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A Fresh Start: How to Address Regulations Suspended during the Coronavirus Crisis

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Executive Summary: Theoretically, regulations can move markets in a more socially efficient or socially just direction by imposing rules over entry, quantity, price, input sourcing, advertising, disclosures, or business operations and technologies. Unfortunately, while each of these tools can move a market in a more just or efficient direction, each may also be used to push it in a less just or less efficient direction. Because organized and informed special interests wield outsized influence over the regulatory process and because regulations accumulate without retrospective review, bad rules can persist for years or even decades. In this paper, we draw lessons from a successful reform effort—the Base Realignment and Closure (or BRAC) commission—to suggest one way to separate the bad rules from the good ones. We suggest that this process may be particularly valuable in evaluating the rules that were eased, modified, or suspended during the COVID-19 crisis.

I. Introduction

Regulatory accumulation is a chronic problem in the United States. It impedes entrepreneurial activity and economic growth, tilts the economic playing field in favor of the wealthy and well-connected, and undermines the efficient and effective administration of government programs. Regulation tends to be on "auto-pilot," growing without regard to cost or effectiveness. The COVID-19 crisis made evident the gravity of this problem.

The crisis has been a stress test for American institutions. It has laid bare the outdated, overlapping, and often contradictory morass of rules that make it difficult for public and private organizations to respond to changing circumstances. In many cases, these rules persist not because they protect the public from danger but because they protect organized interest groups from new competition.[1] Inefficient regulations also persist because agencies rarely prioritize retrospective reviews aimed at eliminating unnecessary or potentially harmful rules. On the contrary, agencies typically have a vested interest in maintaining regulations that often took years to generate.[2] Agency employees who have developed expertise in those rules, just like their counterparts in the private sector, have a financial interest in preserving them. In this way, "Agencies are stakeholders with respect to their own regulations."[3]

Governments have been forced to grapple with these realities. As the COVID-19 crisis intensified, policymakers at the federal, state, and local levels started suspending or rescinding laws and regulations that hindered sensible, speedy responses to the pandemic. These "rule departures" raised many questions. Were the paused rules undermining public health and welfare even before the crisis? Even if the rules were well-intentioned or once possibly served a compelling public interest, had they grown unnecessary or counterproductive? If so, why did they persist? How will the suspended rules be dealt with after the crisis? Are there other rules on the books that might transform from merely unnecessary to actively harmful in future crises?

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In many cases, rule departures or partial deregulations undertaken during the crisis are tantamount to an admission by policymakers that some policies that were intended to serve the public interest fail to do so. "The explanation for many of these problems is that outdated 20th-century rules stymie 21st-century innovation," noted former Florida Governor Jeb Bush in a recent *Wall Street Journal* editorial.[4] "In an emergency, many of those rules can be waived by executive order. After the crisis, there will be momentum to challenge the stale rules that hindered our response. This is likely to go well beyond dealing with pandemics," he argued. Similarly, lawyer and commentator Philip K. Howard has asserted that "the same kind of energy and resourcefulness will be needed to get America's schools, businesses, government agencies and nonprofits up and running again" and has suggested the need for a "temporary Recovery Authority with a broad mandate to identify and waive unnecessary bureaucratic hurdles to recovery."[5] In addition, *Wall Street Journal* columnist and Brookings Institution Senior Fellow William A. Galston has called for a "Coronavirus 9/11 Commission" to study the governance failures witnessed during the crisis, arguing that "the immediate effects of Covid-19 are bad enough. Failing to learn from it would be criminal negligence for which future generations won't forgive us."[6]

Once the COVID-19 crisis subsides, there may be a temptation to return to business-as-usual. Some of those rules, however, should probably be permanently repealed and others amended to allow for more flexible responses in the future. To this end, we propose in this paper an approach based on the successful experience of the Base Realignment and Closure (BRAC) Commission. Our proposed "Fresh Start Initiative" would entail the following actions:

1. A special commission would identify and study all the rules revised or sus pended during the crisis,
2. It would formulate a set of recommended regulatory reforms for each of those rules, and
3. It would craft a plan and timetable for automatically sunsetting or comprehensively reforming those policies or programs as part of a single reform package.

In this paper we begin by reviewing the history and literature explaining regulatory patterns. We then examine regulatory accumulation and its costs. After that, we explore how government officials and agencies have responded to the COVID crisis by relaxing or suspending a wide variety of regulations to ensure those rules were not hindering response efforts. Next, we explain how, going forward, the BRAC model could serve as a template for reform of those suspended rules, and then explain how such a Fresh Start Initiative might work. Finally, we identify a state-based model of how this approach is already being tapped to address regulatory accumulation in Idaho.

