

# The Congressional Review Act in 2025: Expanding Use and Emerging Questions

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The 1996 Congressional Review Act (CRA) authorizes Congress to veto federal agency rules, allowing direct congressional oversight over certain executive branch actions. It has three main components. First, the CRA authorizes Congress to veto a rule before it takes effect using a joint resolution of disapproval signed by the president.<sup>1</sup> Second, it prevents courts from reviewing actions that occur under the CRA.<sup>2</sup> And third, if a joint resolution passes, it prohibits an agency from promulgating a rule “in substantially the same form” in the future.<sup>3</sup> Until recently, Congress rarely used the CRA — once before 2017, 16 times in 2017, and three times in 2021.<sup>4</sup> However, in 2025, Congress used it 22 times and in new ways that raise questions about congressional authority, agency discretion, and judicial oversight.<sup>5</sup>

In this paper, I discuss some of the legal and practical questions that arise when Congress uses the CRA to veto a rule: Which agency actions are subject to the CRA? What is a court’s role in interpreting the CRA or governing its use? And how does the CRA change an agency’s options when promulgating rules in the future?

I explore those questions with three examples where Congress used the CRA in 2025. First, Congress disapproved four Department of the Interior (DOI) **Resource Management Plans** (RMPs).<sup>6</sup> RMPs are high-level, comprehensive documents that outline programmatic multi-year management plans for federal lands.<sup>7</sup> They encompass a variety of project types, such as management of riparian and wetland areas, mineral leasing, livestock grazing, and recreation.<sup>8</sup> The plans guide specific implementation decisions and inform the operation of and strategy for on-the-ground projects.

Second, Congress disapproved three **California waivers under the Clean Air Act**. The Clean Air Act sets federal vehicle emissions standards<sup>9</sup> but provides California an exception to set its own, stricter standards.<sup>10</sup> If California elects to set its own standards, California must request and EPA must grant the state a “waiver.”<sup>11</sup>

Third, I discuss EPA’s **Waste Emission Charge** rule. Here, Congress disapproved a rule implementing a new program created by the Inflation Reduction Act (IRA) to “impose and collect a charge on methane emissions.”<sup>12</sup>

## Which agency actions are subject to the CRA?

*Most final agency rules are subject to the CRA. Historically, Congress deferred to the Government Accountability Office (GAO) on whether actions fell within the CRA’s scope. This year, Congress invoked the CRA despite GAO’s opinion to the contrary, potentially expanding the CRA’s applicability.*

Any agency “rule” as defined in the Administrative Procedure Act (APA), including rules promulgated through notice-and-comment rulemaking and agency notice and policy documents,<sup>13</sup> is subject to veto through the CRA, with three exceptions.<sup>14</sup> The CRA does not apply to (1) rules of particular applicability, such as case-specific orders based on a particular set of circumstances,<sup>15</sup> (2) rules

regarding agency management, or (3) rules governing agency organization that do not affect rights of non-agency parties.<sup>16</sup> While not in statute, the CRA has also not traditionally applied to non-final rules.<sup>17</sup>

The CRA requires agencies to submit each new rule to Congress for review before a rule takes effect.<sup>i</sup> For 60 legislative days<sup>ii</sup> after Congress receives a rule, Congress can use “fast track” procedures to issue a joint resolution of disapproval, meaning Congress needs only a simple majority in the Senate to veto the rule.<sup>18</sup> If the agency submits a rule with fewer than 60 legislative days left in a congressional session, the rule is “constructively resubmitted” on the 15th day of the new Congress (the “lookback mechanism”), giving an incoming Congress a new 60-legislative-day window to review the rule using fast-track procedures.<sup>19</sup> The lookback mechanism gives a new Congress aligned with a new president an opportunity to review and disapprove the previous administration’s actions.<sup>20</sup> This lookback period helps explain the most frequent use of the CRA during the early days a new presidential term.<sup>21</sup>

At the end of the Biden administration, certain rules were subject to the CRA under this traditional framework.<sup>22</sup> However, in 2025, Congress also used other mechanisms to expand the CRA’s reach beyond its traditional bounds.

First, Congress used a procedure to review actions the Biden administration had not submitted to Congress. If an agency does not submit a rule that Congress thinks should be subject to CRA review, congressional practice is to request an opinion from the GAO.<sup>23</sup> If the GAO finds the action is subject to the CRA, the GAO opinion serves as submission of a rule, beginning the 60-legislative-day clock.<sup>24</sup>

In 2025, that process resulted in application of the CRA to a new category of agency documents — **Resource Management Plans**. RMPs document management decisions for geographic areas, and serve three primary functions: “allocate[ing] resources and determine[ing] appropriate multiple uses for the public lands,” “manag[ing] and protect[ing] resources,” and “establish[ing] systems to monitor and evaluate the health of resources and effectiveness of management practices over time.”<sup>25</sup> RMPs are promulgated infrequently; a North Dakota Management Plan published in 2025, for example, replaced a plan published in 1988.<sup>26</sup>

Each plan is based on years of consultation with Tribes, agencies, local and state governments, and industry.<sup>27</sup> The resulting documents establish goals (e.g., improving soil health, reducing erosion and compaction), objectives (e.g., establishing desirable plant communities), management directions (e.g., directing the design of certain projects), and allocation decisions (e.g., deciding how the land will be used) that guide subsequent agency decision-making in the covered area.<sup>28</sup>

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<sup>i</sup> 5 U.S.C. § 801(a)(1)(A); “Major” rules under the CRA cannot take effect for 60 days. 5 U.S.C. § 801(a)(3). A “major rule” is a rule the Office of Information and Regulatory Affairs determines is likely to have an annual economic effect of one-hundred million dollars or more, leads to a “major increase” in costs for consumers, individual industries, agencies or regions, or impacts the ability of U.S. industry to compete with foreign industries. 5 U.S.C. § 804(2). The CRA does not change when non-major rules take effect, after they are submitted to Congress. 5 U.S.C. § 801(a)(4).

<sup>ii</sup> A legislative day can be any length of time but starts with the formal opening of a session and ends when Congress is formally adjourned. Valerie Heitshusen, *Sessions, Adjournments, and Recesses of Congress*, CRS (July 19, 2016), <https://www.congress.gov/crs-product/R42977>.

DOI had never considered RMPs to be rules, and the agency historically did not submit them to Congress.<sup>29</sup> DOI followed that norm and did not submit RMPs published during the Biden administration to Congress.

