, and so they can receive evidence
7 like hearsay, for instance, which would be barred from a
8 courtroom. Then when you challenge, when you appeal from
9 the administrative agency--and you are always going to lose
10 in front of the administrative agency because the prosecutor
11 is paying the judge, right? So when you appeal to the
12 court, a lot of the time--this is especially true of State
13 courts--the courts are locked. They are not allowed to
14 receive any more evidence than what the administrative
15 agency already received. So evidence that would never have
16 been admitted in a courtroom, like hearsay evidence, becomes
17 the only evidence that the judge is later able to consider
18 when he considers the appeal. That is in violation of basic
19 principles of due process.

20 So we need a judiciary that is more skeptical toward
21 administrative agencies that are unelected agencies, that
22 enjoy often extremely broad power to regulate in whatever
23 they think is the public interest without any checks and
24 balances. That is what the courts are supposed to provide,
25 and, unfortunately, they have fallen short many times.

1 Senator Hatch. I have gone over my time, but let me
2 just make one comment. You know, it is said by many people
3 that the D.C. Federal District Court and the Circuit Court
4 of Appeals are so pro-regulation--and they are the courts
5 that hear these matters more than almost any other.

6 Mr. Sandefur. Right.

7 Senator Hatch. And, frankly, almost always find on the
8 side of the regulatory bodies. I think they have got to
9 wake up and start realizing that they are part of the
10 problem as well. And I am very concerned about it because,
11 you know, we see minorities--not just minorities but
12 minorities in particular--who are just getting killed by
13 this overregulatory nature of our society. I am hoping we
14 can get that SCRUB Act through. That would start to peel
15 through all these overregulatory approaches and allow the
16 good regulations to stay.

17 Mr. Sandefur. If I may agree with that, one of the big
18 problems is that we do not know the costs of regulation, and
19 we cannot assess those costs because the costs of regulation
20 typically take the form of the businesses that are never
21 started, the projects that are never begun, the people who
22 look at how difficult it is and say, "Well, why should I
23 even bother?"

24 So when we hear statistics that say, well, existing
25 businesses are fine with the regulatory burden, of course

1 they are. They are already in business. They can afford to
2 absorb those costs. But entrepreneurs, they cannot. And
3 very often they give up, and then we never see the wealth
4 that they could have created but which was stifled by the
5 regulatory burdens.

6 Senator Hatch. Well, sometimes we justify this
7 overregulatory approach because of the ills of our society,
8 but we have got to have the guts to get involved and look at
9 the stuff that we do not need and get rid of it and save the
10 trillions of dollars that we are losing right now because of
11 this overregulatory nature of our society. And I think it
12 is very important for the minority community throughout the
13 country to take this on and start realizing that, you know,
14 the Federal Government is not the last answer to everything.
15 And, frankly, in many ways it is the impediment in our
16 society because we do not get rid of the bad stuff. And yet
17 you still have to comply with a lot of bad things that
18 really tear up especially minority businesses.

19 So I want to thank you, Mr. Chairman, and also the
20 distinguished Senator from Delaware, for allowing me to go
21 over a little bit. Thank you. And I want to thank all of
22 you for being here today. It has been very helpful.

23 Chairman Cruz. Thank you, Senator Hatch.

24 Senator Coons?

25 Senator Coons. Thank you, Chairman Cruz.

1 Mr. Narang, given what your research as well as the
2 research by OMB and other independent organizations has
3 found about some of the positive effects of regulation on
4 our economy, and, in particular, protection and promotion of
5 health and other concerns of the minority community, how do
6 you explain or respond to testimony we have heard today from
7 a number of witnesses that regulations are principally
8 responsible for killing jobs?

9 Mr. Narang. Thank you, Senator. So I do want to make
10 clear and I know my testimony makes clear that regulation
11 obviously does provide benefits. I know a lot of the
12 discussion so far has not centered on that. It is very true
13 that there are opportunity costs, if you will, of not
14 regulating. I think we saw that very clearly in the Wall
15 Street crash. Deregulation led to many of the economic woes
16 that we are currently experiencing now, and it is clear that
17 numbers dating back from 2010 do track the severe damage
18 that was caused to our economy.