II. Explaining Regulatory Patterns

There are several, by no means mutually exclusive, theories of regulation. The "public interest" theory of regulation holds that public policy makers should — and usually do — craft regulatory solutions to market failures.[7] These failures can arise because market imperfections such as monopoly power, externality, information asym-

metry, or behavioral biases may keep markets from obtaining an equilibrium in which social marginal costs equal social marginal benefits. Alternatively, imperfections may arise because market processes can yield unjust inequities, for example by favoring the wealthy or by discriminating against certain disadvantaged populations.

In theory, regulators can nudge markets in a more socially efficient or socially just direction by employing a number of tools such as control over entry, quantity, price, input sourcing, advertising/disclosures, or business operations and technologies.

Unfortunately, while each of these tools can be used to move a market in a more just or efficient direction, they can also be used to push it in a less-just, and/or less efficient direction. For example, a regulation might create market power for certain firms if it imposes barriers to entry, raises rivals' costs, cartelizes quantities or prices, locks-in existing business models and technologies, or forces customers to buy the product or service.

Indeed, in case studies from dozens of industries, economists have documented exactly these sorts of regulatory patterns. Examples include electricity,[8] railroads,[9] radio,[10] airlines,[11] taxicabs,[12] oil,[13] natural gas,[14] banking,[15] financial advice,[16] trucking,[17] television,[18] plumbing,[19] the wireless spectrum,[20] clinical laboratories,[21] TV repair,[22] barbers,[23] optometry,[24] physicians,[25] education,[26] dentistry,[27] child care,[28] legal services,[29] real estate,[30] veterinarians,[31] electricians,[32] pharmaceuticals,[33] mortgage brokers,[34] and hospitals.[35]

Given these patterns, economists have suggested alternative, progressively more complex, theories of regulation. Of particular note are "capture theory," "the economic theory of regulation,"[36] and "the theory of entangled political economy."[37]

Capture theory emerged in the middle of the 20th Century and posited that the regulatory process was liable to be perverted and corrupted so that it would come to serve the interests of regulated firms, especially large, regulated firms, rather than the public.[38]

The economic theory of regulation was developed in the 1970s and is most-closely associated with George Stigler. While it admitted that the perversion and corruption of capture theory is possible, it presented a more nuanced story. Instead of wholesale takeover of the regulatory process by special interests, this theory emphasized that regulations are "demanded" by interest groups — including producers, consumers, and ideologically-motivated groups — and "supplied" by policy makers — including regulators and their overseers in the executive and legislative branches.

While the earliest versions of capture theory simply assumed that only industries could come to control regulators, a virtue of the economic theory of regulation is that it makes no such assumptions. General interest, consumer, producer, and ideological interest groups might all "demand" certain varieties of regulation. The economic theory of regulation does, however, tend to predict that concentrated and organized groups will dominate the process. And quite often, these groups are producers.

Producers have an advantage over consumer groups and ideological groups and this advantage derives from the lower organizational costs of concentrated groups.[39] It takes time, money, and effort to demand a change in regulatory policy. And if others take on these costs, those who benefit from the change have an incentive to free ride on the efforts of the organizers. This "collective action problem" makes it difficult for any group to organize for political change. But it makes it especially difficult for large and diffuse groups such as consumers and ideologically motivated individuals. First, being more numerous, the per-person benefit of policy change tends to be small for members of large groups. Second, large numbers of people are typically more difficult to organize than smaller numbers.

The theory of entangled political economy was formulated by Richard Wagner in the first decades of the 21st century and presents an even more complex and nuanced perspective.[40] As the name implies, it suggests that the public and private sectors are entangled in such a way that it is difficult to see where one ends and the other begins. Moreover, because of this entanglement, each reacts to the other through constantly changing processes of both cooperation and conflict.

This means that if a firm succeeds in obtaining a regulatory privilege, that is not the end of the story. This privilege and the rent that it entails will invite other actors — private competitors, public policy makers, and ideologically-motivated interest groups — to enter the fray and demand changes in policy, perhaps in ways that change or dissipate the rent.

Alfred Kahn observed this dynamic process as the head of the Civil Aeronautics Board:

> Control price, and the result will be artificial stimulus to entry. Control entry as well, and the result will be an artifi cial stimulus to compete by offering larger commissions to travel agents, advertising, scheduling, free meals, and bigger seats. The response of the complete regulator, then, is to limit ad vertising, control scheduling and travel agents' commissions, specify the size of the sandwiches and seats and the charge for inflight movies. Each time the dyke springs a leak, plug it with one of your fingers.[41]

Consistent with the theory of entangled political economy, Kahn himself reacted. He led the charge to deregulate the industry he oversaw (with significant help from Senator Ted Kennedy and President Jimmy Carter). While airline deregulation is beyond the scope of the current analysis, it is widely recognized for making the industry more efficient (adjusted for inflation, airfares are about half of their regulated levels) and for democratizing air travel (in 1965, only 1 in 5 Americans had ever flown; in 2000, half of Americans made a roundtrip flight that year).[42]

Like the BRAC reformers, the airline deregulators had to grapple with the reality of concentrated benefits and diffuse costs. The BRAC framework demonstrates a clear model for overcoming this problem, and that is why we suggest it as a promising solution to regulatory accumulation.