In 2025, the new Congress requested opinions from the GAO about the applicability of the CRA to four of these plans.<sup>30</sup> The plans covered areas in Montana, North Dakota, Alaska, and Wyoming with significant coal or gas deposits or that are important for transporting fossil fuels.<sup>31</sup> DOI argued that neither the agency nor courts had previously considered RMPs to be rules subject to the CRA.<sup>32</sup> The GAO disagreed, explaining that RMPs met each of the required elements of a rule under the APA and did not meet any of the exceptions carved out in the CRA.<sup>33</sup> The GAO opinion triggered a new CRA review period, and Congress issued a joint resolution of disapproval for each of the four RMPs, using fast-track procedures.<sup>34</sup> Commenters have noted that this new practice could provide Congress nearly unlimited authority to disapprove old agency actions that were not considered rules, and therefore, were not submitted to Congress when published.<sup>35</sup> The application of the CRA to these RMPs also has led to uncertainty about the legal effect of RMPs more broadly.<sup>36</sup>

Congress also used the CRA to review actions that the GAO did not consider rules.<sup>37</sup> In a deviation from previous practice, Congress in 2025 issued joint resolutions vetoing EPA's notices of decision approving three **California waivers under the Clean Air Act**.<sup>38</sup> These congressional joint resolutions differed from historical practice in because, unlike the RMPs, the GAO opined the waivers were not rules.

California regularly exercises its authority under the Clean Air Act to set its own vehicle emissions standards.<sup>39</sup> As it has many times before, in 2023 and early 2025, EPA approved three waivers to allow California to set specific vehicle emissions standards.<sup>40</sup> The Advanced Clean Trucks waiver allowed California to require an increasing percentage of new vehicles to be zero-emission trucks by 2035.<sup>41</sup> The Advanced Clean Cars II waiver allowed California to strengthen emission standards on pollutants that cause smog and created a framework to "zero-emission standards (including plug-in hybrids) by the 2035 model year."<sup>42</sup> The Low NOx waiver strengthened NOx emissions standards for heavy duty vehicles.<sup>43</sup> EPA did not submit these waiver approvals to Congress for review at the time of their publication, in accordance with a past GAO opinion that EPA's notices of decision on Clean Air Act waiver requests were not subject to the CRA.<sup>44</sup> The GAO had reasoned that the notices are not "rules" under the APA and that, even if they were rules, they would not be subject to the CRA because of the exception for rules of particular applicability.<sup>45</sup>

EPA, under President Trump, however, submitted the three Biden-era waiver approvals for congressional review in February 2025.<sup>46</sup> Three senators requested a new GAO report to clarify whether Congress could issue joint disapprovals on these actions.<sup>47</sup> The GAO issued a report affirming its prior opinion that the CRA does not apply to notices of decision on California's requests for waivers.<sup>48</sup> The Senate Parliamentarian, a nonpartisan expert in Senate rules and precedents,<sup>49</sup> relied on the GAO report to advise the Senate that the CRA did not apply to EPA's approval of the waivers.<sup>50</sup> However, in a highly unusual move, Congress disregarded the opinion of the Parliamentarian to disapprove the waivers.<sup>51</sup> Commentators have described this use of the CRA as a "dramatic expansion"<sup>52</sup> that could leave the statute with "no limit"<sup>53</sup> in its application to a wide range of waiver and one-off agency decisions.

The disapprovals of the RMPs and California waivers illustrate how Congress and the administration are using both traditional and unconventional paths to make the previous administration's actions

reviewable under the CRA, expanding the CRA's scope and Congress's power to invoke it. This Congress has forced questions about what types of agency actions previously not understood to be rules might be vetoed via a joint resolution and has raised questions about what power, if any, the judicial branch has to review these actions.

### Can courts decide when the CRA applies?

*It depends. Generally, a court cannot interpret the language or application of the CRA, but courts likely have authority to review constitutional questions.*

The CRA explicitly bars courts from exercising jurisdiction over many CRA-related questions, stating, "No determination, finding, action, or omission under this chapter [the CRA] shall be subject to judicial review."<sup>54</sup> In the few suits against agencies alleging failure to comply with the CRA, courts have generally held<sup>55</sup> that this statutory language deprived courts of jurisdiction over the challenge.<sup>55</sup> For example, a court held that when an agency failed to send a rule to Congress as presumably required by the CRA, the statute's jurisdictional bar prevented the court from ruling on that alleged "omission" under the CRA.<sup>56</sup>

While courts have agreed that they have no jurisdiction over challenges involving agencies' compliance with the CRA, two federal circuit courts of appeals have agreed that this jurisdiction-stripping provision does not apply to constitutional challenges to the CRA. However, in both cases, the court held that the CRA did not violate the Constitution.<sup>57</sup>

A new constitutional challenge is now pending before the District Court for the Northern District of California, in which California has raised a unique constitutional challenge to the congressional disapproval of the **California waivers**.<sup>58</sup> After Congress disapproved EPA's grant of California's vehicle emissions standard waivers last year, California and other states sued the United States and EPA, arguing that in doing so Congress disapproved a state, not *federal*, rule, and this application of the CRA violated "federalism and separation of powers principles."<sup>59</sup> The court has not yet ruled on either the question of jurisdiction or on the merits of the states' claims.<sup>60</sup>

### Can courts review whether a rule is "substantially the same" under the CRA?

*Probably. In 2025, a court for the first time evaluated a subsequent agency rule to determine whether it was "substantially the same" as a prior rule and thus barred by the CRA, but this is a new and evolving area of the law.*

The CRA prohibits agencies from issuing a new rule in "substantially the same" form as a disapproved rule.<sup>61</sup> However, the statute does not define "substantially the same," and courts had not interpreted the phrase until recently. Instead, Congress effectively set the bounds of "substantially the same": Congress could disapprove any subsequent rule it deemed noncompliant

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<sup>iii</sup> There are two cases that interpret what "take effect" means under CRA, finding the CRA "does not change the date on which the regulation becomes effective. It only affects the date when the rule becomes operative. In other words, the CRA merely provides for a 60-day waiting period before the agency may enforce the major rule so that Congress has the opportunity to review the regulation." *Liesegang v. Sec'y of Veterans Affairs*, 312 F.3d 1368, 1375 (Fed. Cir. 2002); see also *Nat. Res. Def. Council v. Abraham*, 355 F.3d 179, 201-02 (2d Cir. 2004).

through a subsequent joint resolution.<sup>iv</sup> In 2017, Congress disapproved a 2016 Department of Labor rule<sup>62</sup> regulating states' authority to drug test unemployment compensation applicants.<sup>63</sup> The agency promulgated a new rule in 2019, explaining it was "not substantially the same as the rescinded 2016 final rule" because the agency provided more flexibility to states to determine when to administer drug tests.<sup>64</sup> Congress did not disapprove the subsequent rule. Thus, through tacit Congressional approval, the new rule was effectively not "substantially the same."<sup>65</sup>

