

POLICY ESSAY

THE CONGRESSIONAL REVIEW ACT: CONGRESS'S NEW FAVORITE TOOL FOR RESTORING ITS CONSTITUTIONAL AUTHORITY

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To Dick Armey, native North Dakotan, my political mentor, friend of my father, and architect of the Contract with America. Congress must heed his warning and use our Congressional Review Act powers to overturn improper rules. If we don't, the bureaucracy may decide our silence constitutes approval.

ABSTRACT

Recent Supreme Court decisions have reined in the runaway bureaucracy by reasserting the authority of the legislative branch, the first of three coequal branches of government created by our Constitution. One opinion after another has asserted a common refrain: all power possessed by federal agencies is derived from laws passed by Congress and they must operate within the confines of this authority. When agencies color outside the lines, Congress can check the executive branch through the Congressional Review Act (“CRA”) by overturning rules issued by federal agencies. Congress recently made history in this arena with a novel use of the law to overturn overbearing Bureau of Land Management Resource Management Plans (“RMPs”) for North Dakota, Montana, and Alaska. This approach marked the first time a CRA resolution was used to overturn an RMP, creating a roadmap for expanded use of the CRA authorities to check expansive bureaucracy operating outside the scope of Congress’s intent. With the courts reaffirming the need for a legislative course correction, Congress is taking back control by making it clear these types of rules are out of bounds. The use of the CRA for an RMP is a case study on expanded opportunities to use CRA authority and the legislative and judicial willingness to rightsize Congress’s coequal status.

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I. INTRODUCTION

In 2025, Congress passed historic legislation to overturn three Bureau of Land Management (“BLM”) Resource Management Plans (“RMPs”) in North Dakota, Montana, and Alaska.¹ This landmark effort was a response to the BLM violating a clear legislative mandate set by the Federal Land Policy and Management Act to preserve multiple uses of public lands and ignoring input from North Dakotans and others who actually live near and use the land.²

The North Dakota congressional delegation embarked on a novel strategy beginning with an opinion from the Government Accountability Office (“GAO”) to overturn the state’s RMP via the Congressional Review Act (“CRA”). The CRA was a bipartisan effort led by Republicans in Congress as part of their Contract with America pledge and was signed into law by President Bill Clinton.³ The statute allows Congress to check an ever-expanding executive branch bent on governing by unauthorized regulation.⁴ Under the expedited terms embedded in the CRA, Congress can overturn final rules and prohibit any substantially similar rule from respawning.⁵

The CRA is a blunt instrument and looming threat meant to remind the executive of its constitutional duty to operate within the bounds and intent of the legislation Congress enacts.⁶

In terms of legislative mechanics, Congress may use the CRA to nullify a rule—typically, a final regulation reported to Congress.⁷ When a regulation

¹ See Press Release, Sen. Kevin Cramer (R-N.D.), Senate Passes ND Delegation Resolution to Overturn Biden-Era North Dakota RMP (Oct. 8, 2025), <https://www.cramer.senate.gov/news/press-releases/senate-passes-nd-delegation-resolution-to-overturn-biden-era-north-dakota-rmp> [<https://perma.cc/H36Q-X67T>]; The White House, Congressional Bills H.J. Res. 104, 105, 106, 130, and 131 Signed Into Law (Dec. 11, 2025), <https://www.whitehouse.gov/briefings-statements/2025/12/congressional-bills-h-j-res-104-105-106-130-and-131-signed-into-law/> [<https://perma.cc/P8X8-QQ3D>].

² See *id.* (“[The] final RMP for North Dakota in August 2024 [was passed] and adopted . . . in January without incorporating changes the State of North Dakota and its Congressional delegation requested.”).

³ See President William J. Clinton, *Statement on Signing the Contract With America Advancement Act of 1996*, THE AM. PRESIDENCY PROJECT (1996), <https://www.presidency.ucsb.edu/documents/statement-signing-the-contract-with-america-advancement-act-1996#> [<https://perma.cc/7QTS-XBA9>]; Contract with America, The American Presidency Project, <https://www.presidency.ucsb.edu/documents/the-republican-contract-with-america> [<https://perma.cc/VBZ7-QJ7A>].

⁴ See Adam M. Finkel & Jason W. Sullivan, *A Cost-Benefit Interpretation of the “Substantially Similar” Hurdle in the Congressional Review Act: Can OSHA Ever Utter the E-Word (Ergonomics) Again?*, 63 ADMIN. L. REV. 707, 715 (2011) (“When the Republicans in the 104th Congress first began drafting the Contract with America, they intended to stop the regulatory process in its tracks by imposing a moratorium on the issuance of any new regulations.”).

⁵ See Congressional Review Act, 5 U.S.C. §§ 801–08.

⁶ See 142 CONG. REC. S3684 (daily ed. Apr. 18, 1996) (statement of Senators Nickles, Reid, and Stevens) (“Rules can be surprisingly different from the expectations of Congress or the public. Congressional review gives the public the opportunity to call the attention of politically accountable, elected officials to concerns about new agency rules. If these concerns are sufficiently serious, Congress can stop the rule.”).

⁷ See 5 U.S.C. § 801.

has not been sent to the legislative branch as a rule, the GAO can determine upon request from a member of Congress whether the executive action qualifies.⁸ RMPs are supposed to be relatively routine administrative actions and have not been delivered to Congress as rules.⁹

President Joe Biden's administration built on President Barack Obama's restrictive environmental land use policies, finalizing RMPs in North Dakota, Alaska, and Montana that substantially reduced natural resource output.¹⁰ This was contrary to the multiple use doctrine enshrined by Congress and harmed state and local budgets and economic output.¹¹ During the Obama administration, the Department of Interior finalized an RMP for the Eastern Interior of Alaska.¹² It was never sent to Congress, so in 2017 the Alaska congressional delegation requested a review by the GAO, which found the RMP was eligible for action under the CRA.¹³ Seizing on this momentum, I led the North Dakota delegation's request to the GAO asking it to review President Biden's North Dakota RMP and determine if it was subject to reversal under the CRA.¹⁴ The GAO agreed, allowing me to submit a Joint Resolution of Disapproval to formally revoke the North Dakota RMP in Congress.¹⁵

⁸ See VALERIE C. BRANNON & MAEVE P. CAREY, CONG. RSCH. SERV., R45248, THE CONGRESSIONAL REVIEW ACT: DETERMINING WHICH "RULES" MUST BE SUBMITTED TO CONGRESS 1 (2024), <https://www.congress.gov/crs-product/R45248#ifn10> [<https://perma.cc/SE3Z-Z5YZ>].

⁹ Letter from Robert T. Anderson, Solic. of the U.S. Dep't of the Interior, to Rep. Jared Huffman (D-Cal.) (Jan. 15, 2025), <https://democrats-naturalresources.house.gov/download/doi-response-rep-huffman-rmp> [<https://perma.cc/XGJ7-SFCQ>].

¹⁰ See Press Release, H. Comm. on Nat. Res., President Trump Signs Legislation to Unleash American Resources and Unlock Public Lands (Dec. 11, 2025), <https://naturalresources.house.gov/news/documentsingle.aspx?DocumentID=418511> [<https://perma.cc/AFE3-H8JL>]; Zack Colman & Ben Lefebvre, *Biden Pitching a Much Vaster Climate Plan Than Obama Ever Attempted*, POLITICO (Jan. 27, 2021) <https://www.politico.com/news/2021/01/27/biden-climate-orders-energy-463051> [<https://perma.cc/SKG8-LGX4>]; Peggy Otum, *Public Lands Management in the Biden Era*, WilmerHale (Nov. 16, 2020), <https://www.wilmerhale.com/en/insights/client-alerts/20201116-public-lands-management-in-the-biden-era> [<https://perma.cc/8W44-3VXK>].