19 Let me also just back up and say in terms of setting
20 policy priorities, in terms of determining what are good
21 regulations that are worthwhile, it is very important to
22 keep regulatory benefits in mind and to make decisions based
23 on regulatory benefits as well as costs. I think a simple
24 analogy probably shows how intuitive this is.

25 When you go to a grocery store, you are not just

1 looking at the cost of the food as the only determining
2 factor as to whether you would buy food. Of course, in that
3 instance you would not buy any food. Now, it is a little
4 bit difficult to determine sometimes, just as with the
5 regulatory state, what the benefit of that food is, but
6 clearly it is a critical benefit with respect to livelihood.

7 You know, if you look at the macro level, the same
8 thing applies when making policy decisions on regulatory
9 policy. The benefits have to be taken into consideration.

10 Senator Coons. Well, thank you, Mr. Narang.

11 Mr. Mair, can you just elaborate on that point with
12 respect to environmental regulations and how they affect
13 minority communities and how we should do the cost-benefit
14 analysis?

15 Mr. Mair. Yes, Senator Coons. In our 40-year history
16 of the Clean Air Act, public health safeguards in the
17 economy have actually prospered with regards to cleaning up
18 air and water. In fact, under Clean Air, we have actually
19 seen these safeguards improve and actually grow new
20 businesses. In fact, under the President's Clean Power
21 Plan, it is projected that by 2020, under these low
22 standards, modest standards, over 360,000 jobs will be
23 created.

24 The real issue, I think, as has been pointed out on one
25 level, because there is a little bit of a bait-and-switch

1 here, is that while we are saying it is collapsing industry
2 and, as my colleague to my left has mentioned, that his
3 business has to go to Africa to implement a Clean Power
4 Standard, the fact of the matter is that the big coal and
5 big carbon, big oil industry is absolutely stifling that
6 opportunity. We can actually have that job creation here in
7 the United States right now. It was in the United States
8 where we talk about the solar and wind industry was born,
9 but yet through the big cartels, those opportunities have
10 been pushed off.

11 So we talk about real jobs lost and really repowering
12 and retooling America and getting America back on a green,
13 clean footing, while at the same time reducing ozone and
14 greenhouse gases and, as I say, improving our climate.
15 Again, you know, these are things that are under the control
16 right now or heavy influence of the big carbon and big oil
17 industry. So blocking the President's efforts under the
18 Clean Power Plan I think actually really is the real test
19 of, as I say, doing real economic harm to the average
20 American community.

21 Senator Coons. Thank you.

22 Mr. Narang, do you agree with the claims that were just
23 being debated there? Mr. Alford earlier made claims that
24 the Clean Power Plan will result in job loss and increased
25 energy costs and rising poverty among Hispanic and African

1 American communities?

2 Mr. Narang. So Public Citizen strongly supports the
3 Clean Power Plan, and it is not just because it is a win for
4 the environment. It is also a win for consumers. We are
5 doing ground-breaking research right now looking State by
6 State at the actual benefits to consumers in terms of lower
7 electricity prices, partially including the energy
8 efficiency measures in the Clean Power Plan, not just the
9 carbon regulation measures. And what you are seeing is
10 that, across the board, consumers would see lower
11 electricity prices, and they would see higher electricity
12 prices, of course, in the absence of the Clean Power Plan.

13 Senator Coons. Well, thank you. I also--well, my time
14 has expired. I will let you do another round, if you want.
15 Are we going to do a second round?

16 Chairman Cruz. Thank you, Senator Coons.

17 You know, it is rather striking. This is a hearing on
18 overregulation, and yet as I review both the written
19 testimony and the oral testimony of the three witnesses
20 invited by the Democrats--Mr. Narang, Mr. Scott, and Mr.
21 Mair--none of the three of you have identified even a single
22 example of overregulation. And I am curious if it is your
23 collective view that every regulation is a good thing, that
24 it never goes too far, that more and more Government power
25 over our lives is always good. Is there not really one

1 example of overregulation that any of the Democratic
2 witnesses here can point to

3 Mr. Narang. Senator, I am sure there is. I would say
4 that those who are pushing for less regulation, it is
5 incumbent upon them to demonstrate those examples of
6 overregulation. And I will say that I have been quite
7 surprised that we hear in the abstract instances of massive
8 amounts of overregulation, but there are very few examples
9 that are offered, very few detailed, technical regulations
10 that folks are saying, you know, justify massive reforms to
11 the regulatory process that would stop regulations--

12 Chairman Cruz. So I take it that that answer is a no,
13 then, that you cannot identify a single example of
14 overregulation.