III. Regulatory Accumulation

Regulation is delegated lawmaking, and as such is an unsurprising feature of all modern democracies. Delegation happens in organizations of all shapes and sizes, ranging from the family unit to governments to the largest corporations. In the US, for example, regulatory agencies promulgate and enforce regulations, but both the regulations and the agencies themselves are delegated the authority to do so by acts of Congress. Such patterns of delegation of lawmaking authority are ubiquitous in national jurisdictions and frequently found in subnational jurisdictions as well.

A more subtle feature of modern governance, however, is the tendency towards regulatory accumulation, or the buildup of the stock of regulations over time. The regulatory process in the United States encourages the accumulation of rules for many reasons. For one thing, most new rules — about 99 percent — are promulgated without reference to their costs and benefits.[43] For another, once on the books, existing rules are rarely subjected to retrospective review.And because agency employees spend years developing expertise in their rules, they have a financial interest in preserving them, meaning that "agencies are stakeholders with respect to their own regulations."[44]

Regulatory accumulation is readily apparent in the US Code of Federal Regulations, where the number of pages of regulation in effect in a given year has grown from 9,745 pages in 1950 to 185,984 pages in 2019.[45]

Another way to consider regulatory accumulation has been pioneered by the RegData Project at the Mercatus Center at George Mason University. The RegData Project uses custom-made software to quantify various dimensions of regulatory text, and releases the resulting datasets for public use.[46]

The result is that there are now over one million regulatory restrictions in the *Code of Federal Regulation*, as has been shown by the RegData project. Regulatory restrictions are a proxy for the number of binding prohibitions and obligations contained in regulatory texts, devised by counting specific words and phrases, such as "shall" or "must." Regulatory restrictions contained in US federal regulations have increased from 405,647 in 1970 to 1,078,213 as of the end of 2019.[47]

Whatever the causes of regulatory accumulation, the phenomenon introduces concerns that extend far beyond the problem of regulatory privilege. Indeed, the potential impact of regulatory accumulation on the economy has caught the interest of economists and policymakers alike, as evidenced by the red tape cutting efforts that have proliferated in the states over the past several years.[48]

While studies of regulatory accumulation have largely been limited to national jurisdictions (e.g., US federal regulations' effect on the macroeconomy), regulatory accumulation can occur in subnational (e.g., state, province, or municipal) and supranational (e.g., European Union) settings as well. Historical data for subnational jurisdictions are harder to come by, but the accumulative pattern seen at the national level also appears to be the norm at the subnational level.

IV. The Costs of Regulatory Accumulation

Regulations can impose social costs in several ways, and these costs arise from both the quality of individual regulations and quantity of regulations overall. Most obviously, regulations create compliance costs. The Office of Information and Regulatory Affairs estimates that the public spends about 10 billion hours per year filling out federal forms.[49] These paperwork burdens constitute a small fraction of the total cost of the regulatory burden.[50]

For example, by artificially restricting supply or enhancing demand, regulations can cause marginal costs to diverge from marginal benefits, creating a deadweight loss. When the rules undermine competition, they invite other varieties of social cost such as productive inefficiencies known as x-inefficiency.[51]

These occur when a privileged firm fails to minimize cost or maximize consumer surplus because of its protections. Social losses also arise when firms expend scarce resources seeking privileged positions, and/or opposing the privileged positions of their rivals. These are known as rent-seeking losses.[53] Finally, there can be dynamic losses when regulations limit the ability of firms to innovate or to adapt to changing circumstances. These dynamic losses can become staggering over time because of the exponential nature of economic growth.

Coffey et al. (2020) use an endogenous growth model to estimate the effects of federal regulation on economic growth.[54] They use multi-sector panel data covering 22 industries from the RegData Project, finding that regulatory accumulation slowed economic growth by approximately 0.8 percentage points annually over the roughly three decades covered by their data (1980 to 2012).

The endogenous growth model developed in Coffey et al. (2020) permits the study to focus on a specific mechanism: the effect of regulatory accumulation on business investment, which is a driver of long-run productivity gains and, ultimately, economic growth. This finding is consistent with other studies of the relationship between regulation and the factors that contribute to growth, such as investment, productivity, and innovation. For example, Alesina et al. (2005) examined deregulation of the transportation and telecommunications industries during

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the mid-1980s, finding that deregulation resulted in a significant surge in investment for the US and the United Kingdom relative to Italy, France, and Germany.[55] However, compared to the vast quantity of regulations that actually affect the economy, the bulk of the literature on regulation and growth and the determinants of growth focuses on interventions that are limited in scope or on economic outcomes related to a narrowly defined sector, perhaps missing interactive or cumulative effects.