¹¹ See Press Release, Kelly Armstrong, N.D. Gov., Armstrong: BLM's Finalized Resource Management Plan is Bad for North Dakota, should be repealed (Jan. 14, 2025), <https://www.governor.nd.gov/news/armstrong-blms-finalized-resource-management-plan-bad-north-dakota-should-be-repealed> [<https://perma.cc/V893-7HWM>] ("For example, the anticipated loss in State revenue from royalties and taxes for oil and gas alone is estimated to be \$34 million per year.").

¹² Press Release, Bureau of Land Mgmt., BLM Approves Management Plan for Alaska's Eastern Interior, <https://www.blm.gov/press-release/blm-approves-management-plan-alaskas-eastern-interior> [<https://perma.cc/FGF9-G2RT>].

¹³ U.S. GOV'T ACCOUNTABILITY OFF., B-329065 EASTERN INTERIOR RESOURCE MANAGEMENT PLAN 7 (2017), <https://www.gao.gov/assets/b-329065.pdf> [<https://perma.cc/9DQP-TFAG>].

¹⁴ See Press Release, Sen. Kevin Cramer (R-N.D.), Senate Passes ND Delegation Resolution to Overturn Biden-Era North Dakota RMP (Oct. 8, 2025), <https://www.cramer.senate.gov/news/press-releases/senate-passes-nd-delegation-resolution-to-overturn-biden-era-north-dakota-rmp> [<https://perma.cc/PNH5-A4AF>].

¹⁵ See *id.*

This was a novel use of the CRA, but it was exactly what the law was meant for: to provide Congress with a check on an agency coloring outside the lines of its authority, to enforce congressional intent, and to redirect the bureaucracy.¹⁶

Although the courts have started to restore balance, Congress needs to reassert the authority it surrendered. We must reassess the tools we have to exert our constitutional authority in the face of a runaway bureaucracy with a near evenly divided Congress.

North Dakota's RMP CRA is a case study in the untapped possibility of the CRA and offers a glimpse at the potential restoration of the checks and balances.

Understanding the necessity of North Dakota's CRA to overturn the RMP begins with the rise of the administrative state and the ever-expanding bureaucracy.

II. THE RISE OF THE ADMINISTRATIVE STATE

While the modern administrative state began its growth during Woodrow Wilson's presidency, it rapidly expanded as a result of President Franklin Delano Roosevelt's New Deal.¹⁷ As Congress passed sweeping legislation, it outsourced expansive authority to the bureaucracy, believed to be better suited to making technical decisions than Congress.¹⁸ The less prescriptive Congress was, the more leeway agencies had to interpret the new laws.¹⁹

When it comes to Congress's power, this expansive legislation was a hard turn down the wrong path. Instead of prescriptive legislating, Congress opened a can of worms by delegating away its own authority. Rather than clearly delineating black and white boundaries, vague statutes created massive amounts of gray area for bureaucratic mischief.²⁰ It was during this era that Congress created the Federal Register to compile and centralize the flurry of new regulations from agencies.²¹

¹⁶ See *id.*

¹⁷ Joseph Postell, *From Administrative State to Constitutional Government*, THE HERITAGE FOUNDATION, <https://www.heritage.org/political-process/report/administrative-tate-constitutional-government> [<https://perma.cc/EP3Y-9CDY>].

¹⁸ See John Yoo, *Franklin Roosevelt and Presidential Power*, 21 CHAPMAN L. REV. 205, 206, 224 (2018).

¹⁹ See Elena Kagan, *Presidential Administration*, 114 HARV. L. REV. 2245, 2255 (2001) ("From the beginning of the twentieth century onward, many statutes authorizing agency action included open-ended grants of power, leaving to the relevant agency's discretion major questions of public policy.").

²⁰ See, e.g., H.R. 6518, 88th Cong. (1963) (enacted) ("The Secretary may recommend to such air pollution control agencies and to other appropriate organizations such criteria of air quality as in his judgement may be necessary to protect the public health and welfare.").

²¹ See Harold C. Relyea, *The Federal Register: Origins, Formulation, Realization, and Heritage*, 28 GOV'T INFO. Q. 297 (2011); Nat'l Archives & Recs. Admin., *The Federal Register: A Brief History*, <https://www.archives.gov/files/federal-register/the-federal-register/history.pdf>

In the intervening ninety years, Congress made many attempts at defining the limits of executive agency power, and it will likely do so for the next ninety years. After the passage of the New Deal, Congress spent the next decade considering a procedural framework for agency rules. A House Judiciary Committee report describes the process as “painstaking and detailed study and drafting.”²²

In response to the increase in administrative activity, Congress passed the Administrative Procedure Act (“APA”) in 1946.²³ The APA defined what makes up a “rule,” defined specific types of rulemakings, and standardized the rulemaking process.²⁴ There are a variety of rulemaking types, but the most common is an informal rulemaking, also known as notice-and-comment.²⁵ These rules begin with a notice of proposed rulemaking, public comment period for an “adequate” amount of time, and then finalization.²⁶

While the APA was essential to creating these parameters, it does not constrain bureaucratic outcomes or the gradual accumulation of deference to the executive branch.²⁷ Instead, it merely outlines the process for regulatory action.

Over time, the courts were also involved in this shift as they increasingly used the doctrine established in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*²⁸ As the Supreme Court subsequently described:

[W]ithin a few years [after *Chevron*], both the [Supreme] Court and the courts of appeals were routinely invoking its two-step framework as the governing standard in such cases Eventually, the Court decided that *Chevron* rested on “a presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows.”²⁹

[<https://perma.cc/FE5L-WD7A>]; see also Joel S. Nolette, *Towards an Administrative Rule of Lenity: Restoring the Constitutional Congress by Reforming Statutory Interpretation*, 19 FEDERALIST SOC’Y REV. 16, 16–17 (2018) (“[When] Congress passes vague or broadly worded statutes . . . the agency will begin implementing the law in ways Congress never intended or authorized.”).

²² H.R. Rep. No. 79-1980, at 241 (1946), <https://www.justice.gov/sites/default/files/jmd/legacy/2014/06/09/houserept-1980-1946.pdf>, [<https://perma.cc/HCA8-88A9>].

²³ See 5 U.S.C. §§ 551–59.

²⁴ 5 U.S.C. §§ 551, 553–57.

²⁵ See generally TODD GARVEY, CONG. RSCH. SERV., R41546, A BRIEF OVERVIEW OF RULEMAKING AND JUDICIAL REVIEW (2017), <https://www.congress.gov/crs-product/R41546> [<https://perma.cc/ZGG7-K73M>] (“The Administrative Procedure Act (APA), which applies to all agencies of the federal government, provides the general procedures for various types of rulemaking.”).

²⁶ *Id.* at 2–3.

²⁷ *Id.* at 14–17.

²⁸ 467 U.S. 837 (1984).

²⁹ *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2264–65 (2024).

Yet, as Chief Justice John Roberts explained in *Loper Bright Enterprises v. Raimondo*:

the APA specifies that courts, not agencies, will decide “all relevant questions of law” arising on review of agency action . . . —even those involving ambiguous laws—. . . . And it prescribes no deferential standard for courts to employ in answering those legal questions. That omission is telling, because Section 706 does mandate that judicial review of agency policymaking and factfinding be deferential.³⁰

Over the coming decades, Congress proceeded to allow agencies to determine policy details of its imprecise legislation out of a desire for efficiency and political expediency.³¹ But in doing so, Congress either failed to see or did not care how this slowly chipped away at its own power over relevant questions of law.³² The result has been a failure of transparency and democratic principles. Agencies were handed authority without accountability, and challenging the rule in court was generally the only recourse to prevent a runaway bureaucracy. Each time Congress passes legislation directing the agencies to engage in rulemaking, it places itself out of the picture to some degree.³³

However, in recent years, the tide has turned against unchecked bureaucratic authority as evidenced by several landmark Supreme Court rulings. Whether regarding the Clean Water Act (“CWA”) or agency deference, the Supreme Court in these last several years has reined in overzealous agencies.³⁴

³⁰ *Id.* at 2261.