15 Mr. Narang. Well, I believe I can. I would have to
16 get back to you on that.

17 Chairman Cruz. But as you sit here today you cannot.
18 And in preparing your testimony, you did not. Is that
19 correct?

20 Mr. Narang. Again, I think it is incumbent on those
21 who believe that overregulation is the current most pressing
22 problem in our regulatory system to demonstrate those
23 examples.

24 Chairman Cruz. So thank you. That is a no.

25 You know, Mr. Mair, I found it very interesting, when

1 you took over at Sierra Club, you were quoted in a High
2 Country News interview as saying that it was your goal to
3 change things and to be a change agent, to make sure that
4 "when laws and regulations are fashioned, they are not
5 advantaging one group over another," which was a very
6 interesting statement. And I am curious which regulations
7 in particular you were referring to that were benefiting one
8 group over another.

9 Mr. Mair. Well, right now the most pressing
10 regulations benefiting one group over another is the
11 insistence by the carbon industry, as I say, to maintain the
12 status quo at the expense of, say, opportunities with regard
13 to the development and advancement of clean power. And so I
14 think that, you know, we have a huge opportunity here, when
15 we talk about regulation and our transition from dirty power
16 to clean power, to advance new alternatives. We should not
17 have to have African Americans going to Africa to green and
18 put in their smart grid and green grid in Africa. We should
19 be financing those incentives here in, say, Detroit or here
20 in New York. So the opportunity of where and how
21 regulations are employed, you know, are very, very critical
22 and clear.

23 And from the point of justice, when we talk about
24 justice, in other words, regulations or what we call
25 "safeguards," it is about the equal protection and

1 enforcement of the law. So the question is--so when we talk
2 about regulations and regulatory reform, in this case
3 safeguards that are protective of human health, we need to
4 look at some of the communities that are being--

5 Chairman Cruz. Mr. Mair, I want to keep the focus of
6 the hearing on the topic of the hearing, which is, in
7 particular, the burdens on the minority community of
8 overregulation. Now, you mentioned that your organization
9 disagrees with the Black National Chamber of Commerce's
10 conclusion about the impact of the Obama administration's
11 climate change rules on jobs. In your view, how--

12 Mr. Mair. No, I did not say that, sir.

13 Chairman Cruz. You do not disagree with this study?

14 Mr. Mair. I disagree with his study.

15 Chairman Cruz. Right. That is what I just said.

16 Mr. Mair. Yes, okay.

17 Chairman Cruz. You mentioned you disagree with that
18 study.

19 Mr. Mair. Yes, sir.

20 Chairman Cruz. In your judgment, how many jobs will
21 those new regulations cost?

22 Mr. Mair. Well, the answer is it will not cost. The
23 opportunity--it will create jobs. And I think that one of
24 the things that we need to look at is the data that are
25 supplied by an independent study that was done by the EPA

1 using Department of Labor data, and, in fact, what it showed
2 is that by 2020 we will actually have a net increase of
3 360,000 jobs.

4 Chairman Cruz. And how much will it drive up the
5 electricity bill of the average consumer to put these
6 massive new regulations on the generation of electric power?

7 Mr. Mair. Actually, sir, it will not drive up the cost
8 of the average consumer. In fact, the Clean Power Plan
9 would reduce cost.

10 Chairman Cruz. I am curious. Is it your position that
11 over the last 6-1/2 years the average consumer's electric
12 bill has gone up or down?