Though Congress retains the power to disapprove subsequent rules using the CRA, courts may also have a role. In August 2025, a court ruled for the first time on whether a subsequent rule was "substantially the same" as a previously disapproved rule.<sup>66</sup> The Court of Appeals for the Sixth Circuit in *Ohio Telecom Association v. FCC* held that it had jurisdiction over the "substantially the same" question because the limits on judicial review within the CRA did not apply.<sup>67</sup> The CRA prevents judicial review of actions "under this chapter."<sup>68</sup> The court reasoned that while the phrase "under this chapter" bars judicial review of actions taken "under" the CRA, the subsequent rule was promulgated under the agency's rulemaking authority, not "under" the CRA.<sup>69</sup> Whether other courts come to the same conclusion is yet to be seen, but at least one other court of appeals anticipated jurisdiction in this scenario in the past.<sup>70</sup>

### How will courts evaluate whether a rule is "substantially the same"?

*If the Sixth Circuit decision provides a model, courts will grapple with how to compare two rules differing in scope and substance, finding rules that differ in scope are likely not substantially the same.*

The Sixth Circuit in *Ohio Telecom* provides the first indication of how courts will approach a "substantially the same" inquiry. The court evaluated whether a 2024 FCC Order<sup>71</sup> was substantially the same as a section of a disapproved 2016 Order.<sup>72</sup> The 2016 Order was a comprehensive framework to "protect the confidentiality of customer proprietary information," and included a section regulating data breach notification requirements.<sup>73</sup> In 2017, Congress disapproved the 2016 Order using the CRA.<sup>74</sup> In 2024, the FCC promulgated the 2024 Order, which was narrowly focused on data breach notification obligations of telecommunication service providers.<sup>75</sup>

The majority held that the 2024 Order was not "substantially the same" as the 2016 Order, developing a standard for comparing two rules. They explained that when evaluating whether a rule is substantially the same, the relevant comparison is between the entire disapproved rule and the entire subsequent rule.<sup>76</sup> The language of the CRA bars "a new rule that is substantially the same" as the rule that was "identified in the disapproval resolution."<sup>77</sup> Because notification requirements

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<sup>iv</sup> The legislative history of the CRA provides a clue how Congress might interpret "substantially the same," but only in a statement entered into the Congressional Record post-passage of the law. Rep. Henry Hyde, *Congressional Record*, daily edition, vol. 142, (April 19, 1996), p. E574-75. <https://www.congress.gov/congressional-record/volume-142/issue-51/extensions-of-remarks-section/article/E571-1>. The statement explained that Congress should provide direction to the agency in how to proceed following a CRA disapproval "regarding the agency's options or lack thereof" and that ultimately the agency's options would be governed by the underlying statutory authority that provided the basis for the rule. *Id.* at E577. Courts have not relied on this legislative when interpreting their jurisdiction or the CRA generally. *Ohio Telecom Ass'n v. Fed. Commc'n's Comm'n*, 150 F.4th 694 (6th Cir. 2025); see also *Kansas Nat. Res. Coal. v. United States Dep't of Interior*, 971 F.3d 1222, 1237 (10th Cir. 2020) (finding the legislative history "not persuasive.").

were only a small part of the 2016 Order, whereas the 2024 Order is entirely concerned with regulating data breach reporting requirements, the two orders were sufficiently different in scope, leading the majority to hold that “[t]he two rules [were] not substantially the same.”<sup>78</sup>

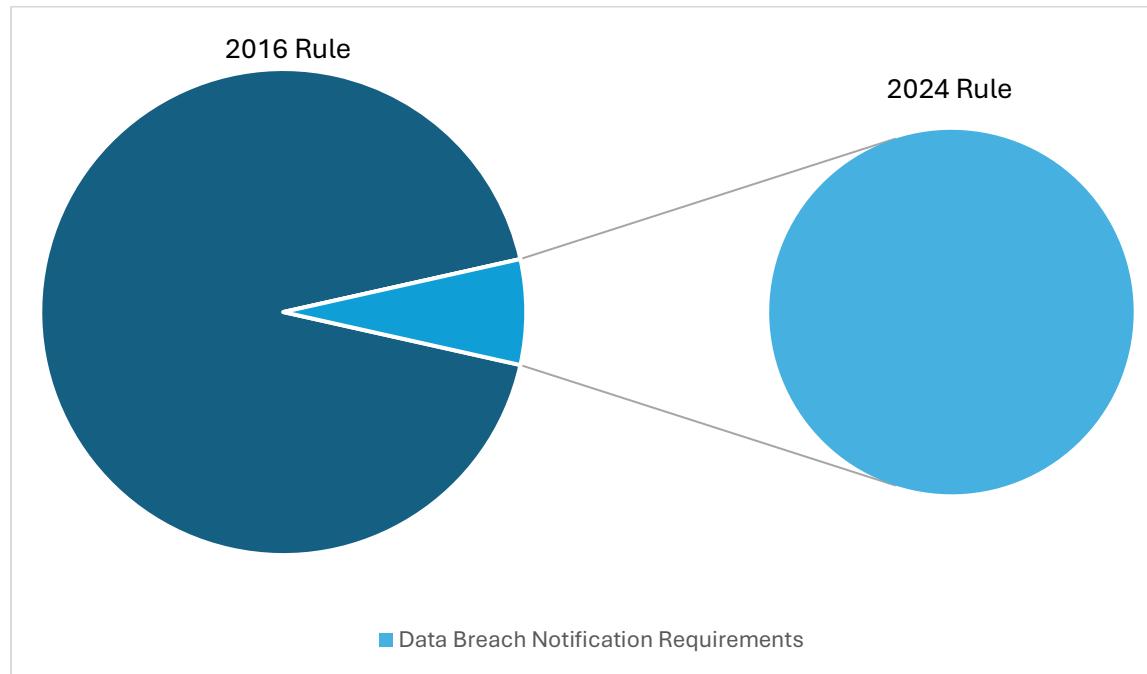


Figure 1: Comparing the scope of the 2016 rule to the scope of the 2024 rule.