³¹ See *Does Congress Delegate Too Much Power to Agencies and What Should Be Done About It?: Hearing Before the H. Comm. on Gov. Reform*, 106th Cong. 8–9 (1999) (statement of Rep. Dennis J. Kucinich (D-Ohio)) (“this process can be abused by both the Congress and the agencies. Congress can duck politically difficult issues by passing broad legislation that sets politically popular goals, and blame the administration when agencies make the tough decisions about who will bear the burden of reaching those goals. Similarly, agencies can overstep their authority and pass regulations which are not authorized by the underlying statutes.”); *Myers v. United States*, 272 U.S. 52, 293 (1926) (Brandeis, J., dissenting) (describing separation of powers as adopted “not to promote efficiency but to preclude the exercise of arbitrary power” and “to save the people from autocracy”).

³² See Reeve Bull, *Congress Should Stop Passing the Buck to the Bureaucracy*, NAT’L REV. (Nov. 12, 2025, at 06:30 ET), <https://www.nationalreview.com/2025/11/congress-should-stop-passing-the-buck-to-the-bureaucracy/> [<https://perma.cc/5XUR-VDQP>] (“So here’s the bumper sticker Congress should live by: Make the rules of the road before handing over the wheel [to the courts].”).

³³ See Michael Macagnone, *Supreme Court’s ‘Chevron’ Ruling Means Changes for Writing Laws*, ROLL CALL (June 28, 2024, at 18:34 ET), <https://rollcall.com/2024/06/28/supreme-courts-chevron-ruling-means-changes-for-writing-laws/> [<https://perma.cc/6965-Y9KD>].

³⁴ See Phil Cha, David Amerikaner & Lindsay Ann Brown, *The New (De)Regulatory Era: what Recent Supreme Court Decisions and Federal Policy Shifts Mean for Regulated Industries*, DUANE MORRIS (July 22, 2025), https://www.duanemorris.com/articles/new_deregulatory_era_recent_supreme_court_decisions_federal_policy_shifts_mean_industries_0725.html [<https://perma.cc/7M5G-MDXW>] (“[The regulatory] era is ending. The United States has entered a new

Beginning in 2022 with *West Virginia v. EPA*, Chief Justice Roberts emphasized “[a]gencies have only those powers given to them by Congress, and ‘enabling legislation’ is generally not an ‘open book to which the agency [may] add pages and change the plot line.’”³⁵ Rather, “[t]he agency instead must point to ‘clear congressional authorization’ for the power it claims.”³⁶ Under the major questions doctrine, the Court established that major policy questions are not for agencies to decide but are squarely for Congress to debate and legislate. As Justice Gorsuch explained in his *West Virginia* concurring opinion:

administrative agencies must be able to point to “clear congressional authorization” when they claim the power to make decisions of vast “economic and political significance.” . . . These rules assume that, absent a clear statement otherwise, Congress means for its laws to operate in congruence with the Constitution rather than test its bounds.³⁷

The Supreme Court again curtailed agency overreach less than a year later. In *Sackett v. EPA*, the Court restrained the EPA’s Waters of the United States (“WOTUS”) rule, clarifying the scope of the Clean Water Act’s authority.³⁸ The decision reined in bureaucratic expansionism. Specifically, the Court held “that the CWA extends to only those ‘wetlands with a continuous surface connection to bodies that are “waters of the United States” in their own right,’ so that they are ‘indistinguishable’ from those waters.”³⁹ It said what bureaucrats were unwilling to see: only bodies of water which are actually bodies of water—not subsurface, not potholes, not ditches—can be defined as WOTUS.

In 2024, the Court rejected the *Chevron* doctrine, reinforcing the separation of powers and reining in expansive agency power. As famously stated by Chief Justice Marshall in *Marbury v. Madison*, “[i]t is emphatically the province and duty of the Judicial Department to say what the law is.”⁴⁰ In *Loper Bright Enterprises v. Raimondo*, the Supreme Court significantly limited courts’ deference to agency expertise when interpreting a statute by reimplementing both the plain text of the APA and the foundational power of Article III courts.⁴¹ Specifically, Chief Justice Roberts stated:

phase—one of deregulatory momentum—driven by recent U.S. Supreme Court decisions and an aggressive reorienting of executive and agency policy.”).

³⁵ 142 S. Ct. 2587, 2609 (2022).

³⁶ *Id.*

³⁷ *Id.* at 2616 (Gorsuch, J., concurring).

³⁸ 143 S. Ct. 1322, 1344 (2023).

³⁹ *Id.*

⁴⁰ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

⁴¹ *See Loper Bright*, 144 S. Ct. at 2273 (“Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires.”).

Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires. Careful attention to the judgment of the Executive Branch may help inform that inquiry. And when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it. But courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.⁴²

This monumental decision took executive power out of the driver's seat and reasserted the law and judges' responsibility to do their job in interpreting it. While the courts have done excellent work in turning the ship, Congress's greatest tool to reclaim its authority is a newly-embraced, yet decades-old law: the CRA.

III. THE CONGRESSIONAL REVIEW ACT

U.S. Senator Christopher Bond (R-Mo.) introduced the Small Business Regulatory Enforcement Fairness Act ("SBREFA") in 1995 to assist small businesses with regulatory compliance.⁴³ While the legislation focused on small businesses, Title V of the bill outlined a process for congressional review of the final rules from executive agencies.⁴⁴

After passing the Senate unanimously, SBREFA was folded into then-Speaker of the House Newt Gingrich (R-Ga.) and North Dakota native and Majority Leader Dick Armey's (R-Tex.) marquee agenda, the Contract with America.⁴⁵ Its intent was to provide for congressional review of final rules from executive agencies. Specifically, it mandated that agencies submit final rules, including proposed implementation dates and "a concise general statement relating to the rule, including whether [it] is a major rule" to Congress and the Comptroller General.⁴⁶

Building on the SBREFA effort to implement congressional review of agency rules,⁴⁷ the CRA within Contract with America established a more

⁴² *Id.*

⁴³ Small Business Regulatory Enforcement Fairness Act of 1996, S. 942, 104th Cong. (1996).

⁴⁴ *Id.*

⁴⁵ *Id.*; Contract with America Advancement Act of 1996, H.R. 3136, 104th Cong. (1996).

⁴⁶ *Id.*

⁴⁷ Small Business Regulatory Enforcement Fairness Act of 1996, S. 942, 104th Cong. (1996).

generous timeline for Congress to pass legislation overturning those rules.⁴⁸ It increased the amount of time Congress has to pass a CRA resolution from forty-five days to sixty days, eliminated the ability to pursue a discharge petition in the House, and prohibited rules which are “substantially the same” from replacing overturned rules.⁴⁹

The CRA defers to the APA definition of a rule,⁵⁰ which is “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy”⁵¹

The three types of rules exempt from the CRA include:

any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing; any rule relating to agency management or personnel; or any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.⁵²

The CRA clearly prescribes the process by which Congress can overturn a rule. Per the CRA, senators can skip the committee process and bring the CRA resolution directly to the floor after twenty days, so long as thirty members sign a discharge petition.⁵³ It restricts floor debate in the Senate to ten hours, divided equally between the supporting and opposing members.⁵⁴ The Senate then proceeds immediately to final passage after debate has expired, requiring only a quorum or simple majority to pass.⁵⁵ As with any law, once a CRA resolution is passed by the House and Senate, it is transmitted to the President for his signature or veto.

Perhaps most importantly, the CRA includes a prohibition on the reincarnation of similar rules.