13 Mr. Mair. Sir, the Clean Power Plan, the proposals and
14 safeguards under it have just been promulgated.

15 Chairman Cruz. But you said a minute ago, when I asked
16 is there any regulation that is bad, you could not point to
17 a single regulation in 175,000 pages. My question is: The
18 last 6-1/2--we have had 6-1/2 years of this administration
19 putting oppressive environmental regulations in place, and
20 you said, well, this new wave of regulations, it is not
21 going to impact any jobs, it is not going to impact
22 electricity bills. My question is simple: Have consumers'
23 electric bills gone up or gone down in the last 6-12 years?

24 Mr. Mair. Sir, the test is in the pudding. When we
25 see the Clean Power Plan fully implemented--

1 Chairman Cruz. I am asking about the pudding today,
2 though, not the future pudding, because I am willing to bet
3 6-1/2 years ago you made the same predictions that the
4 onerous regulations being put in place then were not going
5 to cost any jobs, were not going to raise electric bills.
6 So were you right?

7 Mr. Mair. Senator, when we talk about existing status
8 quo, right now, doing nothing is costing jobs. Doing
9 nothing is poisoning our economy. Doing nothing is taking
10 human health. When we talk about the Clean Power Plan and,
11 as I say, the new policies that are moving forward, shifting
12 to this new clean, green economy will actually create jobs,
13 not reduce them, sir.

14 Chairman Cruz. I think the record will reflect and the
15 facts will reflect that the average consumer's electric
16 bills have gone up dramatically, despite promises that that
17 would not happen.

18 Mr. Mair. Under the existing old regime, sir.

19 Chairman Cruz. You are right, under the existing Obama
20 EPA--

21 Mr. Mair. Old--no, not--sir, under the existing carbon
22 regime, sir.

23 Chairman Cruz. The existing Obama EPA has driven up
24 electric bills dramatically and has cost already vast
25 numbers of jobs.

1 A final question. Mr. Sandefur, you talked quite
2 powerfully about occupational licensing in a host of areas.
3 I want to ask you the same question I asked Ms. Loving. Who
4 gets hurt by these laws? And who do they benefit? Why are
5 they put in place?

6 Mr. Sandefur. Well, laws like these typically go in
7 place because entrenched industry, which has influence with
8 the regulatory agencies, is able to flex its muscle and
9 excuse what it is doing as, oh, well, we are protecting the
10 public. Force an interior decorator to get a 2-year college
11 degree before they are allowed to decorate houses, and that
12 is good for the public. Well, I guess it would be a better
13 thing if interior decorators had a college degree than if
14 they did not. And those interior decorators who do have a
15 college degree and so they get licenses, they will report,
16 "Oh, we are perfectly fine with the regulations. We have no
17 problem with the regulations." And then you will have
18 witnesses up here saying, "Existing businesses have no
19 problem with the regulations," right? It is the
20 entrepreneurs who wanted to get jobs in that industry who
21 are blocked from doing so, who have to go get a job
22 somewhere else or get no job at all, those are the unseen
23 costs of the regulation, and that factors into the increased
24 costs to the consumer, which raises prices, as you
25 mentioned. And, of course, therefore, that is--and that is

1 what Ms. Loving said. It harms consumers because they have
2 less choice and they pay more.

3 But I am much more focused on the rights of
4 entrepreneurs, the wealth--the people who create the wealth
5 that you people all redistribute, they are the people whose
6 rights I am concerned with, and they are very often blocked
7 from the opportunity that this country is supposed to
8 promise by laws that require a third of them to get
9 Government permission before they can do their job for
10 things as simple as floristry. Louisiana has a law that
11 says you have to have a license to be a florist. That is
12 obviously absurd. It is so absurd, no other State has a law
13 like that. It does not protect the consumer. It protects
14 entrenched industries against legitimate competition from
15 entrepreneurs.

16 Chairman Cruz. And, Mr. Sandefur, are there successful
17 American businesses that began with humble beginnings long
18 ago that would be illegal today or impossible based on this
19 current wall of regulations?