The majority explained that if Congress wanted to bar agencies “from issuing a new rule that is substantially the same as any part of a prior [disapproved] rule” it could have said so, but “[t]hat is not the language it chose.”<sup>79</sup> The majority also reasoned that if disapproval of a rule vetoed all constituent parts, an agency would be barred in the future from promulgating “the narrowest, most anodyne ‘agency statement[s] of general or particular applicability and future effect,’ including functional provisions such as definitions.”<sup>80</sup>

Even if the court were to compare the 2024 Order to only the specific portion of the 2016 Order that concerned data breach reporting requirements, the court concluded that the two are not “substantially the same.” The FCC made policy changes to the 2024 Order that resulted in “notable differences.”<sup>81</sup> These differences included expanding data notification requirements in the 2024 Order to apply to providers of telecommunications relay services (TRS), which “provide telephone transmission services to hearing or speech-impaired individuals.”<sup>82</sup> The FCC argued this was “to ensure that [TRS] customers enjoy the same level of protections as customers of telecommunications carriers.”<sup>83</sup> The court also held that that the two orders were not “substantially the same” because the 2024 Order did not prescribe the manner of notification, “granting leeway to effectively provide notice,” whereas the 2016 Order had much more prescriptive reporting requirements, and modified the definition of “breach” to provide a “good faith” exemption when data was acquired but not improperly used.”<sup>84</sup>

The dissent in *Ohio Telecom* took a different approach. The dissenting judge opined that the relevant comparison was between only the data breach notification section of the 2016 Order and the 2024 Order. The dissent wrote that because the CRA incorporates the APA’s definition of “rule,”<sup>85</sup> which

states it is “the whole or a part of an agency statement,”<sup>86</sup> Congress’s disapproval of the 2016 Order necessarily “disapproved of each of its constituent parts” and thus none of those parts could appear in a subsequent rule.<sup>87</sup> The dissent disagreed with the majority’s concern that such a reading would prevent future agency action, reasoning that “it is far from clear” procedural provisions would be considered rules under the CRA, and if Congress disapproved a rule that included something integral, Congress could reauthorize it using future legislation.<sup>88</sup>

Using its preferred framework, the dissent compared the relevant portion of the 2016 Order to the 2024 Order and found only “technical” or “inconsequential” changes.<sup>89</sup> The dissent contended that the majority’s reading is “giv[ing] administrative agencies an obvious way to circumvent the CRA — just make minor, technical changes to a previously disapproved rule.”<sup>90</sup> The dissent maintained that this effectively nullifies the will of Congress, making a joint resolution “devoid of reason and effect.”<sup>91</sup>

Following the Sixth Circuit’s decision in *Ohio Telecom*, petitioners sought rehearing *en banc*.<sup>92</sup> The Sixth Circuit has not yet decided whether to take the case *en banc*, however, because the FCC requested and obtained an abeyance to review the 2024 Order.<sup>93</sup> If the FCC reconsiders the Order, the litigation may be ruled moot and the Sixth Circuit’s decision may be vacated.

Regardless of whether this decision stands, courts will continue to wrestle with the bounds of “substantially the same” in the wake of increased congressional use of the CRA, and resulting decisions may help define the options for future agency action following a joint disapproval.<sup>94</sup> For now, *Ohio Telecom* provides a framework for how courts may evaluate the “substantially the same” question.

The majority first asked *what* it was comparing and answered the relevant analysis was between the two entire rules. If that approach prevails, the scope of an original rule may inform the agency’s options with a subsequent rule. The majority also suggested that specific policy choices may allow an agency to promulgate rules with similar scope without being “substantially the same.” However, under the dissent’s analysis, an agency must make more than “technical” changes to each part of a disapproved rule, though it is unclear how much change would qualify.

These two approaches could lead courts to very different treatment of subsequent agency rules. **Resource Management Plans**, for example, are extensive documents, including goals, objectives, management directions, and allocation decisions.<sup>95</sup> Given their breadth, would a subsequent rule with a more tailored approach not be “substantially the same” under the majority’s approach? Under the dissent’s approach, would every constituent part of an RMP need to change to clear the “substantially the same” bar?

The application of the CRA to EPA’s **Waste Emissions Charge** (WEC), however, provides a more limited example given the specific direction to EPA in the IRA.<sup>96</sup> The statutory language directing EPA to promulgate the Waste Emissions Charge provided certain parameters for the rule.<sup>v</sup> However, in 2025, Congress disapproved EPA’s WEC implementing rule using the CRA<sup>97</sup> and then delayed the

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<sup>v</sup> Inflation Reduction Act, 136 Stat. 2074 (2022). The breadth of authority delegated by the authorizing statute might inform an agency’s options moving forward. For example, Cary Coglianese described “CRA Conundrum” where a statute explicitly requires an action that the CRA has struck down. Cary Coglianese, *Solving the Congressional Review Act’s Conundrum*, 75 ADMIN. L. REV. 79, 91 (Winter 2023).

program's implementation until 2034 under the One Big Beautiful Bill Act (OBBBA).<sup>98</sup> Assuming EPA takes steps to implement the WEC for 2034, it will be important to evaluate EPA's approach to assess how courts might decide whether a new implementation rule is not substantially the same as the disapproved rule.

In terms of the **California waiver**, the Clean Air Act provides California relatively expansive authority to request waivers for vehicle emissions standards that meet the state's needs.<sup>99</sup> The Clean Air Act requires EPA to grant a waiver unless the state's determination is arbitrary and capricious, the state lacks compelling and extraordinary need, or the standards are inconsistent with federal standards.<sup>100</sup> Because the disapproved waivers reflected specific policy choices, and given the state's expansive authority within the Clean Air Act, California may be able to distinguish future waivers by making different choices as technology and regulations evolve.

## Looking Ahead

In the past year, Congress has used the CRA more than in previous years and has asserted new interpretations of its applicability. While Congress is pushing past established boundaries to expand its own role, courts are grappling with their jurisdiction to review these actions and working to set the metrics that govern when a rule is "substantially the same." The scope, applicability, and effect of the CRA will likely continue to evolve, leaving open questions about the power of federal agencies to regulate and what options an agency has after a rule has been vetoed by use of the CRA.

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<sup>1</sup> 5 U.S.C. § 801(b)(1).

<sup>2</sup> 5 U.S.C. § 805.

<sup>3</sup> 5 U.S.C. § 801(b)(2).

<sup>4</sup> Maeve P. Carey & Christopher M. Davis, *The Congressional Review Act (CRA): A Brief Overview*, CRS (Aug. 29, 2024), <https://www.congress.gov/crs-product/IF10023>.

<sup>5</sup> American Action Forum, *Congressional Review Act Tracker for the 119th Congress*, (last accessed Jan. 23, 2026), <https://www.americanactionforum.org/cra-tracker/>.

