

How Do You Misspell Relief?

The GOP's empty promises of regulatory reform

By David Mastio

Environmental Protection Agency chief Carol Browner was not her normal polished self. She was slightly flushed, and the adjectives poured from her mouth: "extreme," "illogical," "cruel," "bizarre."

Anything that gets Browner so worked up must be good news for Republicans and their corporate allies. Indeed, business groups were gloating: "U.S. Chamber smokes EPA on clean air rules," said one press release. Conservative Republicans crowed in front of every TV camera they could find. Environmental groups went over the edge: The U.S. Court of Appeals for the District of Columbia Circuit "has just declared chemical warfare on the lungs of our children," said Sierra Club Executive Director Carl Pope.

You may not have heard anything about the decision that caused all this fuss. The news hit on a Friday night, when few Americans are paying attention to public policy matters. And Browner's scathing reaction came at a uniquely Washington event: a hearing on a ruling about a regulation produced in reaction to a law passed 29 years ago. Not scintillating stuff.

But the American economy often turns on boring issues. In *American Trucking Associations et al. v. U.S. Environmental Protection Agency*, a decision issued in early summer, the D.C. Circuit ruled that a whole raft of new federal regulations to reduce smog, soot, and pollution that drifts across state lines should either be rewritten or put on hold indefinitely. The rules Vice President Al Gore called the "centerpiece" of the Clinton administration's environmental program would have cost tens, maybe hundreds, of billions of dollars to implement. Understandably, business groups hated them.

Still, the celebration over *American Trucking* may have been a bit premature. Buried in the boring details of the decision,

which overturned the regulations on obscure constitutional grounds, is a devastating defeat for Republican plans to rein in tough environmental regulations like the ones the court struck down.

You may recall the 10-point, poll-tested "Contract with America" that Republicans claimed was their key to taking control of Congress from the Democrats in the "revolution" of 1994. Among the few provisions of the contract that actually made it into law was the Unfunded Mandates Reform Act, known as UMRA by the judges, regulators, and congressional staffers who have to deal with it. The law was intended to stop federal agencies from writing new rules and then passing the cost of implementing them onto state and local governments or business.

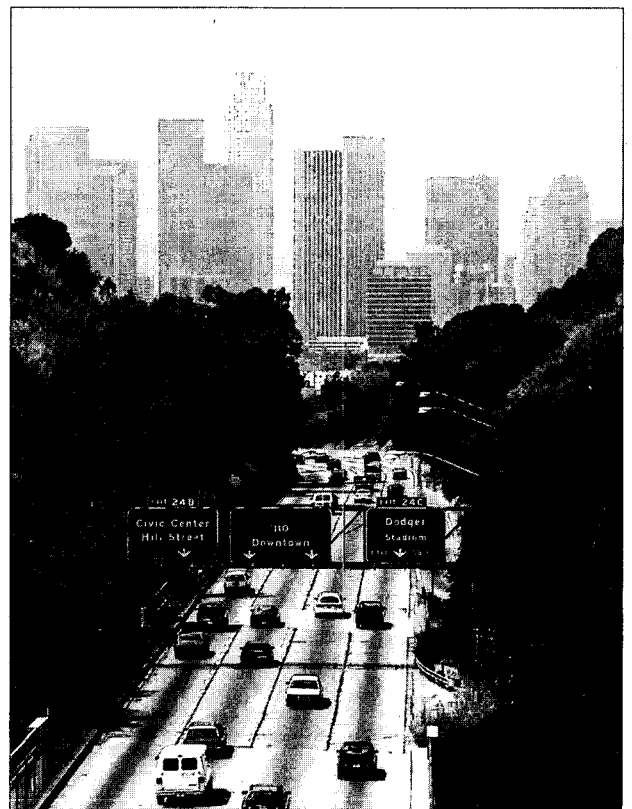
When Congress passed UMRA in 1995, environmentalists screamed. They said it would bury further attempts to clean the air and water under a pile of red tape. One of the law's biggest proponents, Rep. David McIntosh (R-Ind.), said, "If we don't do something about [regulation], people are going to say that Congress only talks a big game."

Judging from the D.C. Circuit's ruling in *American Trucking*, UMRA's opponents and supporters were both wrong. It turns out that all Congress did was "talk a big game."

UMRA was supposed

to require the EPA and other federal agencies to produce a "regulatory impact statement" before issuing new rules, a process aimed at minimizing the cost of regulations. But as the appeals court noted, the law said that "any compliance or noncompliance with the provisions of [UMRA] shall not be subject to judicial review, [nor shall any] provision of [UMRA] be construed to be enforceable by any person in any judicial action." In other words, the Republican Congress wrote into its much-touted regulatory reform law a provision that tells federal agencies there will be no consequences should they fail to abide by the law.