A rule that does not take effect (or does not continue) . . . may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.⁵⁶

⁴⁸ Contract with America Advancement Act of 1996, Pub. L. No. 104-121, § 251, 110 Stat. 847, 868 (1996) (enacted in 5 U.S.C. §§ 801–08).

⁴⁹ 5 U.S.C. § 801.

⁵⁰ *Id.* § 804(3) (“The term ‘rule’ has the meaning given such term in section 551.”).

⁵¹ *Id.* § 551(4).

⁵² *Id.* § 804(3) (headings omitted).

⁵³ *Id.* § 802(c).

⁵⁴ *Id.* § 802(d)(2).

⁵⁵ *Id.* § 802(d)(3).

⁵⁶ *Id.* § 801(b)(2).

The CRA is clear: once a rule is overturned, future rules must be significantly different unless Congress passes legislation otherwise authorizing the rule after the successful CRA resolution.

Interestingly, the CRA does not define “substantially the same,” leaving each administration, and potentially the courts and Congress, to decide how similar is too similar. Under the CRA, a resolution signed into law is not judicially reviewable, but a replacement rule could be challenged in court on the grounds that it mimics what was revoked. Alternatively, Congress can determine that enough substantive changes have been made. Congress must decide its own tolerance for reissued rules and whether it is willing to expend the time and energy to overturn them. There have only been two attempts at finalizing rules previously repealed by CRA resolutions, and Congress did not introduce or pass CRA resolutions to overturn them, suggesting the most significant flaws were alleviated.

Given the immense resources and tradeoffs required to develop a rule, the “substantially similar” prohibition serves as a practical deterrent to regulatory overreach even if its enforceability is in doubt.

Every time Congress passes a CRA resolution, it is a stop sign to the bureaucracy. If the bureaucracy colors so far outside the lines that Congress passes and the President signs a successful CRA, the result is not just a repudiation of the present, but also a warning to future efforts of a similar nature.

In a statement submitted to the Congressional Record after its initial passage, then-U.S. Senators Don Nickles (R-Okla.), Harry Reid (D-Nev.), and Ted Stevens (R-Alaska) described their intent behind the CRA and explicitly outlined how they envisioned its future interpretation.⁵⁷ Before submitting the statement, Nickles explained: “This joint statement is intended to provide guidance to the agencies, the courts, and other interested parties when interpreting the act’s terms.”⁵⁸

The lawmakers said the CRA was intended to “help . . . redress the balance [between Congress and the Executive Branch], reclaiming for Congress some of its policymaking authority, without at the same time requiring Congress to become a super regulatory agency.”⁵⁹

Their statement offers tough but fair criticism of Congress and the executive, faulting both branches: “As the number and complexity of federal statutory programs has increased over the last fifty years, Congress has come to depend more and more upon Executive Branch agencies to fill out the details of the programs it enacts.”⁶⁰

⁵⁷ See generally 142 CONG. REC. S3683–87 (daily ed. Apr. 18, 1996) (statement of Sens. Nickles, Reid & Stevens) (providing a “detailed explanation and a legislative history for the congressional review title of H.R. 3136”).

⁵⁸ *Id.* at S3683.

⁵⁹ *Id.*

⁶⁰ *Id.*

Giving agencies the difficult job of determining what Congress intended is a catch-22. As Senators Nickles, Reid, and Stevens explain, “[b]ecause Congress often is unable to anticipate the numerous situations to which the laws it passes must apply, Executive Branch agencies sometimes develop regulatory schemes at odds with congressional expectations Rules can be surprisingly different from the expectations of Congress or the public.”⁶¹

A. *The Evolving Uses of the CRA*

Once the CRA passed the Senate and was signed into law by President Clinton, it lay dormant for nearly half a decade. For many years, CRA procedure was widely regarded as “toothless” in large part because of the very narrow and specific circumstances necessary for a CRA effort to succeed.⁶²

As long as the president who promulgated the rule was still in office, he would have the ability to veto it, leaving Congress to attempt a veto override. A president would rarely overturn his own administration’s rule, so any CRA effort would likely be doomed from the start.

The genius of the CRA would be revealed the very first time it was used. Five years after its passage, Congress successfully overturned a Clinton administration-era Occupational Safety and Health Administration (“OSHA”) ergonomics rule.⁶³ OSHA’s rule was intended to reduce repetitive stress injuries in the workplace by requiring employers to educate employees on injuries, track injuries, and modify work environments to prevent injuries.⁶⁴

The rule was finalized in November 2000, exactly a week after President George W. Bush was elected.⁶⁵ President Bush prepared to assume the presidency as Republicans maintained their control of the House and Senate, forming a trifecta.⁶⁶ Congressional Republicans began working to overturn the rule,⁶⁷ which President Bush described as “a bureaucratic one-size-fits-all

⁶¹ *Id.* at S3684.

⁶² See Stuart Shapiro, *The Congressional Review Act, Rarely Used and (Almost Always) Unsuccessful*, THE HILL (Apr. 17, 2015), <https://thehill.com/blogs/pundits-blog/lawmaker-news/239189-the-congressional-review-act-rarely-used-and-almost-always/> [<https://perma.cc/6WL4-BHXX>] (explaining why Congressional Republicans would likely fail in their attempt to stop Obama regulations).

⁶³ See S.J. Res. 6, 107th Cong., 115 Stat. 7 (2001).

⁶⁴ Ergonomics Program, 65 Fed. Reg. 68262 (Nov. 14, 2000) (to be codified at 29 C.F.R. pt. 1910) (overturned).

⁶⁵ *Id.*

⁶⁶ *Party Government Since 1857*, U.S. HOUSE OF REPS.: HIST., ART & ARCHIVES, <https://history.house.gov/Institution/Presidents-Coinciding/Party-Government/> [<https://perma.cc/XTE5-8HYK>].

⁶⁷ See Nick Anderson, *Senate Overturns Ergonomics Rules on Worker Safety*, L.A. TIMES (Mar. 7, 2001, at 00:00 PT), <https://www.latimes.com/archives/la-xpm-2001-mar-07-mn-34317-story.html> [<https://perma.cc/6D45-L8K6>] (detailing a “Republican-led [vote] to kill new rules”).

solution to a broad range of employers and workers—not good government at work.”⁶⁸

The U.S. Chamber of Commerce warned of the strain this would place on employers, from skyrocketing costs to malicious, frivolous lawsuits.⁶⁹

Senator Nickles introduced the CRA resolution to overturn the rule, referring to it as “the most expensive, intrusive regulations ever promulgated, certainly by the Department of Labor and maybe by any department in history.”⁷⁰

After signing the CRA resolution into law, Bush described the overturned rule as “unduly burdensome and overly broad.”⁷¹ He further explained, “in exchange for uncertain benefits, the ergonomics rule would have cost both large and small employers billions of dollars and presented employers with overwhelming compliance challenges.”⁷²

In addition to noting the historic nature of the repeal, Bush highlighted the role of the CRA in ensuring accountability within the executive agencies. He argued the “resolution is a good and proper use of the [Congressional Review] Act because the different branches of our Government need to be held accountable.”⁷³

Despite the successful use of CRA powers, it was dismissed as a one-off event without much future utility. As a Congressional Research Service report from 2008 describes:

In the view of some observers, the OSHA action was the result of a unique confluence of circumstances not likely to soon recur: the White House and both Houses of Congress in the hands of the same political party, a contentious rule promulgated in the waning days of an outgoing Administration; longstanding opposition to the rule by some in Congress and by a broad coalition of business interests; and encouragement of repeal by the President.⁷⁴

After the successful overturn of the ergonomics rule, Congress gradually introduced more CRA resolutions of disapproval. Fourteen years after the first CRA resolution, President Barack Obama vetoed a CRA to overturn his

⁶⁸ Statement on Signing Legislation To Repeal Federal Ergonomics Regulations, 37 WEEKLY COMP. PRES. DOC. 477 (Mar. 20, 2001).