20 Mr. Sandefur. Oh, of course. A hundred years ago, an
21 immigrant or a black entrepreneur could paint the word
22 "Taxi" on the side of his car, and there you go, right? And
23 as long as he is insured, as long as he does not run
24 somebody over--and if he does, he is going to get punished
25 for that by the existing regulations, and those are safety

1 regulations everybody on this panel would agree with. But
2 under today's laws, in most States and metropolitan areas,
3 they would have to get permission from their own competition
4 before they can start up a taxi business. We have all read
5 the headlines about Uber, but it is not just Uber that is an
6 example of this. My client, Maurice Underwood, wants to
7 start a moving business. How harmless can you get, a moving
8 business? He should be allowed to paint the word "Mover" on
9 the side of his truck and go into business. Instead, he has
10 to get approved to--hire a lawyer, go to a hearing, and
11 prove to Government bureaucrats that his business would
12 "foster sound economic conditions," which nobody knows what
13 that means.

14 So these businesses stifle entrepreneurship, and to
15 hear these witnesses say, "Oh, well, everything is fine.
16 Industry is fine. We do not see any job loss," it reminds
17 me of the story of the man who jumped off the 100-story
18 building, and as he passes the 50th floor says, "Well, so
19 far, so good." That is the problem that we have got when it
20 comes to the economy in this country. We have a healthy
21 economy that could recover if we would let it. And too many
22 rules mean that we cannot let it.

23 I could spend the entire listing the bad regulations
24 that these other witnesses have somehow been unable to
25 identify, but we all have time to worry about.

1 Chairman Cruz. Thank you very much, Mr. Sandefur.

2 Senator Coons?

3 Senator Coons. Thank you, Chairman Cruz.

4 If I might, Mr. Mair, Mr. Alford testified earlier that
5 the new EPA ozone regulations will harm minority communities
6 and that the Clean Power Plan will harm minority
7 communities. Do you agree with that? And what evidence do
8 you point to? Frankly, Mr. Alford cited a study by the
9 Black Chamber of Commerce, and I am wondering if the Sierra
10 Club has any competing sources of information that they
11 would like to point to?

12 Mr. Mair. Yes. One of the things that we definitely
13 rely upon is the EPA data, and according to our studies,
14 actually, you know, the ozone studies are one of the
15 critical pieces whereby, you know, our human health would be
16 greatly impacted and affected, sir. And, specifically...

17 Senator Coons. Mr. Mair, if I might give you a minute
18 to sort of work through any answer to that, I am going to
19 move on to other witnesses, if I might.

20 Mr. Mair. Please.

21 Senator Coons. Mr. Scott--well, let me just--Mr.
22 Alford, you have said that on behalf of 2 million African
23 American-owned businesses you oppose environmental
24 regulations, the ACA, Dodd-Frank, a range of things--and I
25 may be mischaracterizing your testimony, so feel free to

1 correct me--because they have largely caused job loss at
2 minority-owned businesses rather than creating
3 opportunities.

4 Mr. Alford. I did not mention Dodd-Frank, but it
5 certainly is an example. It dried up money on the street.
6 The SBA will not even print their numbers of 7(a) loans to
7 black businesses because they are so ashamed. They have
8 locked it up. The Export-Import Bank wanted our help
9 because they were being de-authorized. I asked them to give
10 me one loan they have made to a black business anywhere in
11 this world. I have been waiting 6 months for that answer.
12 They do not do it. We are on our own. We have no small
13 business government, and we are finding other ways.

14 The San Francisco chapter has put in a \$200 million
15 development with Shanghai money through EB-5 visas. We had
16 to get creative. Our own banks are not going to do it, so
17 we will find a way.

18 And in terms of asthma, there is no source to say how
19 asthma is formed. There is no cure for asthma. Asthma has
20 increased as the ozone has gone down. I grew up in Los
21 Angeles. Let me tell you, we have improved the air a whole
22 lot. When you are playing football on Saturday afternoon in
23 L.A. in 90-degree weather, we have improved a whole lot.
24 Asthma has gotten worse. There is no correlation between
25 ozone and asthma.

1 Senator Coons. Well, thank you, Mr. Alford.

2 Mr. Scott, as a minority business owner yourself and
3 someone who works regularly with minority business
4 entrepreneurs, do the positions Mr. Alford is taking and his
5 characterization of the impact on regulation represent you
6 fairly as a minority business owner?