Moreover, the burden of regulatory accumulation is not simply borne by businesses. The costs of regulation can fall disproportionately on low-income households.[56] While regulations often target small risks or issues relevant only for a particular group, the costs of new regulations are borne by everyone through increases in consumer prices. Regulations can often act like a regressive sales tax, with middle-and lower-income households bearing much of the cost of rules that focus on the risk preferences of wealthier households, even though everyone ends up paying the same higher prices.[57]

Regulatory accumulation can also increase income inequality. Sometimes, regulations can make entry into a market more difficult by corralling lower-skilled workers into lower-paying, less-regulated fields or forcing them to operate illegally and incur the higher costs of doing so. If entry regulations require expensive education, testing, and fees, workers may choose instead to accept jobs that pay less and don't take full advantage of their skills.

One study shows that an increase in the number of steps necessary to legally open a business is associated with an increase in the inequality of income distribution.[58] The accumulation of regulatory requirements can contribute to income inequality. More generally, the accumulation of federal regulations pertinent to a given state's economy (e.g., agricultural regulations are particularly pertinent to states where agriculture is relatively important, such as Iowa) has been shown to positively correlate with both income inequality and poverty rates in those states.[59]

V. Examples of Policies Suspended during the Coronavirus Crisis

The Mercatus Center and many other organizations have been tracking rules that have been relaxed or suspended during the coronavirus crisis. Rules are being shed or frozen at such a rapid rate that it is becoming challenging to track all of the activity happening at the federal, state, and local levels. As summarized below, the Fresh Start Initiative would create an authoritative inventory of all the rules relaxed or paused during the crisis. That list would then become the basis of a report recommending either more reforms or sunsets for questionable rules and programs.

Here are a few illustrative examples of suspended rules:

- *FDA approval process.* One of us criticized the FDA for limiting flexible testing and treatment options as the crisis unfolded.[60] These errors contributed to delays of COVID-19 testing by six critical weeks.[61] But since then, the FDA has loosened restrictions on tests and various types of regulated devices. Although many people were surprised to learn that the FDA regulated mundane things such as hand sanitizer and face masks,[62] the agency eventually took steps to relax rules on both these fronts. It also allowed more flexible responses to the shortages of ventilators and drugs.[63]
- *TSA limits on hand sanitizers.* The Transportation Security Administration (TSA) waived its 3.4 ounce limit on liquids and gels for hand-sanitizers on airplanes, a rule that had been in effect for 14 years.[64]

- *Tariffs*. In mid-March, the United States Trade Representative issued tariff exemptions for various medical equipment and supplies, such as medical gloves, gowns, and goggles.[65] Later in the month, Trump administration officials told reporters that the administration would suspend the collection of customs duties for three months.[66] Later that day, the president called the report "fake news."[67] The fate of this suspension remains uncertain.
- *Restrictions on telemedicine*. The US Department of Health and Human Services recently announced that it will allow doctors who participate in federal health programs to be paid for offering telemedicine services in states where they do not hold a license.[68] In many places, however, state laws make this federal policy change moot. As of 2015, 36 states and the District of Columbia required a provider to have a face-to-face interaction with a patient before writing any prescription.[69] In Arizona, Governor Doug Ducey has suspended this rule.[70] Other states are likely to follow.
- *Restrictions on scope of practice for nurse practitioners*. The National Academy of Medicine recommends that nurse practitioners be permitted "full practice authority," meaning that they should be allowed to evaluate patients and initiate treatment without physician approval. Given that there is only 1 practicing physician for every 500 Americans, following this recommendation would permit patients to access more caregivers and would free up physicians to focus on the most demanding cases. Research suggests that full practice authority would expand access to care without jeopardizing patient safety.[71] As the crisis unfolded, however, only 23 states permitted this level of authority.[72] Maryland has now granted all healthcare professionals the authority to work beyond their current scope of practice, and eight other states (Idaho, Maine, Michigan, Missouri, New Hampshire, New York, Pennsylvania, and Texas) have moved to waive or modify their scope-of-practice requirements.[73]
- *State certificate-of-need laws*. Certificate-of-need (CON) laws require healthcare providers to first obtain permission before they may open or expand their facilities. Researchers find that these rules are associated with higher costs,[74] lower quality,[75] and — above all — more limited access to care.[76] When the pandemic hit, 28 states required providers to obtain certificates of need before adding, or in some cases even moving, acute hospital beds.[77] Nationwide, the United States has only 2.77 beds per 1,000 residents, far fewer than Italy (3.18), China (4.34), or South Korea (12.27).[78] Yet compared with other states, those that require certificates of need for hospital beds have even fewer beds, 1.31 fewer beds per 1,000 residents.[79] Research conducted at the beginning of the pandemic found that states that require CONs for hospital beds were more likely to face projected shortages.[80] And subsequent research found higher mortality rates in CON states and lower mortality rates among states that eased these restrictions.[81] As of March 31, 15 states had suspended or somehow modified their CON laws to allow providers greater flexibility to deal with the pandemic.[82]

This list is not comprehensive; more suspended rules at the local, state, and federal levels are coming to our attention on a daily basis. This is not surprising, simply because so many rules have accumulated over the past 50 years, as detailed above.