<sup>6</sup> Press release, House Committee on Natural Resources, *President Trump Signs Legislation to Unleash American Resources and Unlock Public Lands*, (December 11, 2025), <https://naturalresources.house.gov/news/documentsingle.aspx?DocumentID=418511>. (The fifth example listed here is a record of decision which is a similar but different tool.)

<sup>7</sup> Kelsey Brugger, Congress strikes down third Biden land use plan, E&E DAILY (Oct. 10, 2025), <https://www.eenews.net/articles/congress-strikes-down-third-biden-land-use-plan/>.

<sup>8</sup> Dept. of Interior North Dakota Field Office, *Record of Decision and Approved Resource Management Plan*, at 2-6 (Jan. 2025) To download the pdf: [https://eplanning.blm.gov/public\\_projects/1505069/200366341/20126222/251026202/NDRMP\\_ROD\\_20250108\\_508.pdf](https://eplanning.blm.gov/public_projects/1505069/200366341/20126222/251026202/NDRMP_ROD_20250108_508.pdf)

<sup>9</sup> 42 U.S.C. § 7521.

<sup>10</sup> 42 U.S.C. § 7543 (b) & (e).

<sup>11</sup> EPA, *Vehicle Emissions California Waivers and Authorizations* (last accessed Jan. 23, 2026) <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations>

<sup>12</sup> Inflation Reduction Act, Public Law No. 117-169, 136 Stat. 2074 (2022).

<sup>13</sup> 5 U.S.C. § 551.

<sup>14</sup> 5 U.S.C. § 804(3).

<sup>15</sup> *Observations Regarding the Environmental Protection Agency’s Submission of Notices of Decision on Clean Air Act Preemption Waivers as Rules Under the Congressional Review Act*, GAO (March 6, 2025), <https://www.gao.gov/assets/880/875948.pdf>.

<sup>16</sup> 5 U.S.C. § 804(3).

<sup>17</sup> Valerie C. Brannon, *Defining Final Agency Action for APA and CRA Review*, CRS (Apr. 24, 2024) (“GAO has concluded that although the CRA only applies to final rules, it includes rules that are nonbinding.”)

<sup>18</sup> 5 U.S.C. § 802(d)(2), Maeve P. Carey & Christopher M. Davis, *The Congressional Review Act (CRA): Frequently Asked Questions*, CRS (Nov. 12, 2021), <https://www.congress.gov/crs-product/R43992>.

<sup>19</sup> Maeve P. Carey & Christopher M. Davis, *The Congressional Review Act: The Lookback Mechanism and Presidential Transitions*, CRS (July 9, 2024), <https://www.congress.gov/crs-product/IF12708>

<sup>20</sup> Maeve P. Carey & Christopher M. Davis, *CRA Lookback Period Currently Estimated to Begin in August 1 Time Frame*, CRS (Aug. 21, 2024), <https://www.congress.gov/crs-product/IN12408>.

<sup>21</sup> Maeve P. Carey & Christopher M. Davis, *The Congressional Review Act (CRA): A Brief Overview* (Aug. 29, 2024), <https://www.congress.gov/crs-product/IF10023>. The 119th Congress introduced 70 CRA resolutions, 22 of which passed into law. American Action Forum, *Congressional Review Act Tracker for the 119th Congress* (last accessed Jan. 23, 2026), <https://www.americanactionforum.org/cra-tracker/>.

<sup>22</sup> See, for example, Waste Emissions Charge for Petroleum and Natural Gas Systems: Procedures for Facilitating Compliance, Including Netting and Exemptions, 89 Fed Reg at 91096; Public Law No: 119-2. (2025). See also Jack Jones & Ricky Revesz, *The Weaponization of the Congressional Review Act in 2025*, THE REGULATORY REVIEW (Feb. 3, 2026), <https://www.thereview.org/2026/02/03/jones-revesz-the-weaponization-of-the-congressional-review-act-in-2025/> (explaining how the Biden administration promulgated important rules early in the administration to avoid a risk from the CRA).

<sup>23</sup> Valerie C. Brannon & Maeve P. Carey, *The Congressional Review Act: Determining Which “Rules” Must Be Submitted to Congress*, CRS (Oct. 22, 2024), <https://www.congress.gov/crs-product/R45248#ifn8> (“A GAO opinion stating that a specific agency action should have been submitted under the CRA can then stand in for the agency having submitted the rule. Recent practice has been for Members to publish the GAO opinion in the Congressional Record, and the date that the opinion is published in the Congressional Record serves as the starting date for the CRA’s timelines.”).

<sup>24</sup> Valerie C. Brannon & Maeve P. Carey, *The Congressional Review Act: Defining a “Rule” and Overturning a Rule an Agency Did Not Submit to Congress*, CRS (Apr. 18, 2024), [https://www.congress.gov/crs\\_external\\_products/IF/PDF/IF11096/IF11096.4.pdf](https://www.congress.gov/crs_external_products/IF/PDF/IF11096/IF11096.4.pdf).

<sup>25</sup> BLM, *Planning 101*, (last accessed Jan. 23, 2026), <https://www.blm.gov/programs/planning-and-nepa/planning-101>.

<sup>26</sup> Dept. of Interior North Dakota Field Office, Record of Decision and Approved Resource Management Plan, at 2-1 (Jan. 2025) (to download pdf: [https://eplanning.blm.gov/public\\_projects/1505069/200366341/20126222/251026202/NDRMP\\_ROD\\_20250108\\_508.pdf](https://eplanning.blm.gov/public_projects/1505069/200366341/20126222/251026202/NDRMP_ROD_20250108_508.pdf).)

<sup>27</sup> *Id.* at 1-7 to 1-12.

<sup>28</sup> Dept. of Interior North Dakota Field Office, Record of Decision and Approved Resource Management Plan, (Jan. 2025) (to download pdf: [https://eplanning.blm.gov/public\\_projects/1505069/200366341/20126222/251026202/NDRMP\\_ROD\\_20250108\\_508.pdf](https://eplanning.blm.gov/public_projects/1505069/200366341/20126222/251026202/NDRMP_ROD_20250108_508.pdf).)