7 Mr. Scott. I would say that it does not, and the
8 reason I say that is that I think that one thing that we
9 have been able to do through businesses that I have worked
10 along with and also with Small Business Development Centers
11 across this Nation that are available is to use more of a
12 cooperative approach of businesses working together to find
13 people maybe who have actually went through the system and
14 may have became--followed regulations, became qualified, and
15 bringing them in as an expert, and then sharing that
16 knowledge to work as a team to make sure that we can help
17 businesses that want to get certified or go through
18 regulations of that nature. And that was a way that I think
19 that we was able to avoid some things maybe other people
20 worked through, because we tried to communicate and work
21 together. And I think that when businesses work together as
22 a team, just like the same rules of playing sports, when you
23 work together as a team and we all have rules, you use those
24 rules to your advantage towards making things work instead
25 of fighting against the rules that are in place. And rules

1 are not there.

2 Senator Coons. Thank you, Mr. Scott.

3 If I might, Mr. Chairman, just noting the passage of
4 time, I would just like to put into the record a letter from
5 the U.S. Black Chambers, an African American-led business
6 organization with over 100 self-sustaining Black Chamber
7 members around the country--

8 Mr. Alford. That is not true. That has been proven in
9 a court of law. That is not true.

10 Senator Coons. Mr. Alford?

11 Mr. Alford. Yes, sir.

12 Senator Coons. I am speaking. Thank you very much.

13 Mr. Alford. Sorry.

14 Senator Coons. Forgive me. But the letter that I am
15 going to enter into the record from the president, Mr.
16 Busby, says, among other things, that studies have shown
17 African Americans are suffering an increase in asthma and
18 respiratory issues in no small part because many black
19 families live near power plants and areas with unhealthy
20 ozone levels. And it goes on to support the Clean Power
21 Plan as the solution that will reduce health-related
22 respiratory risks, and that strikes me as just a point in
23 counterpoint that is worth raising.

24 [The letter follows:]

25 / SUBCOMMITTEE INSERT

1 Senator Coons. And if I might, Mr. Mair, did you want
2 to make a closing point before I run out of time?

3 Mr. Mair. Yes, I think that the blanket statement that
4 there is no correlation between ozone and asthma, it just
5 flies in the face of the studies by the American Lung
6 Association, as well as our research, the CDC. These are
7 some of the biggest triggers with regards to asthma, you
8 know, with regards to air quality. So I think that one of
9 the big--as I say, the big dirty dozen, greenhouse gas, but
10 also by the same token, it is one of those areas where, you
11 know, if you look at the studies and the areas where
12 populations have high asthma risk in ozone levels, the
13 studies are there to support that.

14 Senator Coons. And if I might, in closing, the Union
15 of Concerned Scientists, which was not represented here
16 today, has also raised some questions and concerns.

17 Mr. Chairman, if I might enter into the record a post
18 from the Union of Concerned Scientists that raises issues
19 based on the EPA's own cost-benefit analysis, studies from
20 the NAACP about the racially disparate impact of pollution
21 on minorities, cites a recent study by the University of
22 Maryland, that all conclude that the Clean Power Plan may,
23 in fact, have a net positive impact on minority communities
24 and raises some serious questions about the Black Chamber of
25 Commerce of study that was relied upon by Mr. Alford in his

1 testimony.

2 [The information follows:]

3 / SUBCOMMITTEE INSERT

1 Senator Coons. So I think this is a subject of active
2 dispute. I do, in the interest of time, want to thank all
3 the witnesses who testified here today, and I look forward
4 to further hearings with the Chairman.

5 Chairman Cruz. Thank you, Senator Coons, and I would
6 like to go back briefly to Mr. Mair.

7 In your written testimony, you said that the science
8 behind climate change and its effect on minority communities
9 "should not be up for debate." I am curious. Is the Sierra
10 Club--is this a frequent practice to declare areas of
11 science not up for debate, not up for consideration of what
12 the evidence and data show?

13 Mr. Mair. If you are relying on the evidence and data,
14 you know, the science, the preponderance of the evidence are
15 there.