Concentrated and organized interest groups benefit from these rules and have successfully fought to preserve them.[83] They were able to do this, in part, by ensuring that reform remained off the agenda and out of the public discussion.[84] In many cases, this was an easy task given the technical and obscure nature of many rules. Large hospital systems, for example, tend to benefit from little-known CON laws because

they limit competition from new hospitals and nonhospital providers.[85] Similarly, physicians are reliably opposed to efforts that might give nurse practitioners more independent authority.

VI. Learning from the BRAC Commission Reform Model

Regulatory reforms may be able to draw a lesson from a surprising source: the history of obsolete military installations. For much of the 20th century, military installations deemed obsolete by military experts remained open because parochial special interests managed to thwart any efforts to close them. Yet the Base Realignment and Closure (BRAC) Commission overcame these obstacles to successfully close 350 outdated bases over five rounds since 1988.[86] The lessons from BRAC suggest that successful efforts to roll back regulatory privileges require the following elements:[87]

1. Policymakers must be allowed to cast a conspicuous vote in favor of the general interest. That is, there must be an opportunity for them to go on record in support of the general proposition that markets should be open, competitive, and free of regulatory privileges that benefit concentrated interest groups.
2. Some separate institution — perhaps a panel of experts or perhaps an executive-branch authority — should be charged with deciding which particular rules should be permanently eliminated. This separation gives some “cover” to policymakers worried about catching flak for eliminating a special interest’s lucrative privilege.
3. It should be difficult to ignore or countermand the recommendations of this institution. It might be that elected officials agree to accept the institution’s recommendations in whole or not at all (as is the case with “fast-track trade negotiating authority”), or it might be that the institution’s decisions automatically take effect and only an affirmative act of the legislative body can reverse it (as was the case with BRAC).[88]
4. The institution’s progress toward the general goal should be measured and frequently reported to the public.[89] This requirement, again, allows policymakers to take credit for serving the general interest.

VII. “Fresh Start Initiative”: Goals and Structure

Once the coronavirus crisis subsides, lawmakers should consider devising a BRAC-style reform model for laws and regulations that defy common sense and undermine public health. The goal of this Fresh Start Initiative would be to evaluate the experience with the rules suspended during the crisis and then recommend comprehensive reforms or outright repeal. If federal or state policymakers have already identified various laws and regulations that needed to be relaxed or suspended to help fight the coronavirus, this is a clear signal that reforms of these policies or programs are likely both necessary and politically possible.

We suggest the following blueprint for a Fresh Start Initiative:

1. Any rules suspended or modified during the pandemic would remain in suspension until it has been plausibly demonstrated that reinstating them would serve a legitimate public purpose.
2. Congress would authorize the Office of Management and Budget (OMB) to form a Fresh Start Initiative made up of 12 to 24 independent academic experts. Government officials or corporate parties with a direct interest in maintaining the suspended programs or policies would not be allowed to be members of the commission.[90] Alternatively, Congress could direct an executive-branch official to take on these

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same regulatory review functions, as was successfully done in the Canadian province of British Columbia.[91] Either way, the reforms will last longer if they enjoy broad and bipartisan support.

3. The authorizing legislation would require the Fresh Start Initiative to undertake a three-to six-month study inventorying all the laws and regulations frozen or temporarily repealed during the COVID crisis. The Fresh Start Initiative would also collect and summarize relevant academic literature or government reports relating to the effectiveness of programs or policies being considered.
4. After evaluating the evidence as well as the experience during the time the rules were frozen, the Fresh Start Initiative would identify which of these rules should remain suspended permanently and which should be reinstated, albeit with significant modifications or an eventual sunset plan.
5. The Fresh Start Initiative would then issue a final report that would bundle together all of these laws and establish a timetable for repeal or reform. As with the BRAC Commission, and pursuant to the authorizing statute, the Fresh Start Initiative's reform package would take effect automatically unless both houses of Congress passed and the president signed a resolution rejecting the package proposal. No amendments to the reform proposal would be allowed. Of course, Congress or state legislators would always be free to reconsider and reinstate programs and policies that they believe might still serve an important purpose.
6. Finally, the Fresh Start Initiative could consider formulating a similar "fresh start" reform model for state governments to consider because many state governments have paused many regulations of their own. While the initiative obviously would not have the authority to require state or local governments to repeal or replace such policies, the group could at least identify the effect of continuing those regulations and potentially even help devise model legislation for reforming or repealing them.