<sup>29</sup> Letter from Robert Anderson, Solicitor, Dept. of Interior to Senator Martin Heinrich, (Jan. 15, 2025), [https://www.wilderness.org/sites/default/files/media/file/Letter-CRA-RMPs\\_DOI-Solicitor-to-Heinrich.pdf](https://www.wilderness.org/sites/default/files/media/file/Letter-CRA-RMPs_DOI-Solicitor-to-Heinrich.pdf)

<sup>30</sup> 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, GAO (June 25, 2025), <https://www.gao.gov/assets/880/879352.pdf> [hereinafter Miles City ROD]; 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, GAO (June 25, 2025); <https://www.gao.gov/assets/880/879450.pdf> [hereinafter Central Yukon ROD]; 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*, GAO (June 25, 2025), <https://www.gao.gov/assets/880/879448.pdf> [hereinafter North Dakota ROD]; *U.S. Department of the Interior, Bureau of Land Management—Applicability of the Congressional Review Act to Buffalo Field Office Record of Decision and Approved Resource Management Plan Amendment*, GAO (Sept. 18, 2025), <https://www.gao.gov/products/b-337503> [hereinafter Buffalo Field ROD].

<sup>31</sup> Press Release, House Committee on Natural Resources, *President Trump Signs Legislation to Unleash American Resources and Unlock Public Lands*, (Dec. 11, 2025).

<https://naturalresources.house.gov/news/documentsingle.aspx?DocumentID=418511>. (The fifth is a record of decision which is a similar but different tool.)

<sup>32</sup> Letter from Robert Anderson, Solicitor, Dept. of Interior to Senator Martin Heinrich, (Jan. 15, 2025), [https://www.wilderness.org/sites/default/files/media/file/Letter-CRA-RMPs\\_DOI-Solicitor-to-Heinrich.pdf](https://www.wilderness.org/sites/default/files/media/file/Letter-CRA-RMPs_DOI-Solicitor-to-Heinrich.pdf).

<sup>33</sup> Miles City ROD; Central Yukon ROD; North Dakota ROD; Buffalo Field ROD

<sup>34</sup> Public Law No. 119-48 (2025); Public Law No. 119-49 (2025); Public Law No. 119-50 (2025).

<sup>35</sup> Jack Jones & Ricky Revesz, *The Weaponization of the Congressional Review Act in 2025*, THE REGULATORY REVIEW (Feb. 3, 2026), <https://www.theregreview.org/2026/02/03/jones-revesz-the-weaponization-of-the-congressional-review-act-in-2025/>.

<sup>36</sup> Letter from The Wilderness Society, Conservation Lands Foundation, Western Environmental Law Center, Advocates for the West, Wild Montana, Southern Utah Wilderness Alliance to Bill Groffy Acting Director, Bureau of Land Management (Nov. 18, 2025), 18, 2025), [https://www.wilderness.org/sites/default/files/media/file/Letter-BLM-CRA-RMPs-Oil-Gas-Leases\\_251119.pdf](https://www.wilderness.org/sites/default/files/media/file/Letter-BLM-CRA-RMPs-Oil-Gas-Leases_251119.pdf) (wondering if the applicability of the CRA to these RMPs impacts the legality of other RMPs in effect).

<sup>37</sup> *Observations Regarding the Environmental Protection Agency’s Submission of Notices of Decision on Clean Air Act Preemption Waivers as Rules Under the Congressional Review Act*, GAO (Mar. 6, 2025), <https://www.gao.gov/assets/880/875948.pdf>; see also *Environmental Protection Agency—Applicability of the Congressional Review Act to Notice of Decision on Clean Air Act Waiver of Preemption*, GAO (Nov. 23, 2023), <https://www.gao.gov/products/b-334309>.

<sup>38</sup> Public Law No. 119-15 (2025); Public Law No: 119-16 (2025); Public Law No: 119-17 (2025).

<sup>39</sup> Benjamin M. Barczewski, et al., *California and the Clean Air Act (CAA) Waiver: Frequently Asked Questions* (May 9, 2025), <https://www.congress.gov/crs-product/R48168>.

<sup>40</sup> EPA, *Vehicle Emissions California Waivers and Authorizations* (last accessed Jan 24, 2025), <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations>; *Observations Regarding the Environmental Protection Agency’s Submission of Notices of Decision on Clean Air Act Preemption Waivers as Rules Under the Congressional Review Act*, GAO (Mar. 6, 2025), <https://www.gao.gov/assets/880/875948.pdf>; California State Motor Vehicle and Engine Pollution Control Standards; Heavy-Duty Vehicle and Engine Emission Warranty and Maintenance Provisions; Advanced Clean Trucks; Zero Emission Airport Shuttle; Zero-Emission Power Train Certification; Waiver of Preemption; Notice of Decision, 88 Fed. Reg. 20688 (Apr. 6, 2023) [hereinafter Advanced Clean Trucks Waiver Notice]; California State Motor Vehicle and Engine Pollution Control Standards; Advanced Clean Cars II; Waiver of Preemption; Notice of Decision, 90 Fed. Reg. 642 (Jan. 6, 2025) [hereinafter Advanced Clean Cars II Waiver Notice]; California State Motor Vehicle and Engine and Nonroad Engine Pollution Control Standards; The “Omnibus” Low NOX Regulation; Waiver of Preemption; Notice of Decision, 90 Fed. Reg. 643 (Jan. 6, 2025) [hereinafter Low Nox Waiver Notice].

<sup>41</sup> EELP, Clean Car Rules —Corporate Average Fuel Economy Standards/Greenhouse Gas Standards, (last accessed Jan. 24, 2026), <https://eelp.law.harvard.edu/tracker/corporate-average-fuel-economy-standards-greenhouse-gas-standards/>.

<sup>42</sup> California Air Resources Board, *Advanced Clean Cars*, (last accessed Jan. 24, 2026), <https://ww2.arb.ca.gov/our-work/programs/drive-forward-light-duty-vehicle-program/advanced-clean-cars>

<sup>43</sup> EELP, Clean Car Rules —Corporate Average Fuel Economy Standards/Greenhouse Gas Standards, (last accessed Jan. 24, 2026) <https://eelp.law.harvard.edu/tracker/corporate-average-fuel-economy-standards-greenhouse-gas-standards/>.

<sup>44</sup> *Environmental Protection Agency—Applicability of the Congressional Review Act to Notice of Decision on Clean Air Act Waiver of Preemption*, GAO (Nov. 30, 2023), <https://www.gao.gov/products/b-334309>.

<sup>45</sup> *Id.*

<sup>46</sup> Press Release, EPA, *Trump EPA to Transmit California Waivers to Congress in Accordance with Statutory Reporting Requirements* (Feb. 14, 2025), <https://www.epa.gov/newsreleases/trump-epa-transmit-california-waivers-concordance-statutory-reporting>.

<sup>47</sup> Letter from Senators Sheldon Whitehouse, Alex Padilla & Adam B. Schiff to the Comptroller General (Feb. 21, 2025), <https://www.gao.gov/assets/880/875948.pdf>.