⁶⁹ Dana Bash & Trish Turner, *Senate Fight Brews Over Ergonomic Regulations*, CNN: INSIDE POLITICS (Mar. 2, 2001), <https://www.cnn.com/2001/ALLPOLITICS/03/02/gop.job/index.html> [<https://perma.cc/3S46-B76F>].

⁷⁰ Anderson, *supra* note 67; *see also id.*

⁷¹ Bush, *supra* note 68.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ MORTEN ROSENBERG, CONG. RSCH. SERV., RL30116, CONGRESSIONAL REVIEW OF AGENCY RULEMAKING: AN UPDATE AND ASSESSMENT OF THE CONGRESSIONAL REVIEW ACT AFTER A DECADE (2008).

administration's rule allowing streamlined union elections.⁷⁵ President Obama vetoed four additional CRA resolutions, and no CRA attempt by Congress successfully passed during his entire eight years in office.⁷⁶

In February 2017, the CRA forever changed the way Congress interacts with the Executive Branch. Republicans in Congress and newly inaugurated President Donald Trump leveraged the statute for a campaign to overturn sweeping Obama administration rules passed in the final months of his presidency. President Trump signed fifteen CRA resolutions into law within the first year of his administration, followed by one signed CRA resolution in 2018 and one presidential veto of a CRA in 2020.⁷⁷

After the Republican-controlled 115th Congress's use of the CRA, there was no longer any doubt about the power it holds to reshape the bureaucracy and reduce the impact of a president's predecessor.⁷⁸

Four years later, President Joe Biden and a Democrat-controlled Congress overturned three Trump administration rules. Despite bipartisan support, President Biden vetoed most of the fourteen CRAs passed by Congress during his administration.⁷⁹

During the second Trump administration, Congress has dusted off its CRA playbook and passed twenty-two CRA resolutions. They cover everything from RMPs to bank mergers and a wide swath of environmental regulations.⁸⁰

The power of the CRA lies in its permanence. A freshly sworn-in president has a variety of tools to roll back the work of his predecessor. But unlike an executive order to repeal another executive order or a freeze on rulemaking, a successful CRA is the equivalent of playing both offense and defense at the same time. It eliminates a finalized rule and significantly reduces the likelihood of similar rules all in a single legislative act.

A successful CRA resolution of disapproval requires the near-perfect set of circumstances of a president aligned with a simple majority in Congress, a rule finalized in the eleventh hour of an administration, and members of Congress willing to convince their colleagues to get the CRA across

⁷⁵ Representation-Case Procedures, 79 Fed. Reg. 74308 (Dec. 15, 2014) (to be codified at 29 C.F.R. pts. 101–03) (overturned); see Peter Baker, *Obama Rejects Republican Bid to Overturn New Union Rules*, N.Y. TIMES (Mar. 31, 2015), <https://www.nytimes.com/2015/04/01/us/obama-rejects-republican-effort-to-tighten-union-rules.html> [<https://perma.cc/2GAP-T6D9>] (discussing President Obama's veto of the resolution).

⁷⁶ See *Federal Agency Rules Repealed Under the Congressional Review Act*, BALLOTPEdia, https://ballotpedia.org/Federal_agency_rules_repealed_under_the_Congressional_Review_Act [<https://perma.cc/ZWQ8-8JMC>].

⁷⁷ *Id.*

⁷⁸ See Michael D. Shear, *Trump Discards Obama Legacy, One Rule at a Time*, N.Y. TIMES (May 1, 2017), <https://www.nytimes.com/2017/05/01/us/politics/trump-overturning-regulations.html> [<https://perma.cc/TA66-SJ83>].

⁷⁹ See generally *Federal Agency Rules Repealed Under the Congressional Review Act*, *supra* note 76.

⁸⁰ *Id.*

the finish line. They must meticulously plan, introduce their resolution, and lobby colleagues within the sixty-day window for passage.

As of April 2026, only sixty CRA resolutions of disapproval have been passed by Congress.⁸¹ Of those efforts, seventeen were vetoed and forty-three were signed by the president to successfully repeal rules.⁸² The CRA is no longer an obscure tool from 1996 and is now a key to Congress taking back control of its authorities and safeguarding congressional intent.

The recent overturning of the North Dakota RMP is a case study in the previously untapped power of the CRA and the ability of Congress to ensure agencies act within the confines of their authority and in line with congressional intent. We were confident the RMP violated the Federal Land Policy and Management Act (“FLPMA”) and multiple use, and we were determined to use the tools at our disposal to overturn it.

IV. THE FEDERAL LAND POLICY AND MANAGEMENT ACT

Amid ongoing concern over outdated public lands laws in the 1950s and 1960s, President Lyndon B. Johnson and Congress agreed on the need for a commission to study existing laws and propose new ones to better manage public lands across America.⁸³ In 1964, Congress passed legislation establishing the Public Land Law Review Commission.⁸⁴ The Commission was made up of representatives appointed by Johnson, along with bipartisan members of the Senate and House Committees on Interior and Insular Affairs. It was also assisted by representatives of all fifty governors and an advisory council of federal agency and various industry leaders.⁸⁵

The Commission released its report in June 1970 recommending several changes to how the United States manages public lands.⁸⁶ These recommendations included altering land disposal policy, consolidating management of public lands into a single agency, and supporting states and communities with payments in lieu of taxes.⁸⁷

Two key recommendations stood out, laying the groundwork for the multiple use mandate and FLPMA.

First, the Commission recognized the need for public lands to have “a combination of many uses” in order to produce the “food, fiber, and minerals”

⁸¹ *Id.*

⁸² *Id.*

⁸³ Milton A. Pearl, *The Public Land Law Review Commission: An Overview*, 6 LAND & WATER L. REV. 7, 12 (1970).

⁸⁴ Act of Sep. 19, 1964, Pub. L. No. 88-606, 78 Stat. 982.

⁸⁵ PUB. LAND L. REV. COMM’N, ONE THIRD OF THE NATION’S LAND: A REPORT TO THE PRESIDENT AND TO THE CONGRESS BY THE PUBLIC LAND LAW REVIEW COMMISSION ix–x (1970).

⁸⁶ *Id.* at iii.

⁸⁷ *Id.* at 1–7.

the country needed.⁸⁸ The report recommended that “consideration should be given to all possible uses and the maximum number of compatible uses permitted.”⁸⁹

The second recommendation proposed requiring agencies to create “long range, comprehensive land use plans for each state or region.”⁹⁰ This recommendation would form the foundation of modern RMPs.

Congress took these recommendations and spent the next few years crafting FLPMA, which was signed into law on October 21, 1976.⁹¹ As Representative John Melcher (D-Mont.) explained:

Congress has enacted thousands of public land laws. Some of them are still viable. However, in many instances they are obsolete and, in total, do not add up to a coherent expression of congressional policies adequate for today’s national goals. The executive branch has tended to fill in missing gaps in the law. This has not always been done in a manner consistent with a system balanced in the best interests of all the people. This bill, the Federal Land Policy and Management Act, represents a major step in modernizing the public land laws.⁹²

Representative Joe Skubitz (R-Kan.) stressed the need for FLPMA, particularly for reasserting congressional oversight on the BLM, which he described as an “agency which, at present, is free to act mostly of its own accord.”⁹³ The prescriptive nature of FLPMA and its clear multiple-use mandate for public lands should have been enough to rein in the BLM, yet as our CRA resolution indicates, little has changed in the intervening decades.

Almost as applicable today as then, Representative Skubitz expressed concern for domestic energy development on public lands:

It seems inconsistent for some to decry our country’s increasing energy dependence on foreign imports, and yet, at the same time to continue restricting the development of more and more of our Federal lands. Why, for example, do we continue to so severely restrict the discovery and mining of valuable minerals or energy resources available to us within the United States?⁹⁴

The ability to develop energy near BLM lands would later become the central issue within the North Dakota RMP CRA resolution.