16 Chairman Cruz. But that is a different thing than
17 saying we should not debate a question, that the Sierra Club
18 has declared this scientific issue resolved and there should
19 be no debate?

20 Mr. Mair. Based upon the preponderance of the
21 evidence, the science is settled. But the thing is that
22 anything is up for debate, Senator. We can debate anything.

23 Chairman Cruz. Well, you know, I would note that even
24 the phrase "preponderance of the evidence," having been a
25 practicing lawyer for many years, means 51 percent. That

1 means that 49--at least 51 percent is what the preponderance
2 means. You know, I would ask, for example, if you want to
3 end debate, you do not want to address the facts, how do you
4 address the fact that in the last 18 years the satellite
5 data show no demonstrable warming whatsoever?

6 Mr. Mair. Sir, I would rely upon the Union of
7 Concerned Scientists, and I would rely upon the evidence,
8 again, from our own NOAA officials. The data are there.

9 Chairman Cruz. Is it correct that the satellite data
10 over the last 18 years demonstrate no significant warming?

11 Mr. Mair. No.

12 Chairman Cruz. How is it incorrect?

13 Mr. Mair. Based upon our experts, it has been refuted
14 long ago, and there is no long--it is not up for scientific
15 debate.

16 Chairman Cruz. I am curious. So it is--I want to
17 understand this. I do find it highly interesting that the
18 president of the Sierra Club, when asked what the satellite
19 data demonstrate about warming, apparently is relying on
20 staff, so--the nice thing about the satellite data is these
21 are objective numbers.

22 Mr. Mair. Correct.

23 Chairman Cruz. And the numbers over the last 18 years--
24 --are you familiar with the phrase "the pause"?

25 [Pause.]

1 Mr. Mair. The answer is yes, and essentially we rest
2 on our position.

3 Chairman Cruz. And to what you said, you are familiar
4 with the pause, so to what does the phrase "the pause"
5 refer?

6 I am sorry. You said you were familiar with that term,
7 so I asked to what does it refer.

8 Mr. Mair. Essentially, it is the slowing of global
9 warming during the 1940s, sir.

10 Chairman Cruz. During the 1940s. Is it not the term
11 that global warming alarmists have used to explain the
12 inconvenient truth, to use a phrase popularized by former
13 Vice President Al Gore, that the satellite data over the
14 last 18 years demonstrate no significant warming whatsoever?
15 Global warming alarmists call that "the pause" because the
16 computer models say there should be dramatic warming, and
17 yet the actual satellites taking the measurement do not show
18 any significant warming.

19 Mr. Mair. But, Senator, 97 percent of the scientists
20 concur and agree that there is global warming, an
21 anthropogenic impact with regard to--

22 Chairman Cruz. But the problem with that statistic
23 that gets cited a lot is it is based on one bogus study--
24 and, indeed, your response--I would point to your response--
25 is quite striking. I asked about the science and the

1 evidence, the actual data. We have satellites. They are
2 measuring temperature. That should be relevant. And your
3 answer was, "Pay no attention to your lying eyes and the
4 numbers that the satellites show. Instead, listen to the
5 scientists who are receiving massive grants who tell us do
6 not debate the science."

7 Mr. Mair. Sir, this is one of the national pastimes in
8 America, and while we are debating what 97 percent of
9 scientists have already settled, the 3 percent that we, as I
10 say, have invested in with regards to the carbon industry,
11 you know, our planet is cooking and heating up and warming.
12 So this is one of the reasons why with regards--

13 Chairman Cruz. So hold on a second. It is the Sierra
14 Club's position that right now the Earth is cooking up and
15 heating and warming? Is that the Sierra Club's--I mean, I
16 just want to quote you and understand your--

17 Mr. Mair. I am saying I concur with 97 percent of our--
18 -as I say, of the world's scientists with regards to global
19 warming and the anthropogenic effects of mankind with
20 regards to climate.

21 Chairman Cruz. But, sir, would you answer the
22 question? Is it the Sierra Club's position, as you just
23 testified, that the Earth is cooking up and heating and
24 warming right now? Is that the Sierra Club's position?