<sup>48</sup> *Observations Regarding the Environmental Protection Agency's Submission of Notices of Decision on Clean Air Act Preemption Waivers as Rules Under the Congressional Review Act*, GAO (Mar. 6, 2025), <https://www.gao.gov/assets/880/875948.pdf> (citing GAO report B-334309, Nov. 30, 2023, 5 U.S.C. § 551(6), (8), (9)).

<sup>49</sup> Valerie Heitshusen, *The Office of the Parliamentarian in the House and Senate*, CRS (Nov. 28, 2018), <https://www.congress.gov/crs-product/RS20544>.

<sup>50</sup> Rachel Frazin, *Senate parliamentarian says lawmakers can't overturn California car rules — but Republicans may try anyway*, THE HILL (Apr. 4, 2025), <https://thehill.com/policy/energy-environment/5233436-senate-parliamentarian-says-lawmakers-cant-overturn-california-car-rules-but-republicans-may-try-anyway>; Office of Alex Padilla, Press Release, *Padilla, Schiff, Whitehouse Welcome Senate Parliamentarian's Reaffirmation That California's Clean Air Act Waivers Not Subject to Congressional Review Act* (Apr. 4, 2025), <https://www.padilla.senate.gov/newsroom/press-releases/padilla-schiff-whitehouse-welcome-senate-parliamentarians-reaffirmation-that-californias-clean-air-act-waivers-not-subject-to-congressional-review-act>; Molly Reynolds, *The Senate's Recent Actions on the Congressional Review Act*, YALE J. REG. NOTICE & COMMENT (May 28, 2025), <https://www.yalejreg.com/nc/the-senates-recent-actions-on-the-congressional-review-act-by-molly-reynolds/>.

<sup>51</sup> Public Law No. 119-15 (2025); Public Law No: 119-16 (2025); Public Law No: 119-17 (2025); Camila Domonoske, *Upending norms, the Senate votes to undo California's EV rules*, NPR (May 22, 2025), <https://www.npr.org/2025/05/22/nx-s1-5387729/senate-california-ev-air-pollution-waiver-revoked>.

<sup>52</sup> Daniel Farber, *The Congressional Review Act and the California Emissions Waiver: A Deeper Dive*, YALE J. REG. NOTICE & COMMENT (Mar. 11, 2025), <https://www.yalejreg.com/nc/the-congressional-review-act-and-the-california-emissions-waiver-a-deeper-dive-by-daniel-farber/>.

<sup>53</sup> Ann Carlson, *Why You Should Care That Congress Might Use the CRA to Overturn California Waivers*, LEGAL PLANET (MAY 19, 2025), <https://legal-planet.org/2025/05/19/why-you-should-care-that-congress-might-use-the-cra-to-overturn-california-waivers/>.

<sup>54</sup> 5 U.S.C. § 805.

<sup>55</sup> *Alaska Wildlife All. v. Haaland*, 632 F. Supp. 3d 974, 999 n. 221 (D. Alaska 2022), vacated, No. 22-36001, 2024 WL 4890996 (9th Cir. Nov. 22, 2024) (collecting cases); see also *Ctr. for Biological Diversity v. Bernhardt*, 946 F.3d 553 (9th Cir. 2019).

<sup>56</sup> *Kansas Nat. Res. Coal. v. Dept. of Interior*, 971 F.3d 1222 (10th Cir. 2020); see also *Foster v. Dept. of Agric.*, 68 F.4th 372 (8th Cir. 2023) (holding that the CRA barred judicial review of an agency's failure to submit a rule to Congress). Similarly, a court held it could not review a challenge to a joint resolution disapproving a rule. *Ctr. for Biological Diversity v. Bernhardt*, 946 F.3d 553 (9th Cir. 2019) (Plaintiffs challenged a joint resolution disapproving a rule, arguing the underlying rule was invalid because the agency made it effective before submitting it to Congress, violating the Congressional Review Act's requirement that rules be submitted before taking effect. Because plaintiffs argued the joint resolution is invalid, their "claim necessarily involves a challenge to a congressional 'determination, finding, action or omission' under the CRA, and as such is subject to the Jurisdiction-Stripping Provision.").

<sup>57</sup> *Citizens for Const. Integrity v. United States*, 57 F.4th 750, 763 (10th Cir. 2023) ("Plaintiffs argue that on its face the CRA 'violate[s] the separation of powers, equal protection, and due process.' . . . None of these arguments has merit."); *Ctr. for Biological Diversity v. Bernhardt*, 946 F.3d 553, 561-62 (9th Cir. 2019) (Plaintiffs argued the CRA violated the constitution because it infringed on executive's authority under the Take Care Clause of the Constitution. The court held it did not violate the Constitution because, "Congress

did not prevent the President from exercising his constitutional duty to faithfully execute the laws. Indeed, the President now has the constitutional obligation to execute the Joint Resolution.”).

<sup>58</sup> *California et al. v. United States of America et al.*, Docket No. 4:25-cv-04966 (N.D. Cal. Jun 12, 2025).

<sup>59</sup> Complaint for Declaratory and Injunctive Relief, *California et al. v. United States of America et al.*, 2-3, (June 12, 2025).

<sup>60</sup> Complaint for Declaratory and Injunctive Relief, *California et al. v. United States of America et al.*, 3, (June 12, 2025). Defendants have argued that the proper venue for this claim is appellate court, pursuant to CAA § 308(b)(1). Defendants’ Motion to Dismiss, *California v. United States of America et al.*, (Oct. 30, 2025).

California has filed petitions in D.C. Circuit Court and the Ninth Circuit. *California, et al v. EPA, et al*, Docket No. 25-01174 (D.C. Cir. Aug 11, 2025) (held in abeyance pending resolution of the N.D. Cal. case); California et al. v. EPA, et al., Docket No. 25-5071 (9th Cir. Aug 12, 2025) (California requested an abeyance, EPA responded requesting a more abbreviated 45-day abeyance.)

<sup>61</sup> 5 U.S.C. § 801(b)(2).

<sup>62</sup> Maeve P. Carey, *Reissued Labor Department Rule Tests Congressional Review Act Ban on Promulgating “Substantially the Same” Rules*, CRS (Oct. 15, 2019), <https://www.congress.gov/crs-product/IN10996>.

<sup>63</sup> Public Law No. 115-17 (2017), <https://www.congress.gov/115/plaws/plubl17/PLAW-115publ17.pdf>

<sup>64</sup> *Federal-State Unemployment Compensation Program*, 84 Fed. Reg. 53037 (October 4, 2019), <https://www.federalregister.gov/documents/2019/10/04/2019-21227/federal-state-unemployment-compensation-program-establishing-appropriate-occupations-for-drug#p-12>.