⁸⁸ *Id.* at 3.

⁸⁹ *Id.*

⁹⁰ *Id.* at 52.

⁹¹ Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, 90 Stat. 2743 (1976) (codified as amended at 43 U.S.C. §§ 1701–87).

⁹² 122 CONG. REC. 23434 (1976).

⁹³ *Id.* at 23436–37.

⁹⁴ *Id.* at 23437.

Even with FLPMA, the challenge of managing resources without completely withdrawing them for preservation only would remain a challenge for decades to come.

RMPs are the core element of FLPMA. The Act requires the Secretary of the Interior to create land use plans in partnership with the states for managing the public lands across western states, including North Dakota.⁹⁵

In particular, FLPMA mandates “multiple use” of public lands, which it defines as:

[T]he management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.⁹⁶

The central challenge with the multiple use requirement is how to balance the uses, particularly given the direct tension between them. Land used for grazing often cannot be used for conservation, just as land used for energy development may conflict with recreation. However, FLPMA is exceedingly clear that multiple use certainly does not mean single use or withdrawal altogether.⁹⁷

⁹⁵ FLPMA was amended by the Public Rangelands Improvement Act of 1978 to include additional states. *See* Public Rangelands Improvement Act of 1978, Pub. L. No. 95-514, § 7(b), 92 Stat. 1803, 1807 (codified as amended at 43 U.S.C. § 1752) (expanding FLPMA from eleven to sixteen states).

⁹⁶ Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, § 103, 90 Stat. 2743, 2745–46 (codified as amended at 43 U.S.C. § 1702).

⁹⁷ *Id.* at § 202 (“In the development and revision of land use plans, the secretary shall use and observe the principles of multiple use and sustained yield set forth in this and other applicable law”).

Following the recommendations from the Public Land Law Review Commission, FLPMA requires the BLM consult with state governments in drafting and revising plans.⁹⁸

The first RMP was finalized in 1980 and governed the California Desert Conservation Area,⁹⁹ as explicitly required by FLPMA.¹⁰⁰ Eight years later in 1988, North Dakota's RMP was finalized.¹⁰¹ As of April 2025, there are 174 approved RMPs¹⁰² and five pending RMPs¹⁰³ across large swaths of the western United States.

In 2016, the Obama administration BLM finalized an RMP for the Eastern Interior of Alaska, which U.S. Senator Lisa Murkowski (R-Alaska) described as “disregard[ing] its multiple-use mission and the livelihoods of Alaskans as it seeks to impose unnecessary conservation designations.”¹⁰⁴ After an inquiry from Senator Murkowski, the GAO qualified the RMP's eligibility for CRA removal.¹⁰⁵ Although Congress elected not to overturn the RMP, it created momentum for future attempts.¹⁰⁶

V. CASE STUDY: NORTH DAKOTA RESOURCE MANAGEMENT PLAN

In 2025, Congress embarked on a novel use of the CRA's oversight power to overturn a RMP that strayed outside the bounds of the BLM's FLPMA authority. North Dakota's effort to overturn the state's recently finalized RMP was a longer, more uncertain road than most CRA efforts.

⁹⁸ *Id.* § 202(c)(9); see U.S. DEP'T OF THE INTERIOR, BUREAU OF LAND MGMT., THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 AS AMENDED 84 (2016), https://www.blm.gov/sites/default/files/AboutUs_LawsandRegs_FLPMA.pdf [<https://perma.cc/82KW-L8W4>].

⁹⁹ See U.S. DEP'T. OF THE INTERIOR, BUREAU OF LAND MGMT., THE CALIFORNIA DESERT CONSERVATION AREA PLAN (1980), https://eplanning.blm.gov/public_projects/lup/66949/82080/96344/CDCA_Plan.pdf. [<https://perma.cc/3ANU-UMZT>].

¹⁰⁰ See U.S. DEP'T OF THE INTERIOR, *supra* note 98, at 62.

¹⁰¹ Record of Decision and Approved Resource Management Plan for the North Dakota Resource Management, 90 Fed. Reg. 3916 (Jan. 15, 2025) (“The Approved RMP replaces the 1988 North Dakota RMP as amended. The Approved RMP provides guidance for managing approximately 58,500 acres of BLM-administered surface and 4.1 million acres of BLM-administered mineral estate, mostly split estate, across North Dakota.”).

¹⁰² U.S. Department of the Interior, Bureau of Land Management, *BLM Natl Approved Land Use Plans*, GBP-BLM-EGIS HUB (Apr. 3, 2025, at 15:36 ET), <https://gbp-blm-egis.hub.arcgis.com/datasets/BLM-EGIS::blm-natl-approved-land-use-plans/explore> [<https://perma.cc/XX4B-MSFR>].

¹⁰³ U.S. Department of the Interior, Bureau of Land Management, *BLM Natl Revision Development Land Use Plans*, GBP-BLM-EGIS HUB (July 27, 2022), <https://gbp-blm-egis.hub.arcgis.com/datasets/BLM-EGIS::blm-natl-revision-development-land-use-plans/explore?showTable=true> [<https://perma.cc/3QR3-DHZJ>].

¹⁰⁴ Press Release, Sen. Lisa Murkowski (R-Alaska), Murkowski Slams BLM's Final Plan for Eastern Interior Alaska (Jan. 6, 2017), <https://www.murkowski.senate.gov/press/release/murkowski-slams-blms-final-plan-for-eastern-interior-alaska> [<https://perma.cc/RA78-W7RH>].

¹⁰⁵ See generally GOV'T ACCOUNTABILITY OFF., *supra* note 13.

¹⁰⁶ See 171 CONG. REC. S7114 (daily ed. Oct. 14, 2025) (statement of Sen. Mike Lee (R-Utah)) (“While Congress has long known that it can use the CRA to disapprove of a resource management plan, it has yet to.”).

Originally finalized in 1988, the BLM announced its intent to update its RMP for North Dakota in 2020, dictating the use of the land for the next twenty years.¹⁰⁷ During the drafting and finalization process, the State of North Dakota repeatedly expressed concern for the changes and implications it would have on split mineral and surface ownership in the state.¹⁰⁸

In most western areas, especially those managed by the BLM, the owners of the surface and subsurface rights are the same. This is not true in North Dakota. Not only are split-estate lands common, small pockets of federal lands are also intermingled in a patchwork of private and state minerals.¹⁰⁹

One mineral commonly extracted in North Dakota is lignite coal, which is typically extracted via surface mines, rather than underground mines.¹¹⁰ Before mining can begin, the topsoil and subsoil must be removed to access the lignite seams.¹¹¹ It is impossible to extract lignite without disturbing the surface, just as it is impractical to mine small areas.¹¹² Excluding small patches of federal minerals inhibits an efficient and economic mine plan, so companies need access to contiguous subsurface mineral acres.¹¹³ As for oil and gas, which are also commonly extracted in North Dakota, mineral ownership in a spacing unit is pooled to prevent waste and provide just and equitable royalties.¹¹⁴

In North Dakota, BLM manages over four million acres of coal, 489,300 acres of fluid minerals, and 362,600 acres of other subsurface minerals.¹¹⁵ In contrast, BLM only manages 58,500 surface acres.¹¹⁶ Subsurface federal minerals are intermingled with state- and privately-owned assets.¹¹⁷

¹⁰⁷ *North Dakota Resource Management Plan Revision and EIS*, BUREAU OF LAND MGMT.: BLM NAT'L NEPA REG. (Aug. 1, 2025), <https://eplanning.blm.gov/eplanning-ui/project/1505069/510> [<https://perma.cc/7Y6H-CU7Z>].

¹⁰⁸ See Press Release, Kelly Armstrong, N.D. Gov., *supra* note 11.