Washington attorneys C. Boyden Gray (a trustee of the Reason Foundation, publisher of this magazine) and Alan Charles Raul wrote a brief in *American Trucking* on behalf of House Commerce Committee Chairman Tom Bliley (R-Va.). Although



Keep on Truckin': The *American Trucking* case struck down a host of pollution-related regulations.

AP / WIDE WORLD PHOTO

they cited UMRA provisions as one of the grounds for voiding the FDA's regulations, Raul says they knew the law was unenforceable. Bliley, one of the most vociferous regulatory reformers in the House, refused several interview requests.

Surely this must be some kind of mistake. Surely the Republicans were being straight with us when they said federal regulators had gone too far and needed to be stopped. It would be easier to believe that UMRA's toothlessness was accidental if this were the only time Republicans had loudly proclaimed regulatory reform while doing nothing of consequence. But it is part of a pattern.

About a year after Congress passed UMRA, it passed the Small Business Regulatory Enforcement Fairness Act. The Republicans promised a tool to stop regulators from squashing small businesses under piles of inane regulations. But again, courts have since ruled that the law includes language making it essentially unenforceable.

Even when the laws Republicans pass actually have teeth, Republicans apparently are afraid to use them. Also in 1996, Congress approved a requirement that each new rule created by a federal agency be submitted to Congress for review. Since 1996, federal agencies have sent nearly 13,000 rules to Congress. Not a single one has been rejected. The people who write these rules may have good intentions and plenty of expertise, but 13,000 perfect rules in a row would still be a hell of a run.

This pattern of anti-regulatory bluster combined with little real-world impact goes back to the beginning of the first Reagan administration. In the glow of the Gipper's triumph over Jimmy Carter, Ronald Reagan appointed his new vice president, George Bush, to head a group that would "cut away the thicket of irresponsible and senseless regulations." And to back the study group with action, Reagan issued a 60-day moratorium on new regulations.

A year later, Bush turned in his recommendations. First and most important was the idea that the Office of Management and Budget should supervise all new regulations, checking to see that they were cost-effective and coordinated with other federal agencies. The Bush committee es-

timated that adopting this proposal could save local governments, business, and consumers hundreds of billions of dollars a year.

The proposal was implemented by executive order in 1982, with little apparent result. In the first year after the order was issued, the alphabet soup of regulatory agencies spewed forth more than 40 new regulations costing more than \$100 million a year, nearly as many as the year before. Chief among the regulations Bush thought he could stop was the requirement for automatic seat belts or air bags in cars. Today, you will try in vain to buy a new car that is not equipped with "passive restraints."

Eight years later, when Bush was elected president, he assigned *his* new v.p., Dan Quayle, to take up the regulatory reform banner through a "Council on Competitiveness." Predictably, there was a lot of talk and a moratorium and a host of recommendations. Environmentalists issued reports about dire threats to health and safety easily averted by just one more federal rule, one more new mandate. A

decade later, it's hard to see that the administration's efforts made much difference.

"In retrospect, it mostly looks like delaying tactics, even symbolism," says Jonathan Tolman, who worked on Quayle's council and now works for the House Republican Policy Committee. "It's disturbing. Big business says they're for regulatory reform, but when you get down to it they really don't want it." He speculates that established firms have found that regulations give them a competitive advantage. Republicans end up giving their big-money allies about as much reform as they want.

Much has been made in recent months of the lies that emanate from the Clinton White House. Given the uncertain relationship between "regulatory reform" and reality during the last two decades, perhaps Republicans should train their truth detectors on themselves. ♦

David Mastio, a contributing editor to USA Today, covers regulation for The Detroit News.

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Personal Soundtracks

Two decades of mix-and-match music—and a more harmonious world

By RiShawn Biddle

It's been 20 years since Sony started selling the Walkman, rescuing us from the sounds of the '70s. How it used to rankle, to be forced to listen to "Stayin' Alive," "Disco Duck," or whatever else someone nearby wanted to hear. Until 1979, there was no way to reconcile his need for bad music with your need to be free of it. If you wanted a stereo system you could carry while biking, skateboarding, or shopping, your only option was the boombox, better known in my old neighborhood as the "ghettoblaster." And blast it certainly did.