To improve the likelihood of success, the Fresh Start Initiative should follow the BRAC Commission blueprint. Specifically, the initiative must remain focused on a clear and limited mission guided by clear implementation criteria. The purpose should not be to evaluate every federal program or rule. The objective should be to review only those laws and regulations that were relaxed, paused, or partially repealed as part of the effort to address the coronavirus. This goal will provide the Initiative and Congress with a clearly defined and limited range of policies to consider. A longer list of reform objectives would become politically unworkable, and the entire effort would likely be derailed.

Of course, the Fresh Start Initiative could identify other policies that were not suspended during the crisis but that potentially undermine public health or welfare in some fashion. But those rules (or the agencies that enforce them) could be addressed in subsequent reform efforts. A focused effort will improve the chance that policymakers can achieve concrete, lasting reforms of the most counterproductive laws and

regulations.

VIII. State Fresh Start Models: The Idaho Example

State policymakers should also consider Fresh Start Initiatives of their own. Mercatus researchers have previously explained how a BRAC-like approach might be tapped to reform occupational licensing laws, CON laws, and other accumulated regulations.[92] An impartial commission or executive-branch official can review a state's existing licensing laws to determine which ones can be discarded without risking public health or safety.[93] As with the federal Fresh Start Initiative, the bodies or officials leading the effort should not include government or corporate officials with a vested interest in preserving the rules under consideration.

Several states have initiated reforms inspired by this model. Consider Idaho, for example.[94] In late June 2020, Idaho Gov. Brad Little signed an executive order on "Regulatory Relief to Support Economic Recovery," specifically aimed at, "reducing barriers to economic recovery, waiving licensing provisions, increasing telehealth access, and augmenting healthcare capacity."[95]

The governor's order addresses what to do with the 150-plus regulations that Idaho state agencies waived in response to the COVID-19 outbreak. The order eliminates the presumption that the affected rules are in the public interest. It states that "if waiving these regulations was deemed necessary to improve public health and welfare during the declared emergency, there is a rebuttable presumption that the regulations are unnecessary or counterproductive outside of the declared emergency."[96] In other words, if government officials viewed an existing rule as such a hindrance to response efforts during a serious public health emergency that they waived it, then the rule may not be right for normal conditions either. This approach is consistent with the presumption we recommend: Any rule suspended or modified during the pandemic should remain off the books pending further review.

Idaho was already a leader on regulatory reform and has taken steps to address ineffective and outdated regulations through efforts such as the earlier "Red Tape Reduction Act" and the "Zero-Based Regulation" executive orders. In 2019, the State actually sunset its entire regulatory code in an effort to clean up its 8,200 pages of regulations containing 736 chapters of state rules.[97] Other Mercatus Center analysts have noted that, "the Idaho experience demonstrates that state governments can significantly reduce regulations without much fanfare or controversy."[98] They argue, "The state's recent experience shows that it's not inevitable that a state's regulatory code grows ever larger and more complicated year after year. Indeed, major cuts in regulations are possible and need not be controversial."[99]

Other states have adopted fresh start reforms of their own.[100]

In February 2021, Arizona Governor Doug Ducey issued Executive Order 2021-02.[101] It implements a one in, three out policy for new rules, and it orders state agencies to conduct a comprehensive review of any rules that were suspended during the Public Health State of Emergency for COVID-19.

Similarly, Montana Governor Gianforte's first executive order created a red tape relief advisory panel charged with undertaking "a comprehensive review of the regulations issued by each agency to identify "excessive, outdated, and unnecessary" regulations and regulations that burden particular groups.[102] Similar reform bills have also been introduced in Pennsylvania.[103]

The details, of course, will vary. But, ideally, reforms will follow the general guidelines sketched out earlier in this paper. Crucially, an independent body would craft a plan and timetable for either automatically sunsetting

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or comprehensively reforming affected policies or programs as part of a single reform package. This would allow policy makers to cast a conspicuous vote for the general interest while allowing them to avoid flak from special interests worried about losing their regulatory privileges.

IX. Conclusion

Policymakers and special interests have long fought to preserve the regulatory status quo that benefits them, and commonsense reforms that should have happened years ago were never undertaken. Just because a rule was suspended during the COVID crisis does not automatically mean it was a bad rule, but the fact that so many rules were suspended served as a stark reminder that many laws and regulations outlive their usefulness or can become counter-productive over time. This experience has afforded citizens and policymakers everywhere a rare opportunity to see the often-obscured costs associated with these restrictions. And it may permit reform-minded policymakers an opportunity to achieve what has heretofore been so difficult: the permanent removal of costly anti-competitive regulations that benefit small but well-organized interest groups at the expense of the public.

Endnotes

1. George J. Stigler, "The Theory of Economic Regulation," Bell Journal of Economics and Management Science 2, no. 1 (1971): 3–21; Ernesto Dal Bó, "Regulatory Capture: A Review," Oxford Review of Economic Policy 22, no. 2 (2006): 203–25.

2. Patrick A. McLaughlin and Richard Williams, "The Consequences of Regulatory Accumulation and a Proposed Solution" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, February 2014).