¹⁰⁹ See *Discussion on Draft Legislation to Overhaul Federal Lands Energy Policy: Hearing on H.R. 4239 Before the H. Comm. On Nat. Res.*, 115th Cong. 2, 5 (2017) (statement of Lynn Helms, Dir., N.D. Indus. Comm'n Dep't of Min. Res.) (“[F]ederal mineral ownership is interspersed with a ‘checkerboard’ of private and state mineral or surface ownership.”).

¹¹⁰ *Mining Process*, BNI COAL, <https://www.bnicoal.com/AboutBNI/MiningProcess> [<https://perma.cc/KW5C-5WNF>].

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Letter from Doug Burgum, N.D. Gov., to Sonya Germann, State Dir., Mont./Dakota Dist. at the U.S. Bureau of Land Mgmt., Protest of the Proposed Resource Management Plan and Final Environmental Impact Statement for the North Dakota Resource Management Plan Revision (Sep. 9, 2024), <https://www.governor.nd.gov/sites/www/files/documents/BLM%20RMP%20North%20Dakota%20Protest%20Letter%209.9.2024.pdf> [<https://perma.cc/B6AN-BKFA>].

¹¹⁴ See N.D. CENT. CODE § 38-08-08 (2025).

¹¹⁵ U.S. DEP'T OF THE INTERIOR, BUREAU OF LAND MGMT., NORTH DAKOTA DRAFT RESOURCE MANAGEMENT PLAN AND ENVIRONMENTAL IMPACT STATEMENT 1 (2023), https://eplanning.blm.gov/public_projects/1505069/200366341/20072587/250078769/North%20Dakota%20Resource%20Management%20Plan%20Revision%20Volume%201.pdf [<https://perma.cc/Y4NK-46CE>].

¹¹⁶ *See id.*

¹¹⁷ See Record of Decision and Approved Resource Management Plan for the North Dakota Resource Management Plan/Environmental Impact Statement, North Dakota, 90 Fed. Reg. 3915

If the federal government removes access to the minerals under its jurisdiction, it is simultaneously harming other mineral owners by blocking their rightful access and effectively prohibiting the development of non-federal minerals. The BLM's new RMP prohibited future development of nearly ninety-nine percent of federal coal acres and forty-four percent of fluid mineral acres.¹¹⁸ North Dakota's energy sector plays a significant role in the state, and this plan would have deprived the state of \$34 million annually in oil and gas royalties and tax revenue alone.¹¹⁹

The combination of split estates, federal meddling, and intermingled private, state, and federal mineral rights makes mining adjacent to federal lands extremely difficult and inefficient. Given the Biden administration's track record of attempting to shut down fossil fuel development, this was likely intentional.

A central issue with the RMP was this illegal and overbearing prohibition on mineral development. Per FLPMA, this represented a cut and dry withdrawal, which it defines as:

withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program.¹²⁰

The BLM cannot unilaterally withdraw land permanently, because FLPMA specifically requires Congress to pass legislation to do so.¹²¹ Congress never withdrew the surface or subsurface land in North Dakota from development. Locking it up is a de facto taking and not in line with multiple use or the spirit of FLPMA.

Following the release of the draft RMP, I led the North Dakota delegation in sending a letter to the BLM, stressing that "federal preemption of state and private rights is our central concern with the draft RMP."¹²² The BLM recognized the stakeholders who protested the draft RMP, including the State

(Jan. 15, 2025), <https://www.federalregister.gov/documents/2025/01/15/2025-00840/record-of-decision-and-approved-resource-management-plan-for-the-north-dakota-resource-management> [<https://perma.cc/6AXZ-AX4G>].

¹¹⁸ See Press Release, Sen. Kevin Cramer (R-N.D.), North Dakota Congressional Delegation Introduces Congressional Review Act to Repeal BLM's Harmful Land Use Plan (July 10, 2025), <https://www.cramer.senate.gov/news/press-releases/north-dakota-congressional-delegation-introduces-congressional-review-act-to-repeal-blms-harmful-land-use-plan> [<https://perma.cc/Y368-5AQT>].

¹¹⁹ See Press Release, Sen. Kevin Cramer (R-N.D.), Senate Passes ND Delegation Resolution to Overturn Biden-Era North Dakota RMP (Oct. 8, 2025), <https://www.cramer.senate.gov/news/press-releases/senate-passes-nd-delegation-resolution-to-overturn-biden-era-north-dakota-rmp> [<https://perma.cc/RN49-KBR2>].

¹²⁰ See U.S. DEP'T OF THE INTERIOR, *supra* note 98, at 34.

¹²¹ See 43 U.S.C. § 1714(c).

¹²² Letter from Sen. John Hoeven (R-N.D.), Sen. Kevin Cramer (R-N.D.) & Rep. Kelly Armstrong (R-N.D.), to Hon. Tracy Stone-Manning, Dir., Bureau of Land Mgmt.

of North Dakota, but chose to ignore the feedback. It pushed forward with a plan that violated FLPMA and the congressional intent behind it.¹²³

About a month after the plan was finalized, North Dakota filed a lawsuit to overturn it in federal court, and the North Dakota delegation started the process of using every possible tool to combat this misguided plan.¹²⁴ To start the CRA process, the North Dakota congressional delegation wrote to the GAO in February and asked the agency to evaluate whether the RMP met the definition of a rule for the purposes of CRA eligibility.¹²⁵

In June 2025, the GAO determined our RMP constituted a rule.¹²⁶ Additionally, the GAO ruled that Alaska's Central Yukon RMP¹²⁷ and Montana's Miles City RMP¹²⁸ also qualified as rules. The delegations of all three states submitted the GAO's determination to the Congressional Record, starting the clock as if the Department of Interior had submitted them to Congress as final rules.

Representative Julie Fedorchak (R-N.D.) and I introduced joint resolutions of disapproval in the House and Senate in July.¹²⁹ The House passed the CRA resolution in September by a vote of 215-211, followed by Senate passage a month later in October by a vote of 50-45.¹³⁰

Meanwhile, the Montana¹³¹ and Alaska¹³² delegations used the same method of overturning their own RMPs by successfully passing joint resolutions of disapproval in the House and Senate.

(May 6, 2024), <https://ciosenus.app.box.com/s/8jwi3paapl7bf23r5dbfaeoi8u841bze> [<https://perma.cc/VL6D-JGBV>].

¹²³ See, e.g., Complaint for Review of Final Agency Action at 32–40, *North Dakota v. U.S. Dep't Interior*, No. 1:25-cv-00042-DMT-CRH (D.N.D. Feb. 25, 2025).

¹²⁴ See Press Release, N.D. Att'y Gen.'s Off., North Dakota Files Lawsuit Challenging BLM's Amendments to the State's Resource Management Plan (Feb. 25, 2025), <https://attorneygeneral.nd.gov/north-dakota-files-lawsuit-challenging-blms-amendments-to-the-states-resource-management-plan/> [<https://perma.cc/TQC3-BLBH>].

¹²⁵ See Letter from Sen. John Hoeven (R-N.D.), Sen. Kevin Cramer (R-N.D.) & Rep. Julie Fedorchak (R-N.D.), to Hon. Gene L. Dodaro, Comp. Gen., Gov't Accountability Off. (Feb. 14, 2025), <https://fedorchak.house.gov/sites/evo-subsites/fedorchak.house.gov/files/evo-media-document/gao-ndrmp.pdf> [<https://perma.cc/C6RN-DL8L>].

¹²⁶ See U.S. GOV'T ACCOUNTABILITY OFF., U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT—APPLICABILITY OF THE CONGRESSIONAL REVIEW ACT TO NORTH DAKOTA FIELD OFFICE RECORD OF DECISION AND APPROVED RESOURCE MANAGEMENT PLAN 2 (2025), <https://www.gao.gov/products/b-337175> [<https://perma.cc/D3UA-G4L3>].