25 Mr. Mair. Global temperatures are on the rise, sir.

1 Chairman Cruz. And I assume the Sierra Club would
2 issue a public retraction if confronted with the facts that
3 the data are precisely as I described, that over the last 18
4 years there has been no significant warming, and, indeed,
5 that is why global warming alarmists invented the term "the
6 pause" to explain what they call "the pause in global
7 warming" because the data demonstrate what you just said,
8 that the Earth is cooking and warming, is not back up by the
9 data?

10 Mr. Mair. We are concurring with 97 percent of the
11 scientists that absolutely say the opposite, sir.

12 Chairman Cruz. So if the data are contrary to your
13 testimony, would the Sierra Club issue a retraction?

14 Mr. Mair. Sir, we concur with the 97 percent
15 scientific consensus with regards to global warming.

16 Chairman Cruz. I would like to--

17 Senator Coons. Mr. Chairman, if i--

18 Chairman Cruz. Certainly in a moment, but I would like
19 to repeat the question and get an answer. If the data are
20 contrary to your testimony, would the Sierra Club issue a
21 retraction?

22 Mr. Mair. We concur with 97 percent of the scientists
23 that believe that the anthropogenic impacts of mankind with
24 regards to global warming are true.

25 Chairman Cruz. So does that mean you are not willing

1 to answer the question?

2 Mr. Mair. We concur with the preponderance of the
3 evidence and the science that 97 percent--you are asking me
4 if we would take the 3 percent over the 97 percent--

5 Chairman Cruz. No, I am actually not asking about a
6 survey among scientists. I am asking about the objective
7 data, the numbers.

8 Mr. Mair. The scientists rely upon their objective
9 data and their analysis, and 97 percent have concurred and
10 conclude that global warming is indeed a fact.

11 Chairman Cruz. You know, Mr. Mair, I find it striking
12 that for a public policy organization that purports to focus
13 exclusively on environmental issues that you are not willing
14 to tell this Committee that you would issue a retraction if
15 your testimony is objectively false under scientific data.
16 That undermines the credibility of any organization if you
17 will persist in a political position regardless of what the
18 science shows, regardless of the facts, regardless of the
19 evidence, and regardless of the data. That is not
20 consistent, I would suggest, with sound public policy.

21 Mr. Mair. Sir, you can pick whatever and cherrypick
22 whatever data you wish, but I concur with the 97 percent of
23 scientists who concur that global warming is a fact.

24 Chairman Cruz. Senator Coons.

25 Senator Coons. Thank you, Mr. Chairman. I just simply

1 wanted to observe that we have a broadly representative and
2 qualified group of folks who were brought here to talk about
3 overregulation and its impact on minority communities, and I
4 do not speak for the Sierra Club, obviously, but it is my
5 hope and expectation that if you want to pursue that line of
6 inquiry with them further, they would be happy to. But my
7 assumption is that we will continue to focus on the subject
8 of the hearing at hand.

9 Chairman Cruz. And I certainly concur with Senator
10 Coons, and I would note that Mr. Mair's written testimony
11 and oral testimony focused in significant part on the Obama
12 administration's new global warming regulations that could
13 cost up to 10 million jobs and impose massive costs on
14 American consumers. And so he argued that the data support
15 causing millions of Americans to lose their jobs, including
16 millions of African Americans and Hispanics, and I was
17 pressing on what the data was that he was testifying about.
18 And I would note that that is not only relevant to his
19 testimony, it was almost the entire subject of his
20 testimony. And yet apparently the testimony is not based on
21 the data or the evidence, or he is not prepared to discuss
22 the data or evidence beyond asserting that we should take
23 the word--to take their word for it.

24 With that, I want to thank all the witnesses for being
25 here. Thank you for joining us. We will be keeping the

1 hearing record open for an additional 5 business days, which
2 means the record will be closed at the end of the business
3 day on Tuesday, October 13, 2015.

4 Thank you very much to each of the witnesses. The
5 hearing is adjourned.

6 [Whereupon, at 4:25 p.m., the Subcommittee was
7 adjourned.]

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