3. McLaughlin and Williams, "Consequences of Regulatory Accumulation," 35.

4. Jeb Bush, "Local Leaders Are Showing the Way Forward," *Wall Street Journal*, March 26, 2020.

5. Philip K. Howard, "After Pandemic Ends, U.S. Needs Recovery Authority to Speed Economic Rebound," *USA Today*, March 30, 2020.

6. William Gallston, "Appoint a Coronavirus 9/11 Commission," *Wall Street Journal*, April 1, 2020.

7. As Judge Posner aptly put it, this theory "is more often assumed than articulated." FN, p. 335 Richard A. Posner, "Theories of Economic Regulation," *The Bell Journal of Economics and Management Science* 5, no. 2 (October 1, 1974): 335–58. Though his favored instrument was a tax rather than a regulation, A.C. Pigou is often cited as an early exponent of the idea that government policy can correct market imperfections. A. C. Pigou, *The Economics of Welfare*, Reprint edition (Houndmills, Basingstoke, Hampshire ; New York: Palgrave Macmillan, 1920).

8. George J. Stigler and Claire Friedland, "What Can Regulators Regulate? The Case of Electricity," *Journal of Law and Economics* 5 (October 1, 1962): 1–16.

9. Samuel P. Huntington, "The Marasmus of the ICC: The Commission, the Railroads, and the Pub-

lic Interest," *The Yale Law Journal* 61, no. 4 (1952): 467–509, https://doi.org/10.2307/793586; Paul W. MacAvoy, *The Economic Effects of Regulation: The Trunk-Line Railroad Cartels and the Interstate Commerce Commission before 1900* (The MIT Press, 1965); George W. Hilton, "The Consistency of the Interstate Commerce Act," *Journal of Law and Economics* 9 (October 1, 1966): 87–113; Marver H. Bernstein, *Regulating Business by Independent Commission*, New impression edition (Princeton University Press, 1966); Gabriel Kolko, *Railroads and Regulation*, 1877-1916 (New York: W. W. Norton & Company, 1970).

10. Ronald H. Coase, "The Federal Communications Commission," *Journal of Law and Economics* 2 (October 1, 1959): 1–40.

11. Richard E. Caves, *Air Transport and Its Regulators: An Industry Study* (Harvard University Press, 1962); William A. Jordan, *Airline Regulation in America: Effects and Imperfections*, New edition (Westport, CT: Greenwood Press Reprint, 1979).

12. Edmund W. Kitch, Marc Isaacson, and Daniel Kasper, "The Regulation of Taxicabs in Chicago," *Journal of Law and Economics* 14, no. 2 (October 1, 1971): 285–350; Coffman, "The Economic Reasons for Price and Entry Regulation of Taxicabs (Comment and Rejoinder)"; D. Wayne Taylor, "The Economic Effects of the Direct Regulation of the Taxicab Industry in Metropolitan Toronto," Logistics and Transportation Review 25, no. 2 (June 1989): 169–82; Stefan Rometsch and Elmar Wolfstetter, "The Taxicab Market: An Elementary Model," Journal of Institutional and Theoretical Economics (JITE) / Zeitschrift für die gesamte Staatswissenschaft 149, no. 3 (September 1993): 531– 46; Sean D. Barrett, "Regulatory Capture, Property Rights, and Taxi Deregulation: A Case Study," Economic Affairs 23, no. 4 (December 2003): 34–40; Adrian T. Moore and Ted Balaker, "Do Economists Reach a Conclusion on Taxi Deregulation?," Econ Journal Watch 3, no. 1 (January 2006): 109–32; Staley and Douglas, "Market Concentration and the Supply of Taxicabs in US Cities"; "Rethinking Taxi Regulations: The Case for Fundamental Reform," with Michael Farren and Christopher Koopman. *Mercatus Research*. Mercatus Center at George Mason University, Arlington, VA, July 2016.

13. Cabinet Task Force On Oil Import Control, "The Oil Import Question: A Report on the Relationship of Oil Imports" (Washington, D.C.: U.S. Government Printing Office, 1970).

14. Paul W. MacAvoy, "The Regulation-Induced Shortage of Natural Gas," *Journal of Law and Economics* 14, no. 1 (April 1, 1971): 167–99.

15. Sam Peltzman, "Entry in Commercial Banking," *Journal of Law and Economics* 8, no. 2 (October 1, 1965): 11–50.

16. Carl Shapiro, "Investment, Moral Hazard and Occupational Licensing." Review of Economic Studies 53, no. 5 (1986): 843–862.

17. George J. Stigler, "The Theory of Economic Regulation," *The Bell Journal of Economics and Management Science* 2, no. 1 (April 1, 1971): 3–21, https://doi.org/10.2307/3003160.

18. Roger G. Noll, Merton J. Peck, and John J. McGowan, *Economic Aspects of Television Regulation* (Washington: Brookings Institution Press, 1973).