With the Sony Walkman and its clones, we could tote around our own music without imposing it on everyone else. For teenagers everywhere, this was the best thing since blue jeans and vending machines. Tiny, lightweight, and portable, the Walkman could destroy their eardrums without annoying anyone with more taste or common sense. It's also been coach, concert hall, and personal reader for millions of workout warriors, housewives, and retirees. For travelers, it is a trusty companion, something to ward off talkative salesmen and grandmothers loaded with wallet-size photos. Anywhere you go, you can tune in to joyful noise and kick boredom to the curb.

The Walkman has personalized such mass media as radio and records. Headsets create a sense of intimacy; the stereo sound lets listeners feel like they're in a studio or a concert hall, no matter what environment actually surrounds them. The Walkman expands our choices, lets us remake the world around us without impinging on our neighbors' ability to do the same. You can stand in Grand Central Station during the afternoon rush hour and have one foot in Lilith Fair; or in a studio session with Mingus, Monk, or

Miles Davis; or in a shouting match with Rush Limbaugh.

My conservative friend Marty Dekom can ignore Bill Clinton just by putting on his headphones. "I can watch CNN and listen to Tom Petty," he reports happily. "I can attend tree-hugging rallies for ecobozos and enjoy AC/DC." Michael Marsden, co-editor of *The Journal of Popular Film and Television*, calls this a metaphysical form of personal space. "It's your personal space that you've created, in a world in which we don't have a lot of personal space," he explains. "It's a totally private world."

The Walkman lets you merge the scenery around you with the soundtrack of your choice. Deroy Murdock of the Atlas

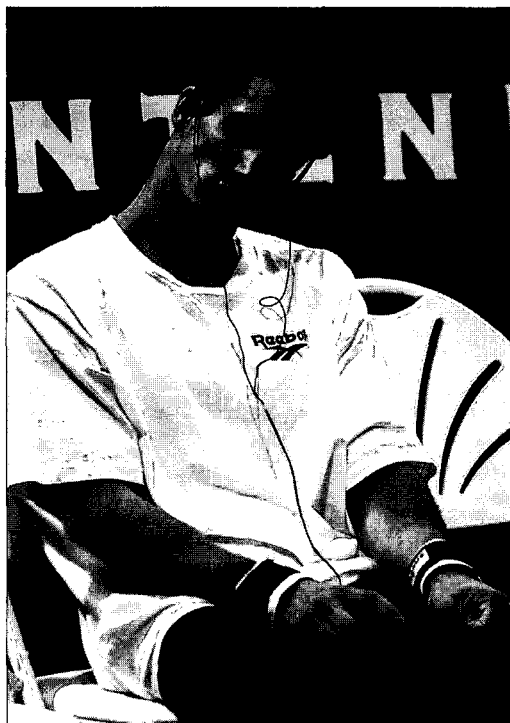
Economic Research Institute found this out while touring Europe, fusing the Old World with the dancing bears and tie-dyes of the Grateful Dead. "I learned those songs," he recalls, "while peering out the windows of trains and buses across the continent. Even as I hear those songs today, I associate them with the mountains, plains, and castles of the Old World."

You don't have to travel that far to experience this. It worked for me in my own back yard. I wore my Walkman on a recent Saturday afternoon, walking up Westwood Boulevard in Los Angeles. Latin music pumped through the headset. A woman in a tiny black T-shirt and tight red shorts jogged past me, her Husky-Saluki mutt in tow. The sun, the woman, and the music made a luscious combination, blocking out the roar of traffic rushing toward the Santa Monica Freeway.

Some don't like the Walkman. In *The Closing of the American Mind*, cultural critic Allan Bloom wrote that the Walkman-tugging teen reduces centuries of Western cultural progress into "a nonstop...masturbational fantasy" celebrating libertinism. The neo-Luddite writer John Zerzan, for whom art itself prevents people from truly experiencing nature, says the Walkman is part of an "ensemble of technologies" that cause a "protective sort of withdrawal from social connections." And any card-carrying member of the hand-wringing morals brigade would lump those magic earphones in with video games and TV violence as abettors of aberrant and abhorrent teen behavior.

Then there's Thomas Lipscomb, chairman of the Center for the Digital Future. He thinks the Walkman is the electronic equivalent of soma, the happiness drug in *Brave New World*. "It closes you in an airtight bubble of sound," he complains. "It's a sensory depressant." What's more, he says, it prolongs adolescence, stifles social contact, and keeps people from expanding their intellectual horizons.

But why should wearing a headset



Your Own Private Idaho: Gymnast John Roethlisberger listens to music during competition at the 1996 Olympics.