<sup>65</sup> The DOL rule was re-promulgated in October 2019. *Federal-State Unemployment Compensation Program*, 84 Fed. Reg. 53037 (Oct. 4, 2019), <https://www.federalregister.gov/documents/2019/10/04/2019-21227/federal-state-unemployment-compensation-program-establishing-appropriate-occupations-for-drug#p-12>.

<sup>66</sup> *Ohio Telecom Ass'n v. FCC*, 150 F.4th 694, 704 (6th Cir. 2025) (The court also considered whether the FCC overstepped its statutory authority).

<sup>67</sup> 150 F.4th 694 (6th Cir. 2025).

<sup>68</sup> 5 U.S.C. § 805.

<sup>69</sup> *Ohio Telecom Ass'n v. FCC*, 150 F.4th 694, 722 (6th Cir. 2025) (citing dicta from *Kan. Nat. Res. Coal. v. U.S. Dep't of Interior*, 971 F.3d 1222, 1236 (10th Cir. 2020)). The court explained, “2024 Order was not an action taken as part of the FCC’s legal obligations and requirements under the CRA. Rather, the Order was issued pursuant to the FCC’s rulemaking authority.” *Ohio Telecom Ass'n*, 150 F.4th at 722.

<sup>70</sup> *Kansas Nat. Res. Coal. v. United States Dep't of Interior*, 971 F.3d 1222, 1236-37 (10th Cir. 2020) (“As we have . . . explained, ‘under this chapter’ specifies those determinations, findings, actions, or omissions that are covered by § 805. If an agency were to promulgate a disapproved-of rule, it would presumably do so in reliance on its rulemaking authority. Those rulemaking authorities are not part of the CRA, i.e., ‘this chapter.’ It is therefore not obvious that an agency’s decision to reissue a disapproved-of rule—pursuant to authority conferred by statutes other than the CRA—would fall within § 805’s limited scope.”)

<sup>71</sup> FCC, *Data Breach Reporting Requirements*, 89 Fed. Reg. 9968 (Feb. 12, 2024).

<sup>72</sup> FCC, *Protecting Private of Customers of Broadband & Other Telecomms. Servs.*, 81 Fed. Reg. 87274, (Dec. 2, 2016) [hereinafter 2016 Order].

<sup>73</sup> 2016 Order.

<sup>74</sup> Public Law 115-22 (2017), <https://www.congress.gov/115/plaws/plubl22/PLAW-115publ22.pdf>.

<sup>75</sup> FCC, *Data Breach Reporting Requirements*, 89 Fed. Reg. 9968 (Feb. 12, 2024) (hereinafter 2024 Order).

<sup>76</sup> *Ohio Telecom Ass'n v. FCC*, 150 F.4th 694, 724 (6th Cir. 2025).

<sup>77</sup> *Id.* at 723.

<sup>78</sup> *Id.* at 724.

<sup>79</sup> *Id.* at 723-24.

<sup>80</sup> *Id.* at 724 (citing 551(4)).

<sup>81</sup> *Id.* at 724. This is likely dicta, so while it provides context to inform how a court might evaluate rules which are similar in scope, it is likely not precedential.

<sup>82</sup> *Id.* at 720, 724. This is a change in the FCC statutory interpretation; the court held the FCC has the statutory authority to require TRS providers to comply with these data breach notification requirements. *Id.* at 720.

<sup>83</sup> FCC, *Data Breach Reporting Requirements*, 89 Fed. Reg. 9968 (Feb. 12, 2024).

<sup>84</sup> *Ohio Telecom Ass'n v. FCC*, 150 F.4th 694, 724-25 (6th Cir. 2025).

<sup>85</sup> 5 U.S.C. § 551

<sup>86</sup> *Ohio Telecom Ass'n v. FCC*, 150 F.4th 694, 728 (6th Cir. 2025) (Griffin, J., dissenting) (citing 5 U.S.C. § 551) (dissent's emphasis).

<sup>87</sup> *Id.* at 728 (Griffin, J., dissenting)

<sup>88</sup> *Id.* at 729 (Griffin, J., dissenting)

<sup>89</sup> *Id.* at 727-28 (Griffin, J., dissenting).

<sup>90</sup> *Id.* (Griffin, J., dissenting).

<sup>91</sup> *Id.* at 729 (Griffin, J., dissenting) (quoting *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 217-18 (2002)).

<sup>92</sup> Order, *Ohio Telecom Ass'n v. FCC*, Docket No. 24-3133 (6th Cir. Oct. 7, 2025).

<sup>93</sup> *Id.*

<sup>94</sup> See for example, Final Brief of the Institute for Policy Integrity at the New York University Law School as Amicus Curiae in Support of Petitioners, *California Communities Against Toxics, et al., v EPA*, Docket No. 21-1024 (Jan. 20, 2026),

[https://policyintegrity.org/documents/Amicus\\_Brief\\_in\\_the\\_D.C.\\_Circuit\\_on\\_the\\_Narrow\\_Application\\_of\\_the\\_Congressional\\_Review\\_Act\\_.pdf](https://policyintegrity.org/documents/Amicus_Brief_in_the_D.C._Circuit_on_the_Narrow_Application_of_the_Congressional_Review_Act_.pdf) (arguing that the “substantially the same” provision of the CRA must be read narrowly to strike down single agency actions, not to restructure regulatory regimes).

<sup>95</sup> Dept. of Interior North Dakota Field Office, *Record of Decision and Approved Resource Management Plan*, at 2-6 (Jan. 2025) (to download pdf:

[https://eplanning.blm.gov/public\\_projects/1505069/200366341/20126222/251026202/NDRMP\\_ROD\\_20250\\_108\\_508.pdf](https://eplanning.blm.gov/public_projects/1505069/200366341/20126222/251026202/NDRMP_ROD_20250_108_508.pdf)).

<sup>96</sup> EPA, *Waste Emissions Charge for Petroleum and Natural Gas Systems: Procedures for Facilitating Compliance, Including Netting and Exemptions*, 89 Fed. Reg. 91094, 91096 (Nov. 18, 2024); Inflation Reduction Act, 136 Stat. 2074 (2022).

<sup>97</sup> Public Law No. 119-2 (2025).

<sup>98</sup> Public Law No. 119-21, 139 Stat. 156 (2025).

<sup>99</sup> 42 U.S.C. § 7543 (b) & (e)(2)(A)

<sup>100</sup> 42 U.S.C. § 7543 (b) & (e)(2)(A). See the federal standards at 42 U.S.C. § 7521(a).