¹²⁷ See U.S. GOV'T ACCOUNTABILITY OFF., U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT—APPLICABILITY OF THE CONGRESSIONAL REVIEW ACT TO CENTRAL YUKON RECORD OF DECISION AND APPROVED RESOURCE MANAGEMENT PLAN 2 (2025), <https://www.gao.gov/products/b-337200> [<https://perma.cc/F3T3-EBD7>].

¹²⁸ See U.S. GOV'T ACCOUNTABILITY OFF., U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT—APPLICABILITY OF THE CONGRESSIONAL REVIEW ACT TO MILES CITY FIELD OFFICE RECORD OF DECISION AND APPROVED RESOURCE MANAGEMENT PLAN AMENDMENT 2 (2025), <https://www.gao.gov/products/b-337163> [<https://perma.cc/F4AC-YK6H>].

¹²⁹ See generally Press Release, Cramer, *supra* note 118.

¹³⁰ See H.R. Res. 105, 119th Cong. (2025) (enacted).

¹³¹ See H.R. Res. 104, 119th Cong. (2025) (enacted).

¹³² See H.R. Res. 106, 119th Cong. (2025) (enacted).

As I explained in a statement after Senate passage, this CRA resolution pushed back against the BLM choosing to ignore the law and willfully flaunting the multiple use mandate. “[BLM’s] resource plan requires the mandate to implement multiple use. Multiple use includes energy development. It includes grazing. It includes agriculture. It includes recreation. It includes development of resources. It’s multiple use.”¹³³

While the CRA resolution passed, it was not without criticism. U.S. Senator Martin Heinrich (D-N.M.) denounced the CRA resolution, asserting that the North Dakota, Montana, and Alaska CRA resolutions will cause a chaotic undoing of every RMP, undoing of individual leases resulting from RMPs, and ignores community and stakeholder feedback since the 1990s.¹³⁴ This is not true. The GAO’s opinions and subsequent repeal of these RMPs does not invalidate all RMPs, but it does firmly establish a path for congressional recourse when the BLM strays from the intent of FLPMA.

The CRA effort was labeled “a 745-million-acre can of worms” because we had the audacity to check the bureaucracy.¹³⁵ The implication was clear: how dare Congress ensure the BLM stay within the confines of the laws Congress wrote?

Our CRA did not open a can of worms. In fact, it had the opposite effect. With each CRA resolution, Congress is putting the worms back in the can by permanently limiting the bureaucracy’s regulatory options. The knee-jerk defense of the bureaucracy, even when it is in the wrong, comes at the expense of Congress and is contrary to the Supreme Court’s rulings in *West Virginia, Sackett, and Loper Bright*.

Despite the assertions of Senator Heinrich and others, the CRAs only overturned the individual RMPs. The BLM will now have to revise the RMPs, but this time it must use the feedback it previously ignored, and the final product cannot be “substantially the same” as what was rejected.

As we painstakingly explained in the lead-up to passage, this CRA resolution was not about overturning an RMP we merely did not like. This RMP was crafted by the Biden administration’s BLM in a manner that blatantly and intentionally ignored the very law Congress passed and closed off mineral development without congressional approval.

¹³³ Press Release, Sen. Kevin Cramer (R-N.D.), Senate Passes ND Delegation Resolution to Overturn Biden-Era North Dakota RMP, (Oct. 8, 2025), <https://www.cramer.senate.gov/news/press-releases/senate-passes-nd-delegation-resolution-to-overturn-biden-era-north-dakota-rmp> [<https://perma.cc/S8FH-T85K>].

¹³⁴ See 171 CONG. REC. S7001–02 (daily ed. Oct. 8, 2025) (statement of Sen. Martin Heinrich (D-N.M.)).

¹³⁵ See Alex Guillen, *Congress Opens a Can of Worms*, POLITICOPRO (Oct. 10, 2025, at 15:42 ET), <https://subscriber.politicopro.com/newsletter/2025/10/congress-opens-a-can-of-worms-00602064> [<https://perma.cc/97UZ-JKWU>].

VI. THE CRA AS THE LAWMAKING TOOL OF THE FUTURE

The utility of the “traditional” use of the CRA is powerful but limited. Even so, it is already changing the way presidents govern and the timelines for rulemaking. Washington no longer thinks of the CRA as an obscure, toothless tool. Today, CRA resolutions provide one mechanism for Congress to reclaim its power and conduct oversight.

The recent increase in use of the CRA has already prompted administrations to finalize rules well in advance of the next administration to prevent potential attempts to overturn them.¹³⁶ Protecting the rules from potential CRA repeals provides a strong incentive toward cementing rulemaking efforts. Nevertheless, should an outgoing administration finalize rulemakings in its final months, the incoming administration working with Congress has a viable path to use the CRA to make lasting changes from its predecessor.

While all previous CRA resolutions have covered standard rulemakings, our RMP CRA resolution demonstrates the Act’s reach is much wider. As long as a member of Congress can successfully navigate the process, Congress can overturn a variety of rules with the CRA.

The “can of worms” that has been opened is not Congress’s assertion of authority over agency action, but the unfettered spread of the bureaucracy. While our CRA resolution will not completely eliminate bureaucratic creep, it is a stark reminder that Congress can and, importantly, should use available tools to remind the executive that its rulemaking authority is delegated from the legislative branch, not the other way around.

As North Dakota native and former House Majority Leader Dick Armey wisely advised us, “Along with the means, the CRA gives Congress the responsibility to reject inappropriate rules and regulations. If Congress fails to do so, agencies may say that Congress has tacitly approved their actions.”¹³⁷

I expect increased and more frequent CRA attempts in Congress. However, the newly realized uses of the CRA alone will not be enough to reassert congressional intent and authority. Selectively choosing a limited number of rules as worthy of the CRA battle in the limited time we have to overturn them at the beginning of a Congress is insufficient. Congress can be doing more.

If we truly want to reassert our authority, Congress should pass legislation providing itself additional mechanisms to do so. One pathway could include the Regulations from the Executive in Need of Scrutiny (“REINS”) Act.¹³⁸ Introduced to every Congress for the last fifteen years, the REINS

¹³⁶ See Gerard Edic, *Why is the Biden Administration Completing So Many Regulations?*, AM. PROSPECT (Apr. 23, 2024), <https://prospect.org/2024/04/23/2024-04-23-biden-administration-regulations-congressional-review-act/> [https://perma.cc/6WNV-LTUH].

¹³⁷ *Lawmakers Urged to Use Congressional Review Act*, HEARTLAND INST. (Feb. 1, 1998), <https://heartland.org/opinion/lawmakers-urged-to-use-congressional-review-act/> [https://perma.cc/7VUZ-M9JE].

¹³⁸ See H.R. 142, 119th Cong. (2025) (enacted).

Act would require an affirmative vote from both chambers of Congress on every major rule.¹³⁹ Instead of attempting to pass CRA resolutions on a small handful of rules within the statutory time frame of the CRA, Congress would have the responsibility of evaluating every rule finalized by the bureaucracy. Evaluating the rules finalized by the bureaucracy and whether they comply with congressional intent should not be an optional exercise. It should be essential.

Expanding use of the CRA and implementing legislation like the REINS Act are the next steps to reducing the bureaucracy and returning power to Congress. The courts have paved the way for correction, now Congress is taking back control of its authority by using the CRA to safeguard congressional intent. But the real lesson to be learned falls at the feet of the executive branch. Judicial limitations like the major questions doctrine, and legislative limitations like the CRA and REINS Act would not be necessary if the executive branch simply recognized the limits of its power. The sooner it learns that the absence of a prohibition is not a license for bureaucratic creep, the better the whole system will work as our Founders designed.

¹³⁹ *See id.*