19. Sidney Carroll and Rober Gaston, "Occupational Restrictions and The Quality of Service Received: Some Evidence." Southern Economic Journal 47 (1981): 959-976.

20. Thomas Winslow Hazlett, *The Political Spectrum: The Tumultuous Liberation of Wireless Technology, from Herbert Hoover to the Smartphone* (New Haven: Yale University Press, 2017).

21. Kathryn Healey, "The Effect of Licensure on Clinical Laboratory Effectiveness" (doctoral dissertation, University of California, Los Angeles, 1973).

22. John J. Phelan, "Regulation of the Television Repair Industry in Louisiana and California: A Case Study" (Federal Trade Commission, Washington, D.C., 1974).

23. Robert J. Thornton and Andrew R. Weintraub, "Licensing in the Barbering Profession," Industrial and Labor Relations Review 32, no. 2 (1979): 242–49.

24. Ronald Bond et al., "Effects of Restrictions of Advertising and Commercial Practice in the Professions: The Case of Optometry," (Federal Trade Commission, Washington, D.C., 1980); Ronald S. Bond, John E. Kwoka, Jr., John J. Phelan, & Ira Taylor. "Self-Regulation in Optometry: The Impact on Price And Quality." Law and Human Behavior 7, no. 2-3 (1983), 219–234; John E. Kwoka, "Advertising and the Price and Quality of Optometric Services," American Economic Review 74, no. 1 (1984): 211–16.

25. Chris Paul, "Physician Licensure Legislation and the Quality of Medical Care," Atlantic Economic Journal 12, no. 4 (1984): 18–30; Morris M. Kleiner et al., "Relaxing Occupational Licensing Requirements: Analyzing Wages and Prices for a Medical Service," The Journal of Law and Economics 59, no. 2 (May 1, 2016): 261–91.

26. Morris M. Kleiner and Daniel L. Petree, "Unionizing and Licensing of Public School Teachers: Impact on Wages and Educational Output," in When Public Sector Workers Unionize, ed. Richard B. Freeman and Casey Ichniowski (Chicago: University of Chicago Press, 1988), 305–19; Mark C. Berger and Eugenia F. Toma, "Variation in State Education Policies and Effects on Student Performance," Journal of Policy Analysis and Management 13, no. 3 (1994): 477; D. D. Goldhaber and D. J. Brewer, "Does Teacher Certification Matter? High School Teacher Certification Status and Student Achievement," Educational Evaluation and Policy Analysis 22, no. 2 (2000): 129–45; Joshua Angrist and Jonathan Guryan, "Does Teacher Testing Raise Teacher Quality? Evidence from State Certification Requirements," Economics of Education Review 27, no. 5 (2008): 483–503; Thomas J. Kane, Jonah E. Rockoff, and Douglas O. Staiger, "What Does Certification Tell Us About Teacher Effectiveness? Evidence from New York City," Economics of Education Review 27 (2008): 615-631.

27. Sidney Carroll and Rober Gaston, "Occupational Restrictions and The Quality of Service Received: Some Evidence." Southern Economic Journal 47 (1981): 959-976; Morris M. Kleiner and Robert T. Kudrle, "Does Regulation Affect Economic Outcomes? The Case of Dentistry," Journal of Law and Economics 43, no. 2 (2000): 547–82.

28. David Blau, "Unintended Consequences of Child Care Regulations," Labour Economics 14, no. 3 (2007): 513–38.

29. Timothy Muris and Fred McChesney, "Advertising, Consumer Welfare, and the Quality of Legal Services: The Case of Legal Clinics" (Working Paper 78-5, Law and Economics Center, University of Miami, Miami, FL, 1978).

30. Sidney Carroll and Rober Gaston, "State Occupational Licensing Provisions and Quality of Services Received: The Real Estate Business." Research in Law and Economics 1 (1979): 1-14.

31. Sidney Carroll and Rober Gaston, "Barriers of Occupational Licensing of Veterinarians and The Incidence of Animal Diseases."

Agricultural Economic Research, 30 (1978): 37-39.

32. Sidney Carroll and Rober Gaston, "Occupational Restrictions and The Quality of Service Received: Some Evidence." Southern Economic Journal 47 (1981): 959-976.

33. Sam Peltzman, "An Evaluation of Consumer Protection Legislation: The 1962 Drug Amendments," *Journal of Political Economy* 81, no. 5 (September 1, 1973): 1049–91.

34. Morris M. Kleiner and Richard M. Todd, "Mortgage Broker Regulations That Matter: Analyzing Earnings, Employment, and Outcomes for Consumers," in Studies of Labor Market Intermediation, David Autor, ed. (2009): 183-231.

35. Thomas Stratmann and David Wille, "Certificate-of-Need Laws and Hospital Quality" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016); Matthew D Mitchell, "Certificate-of-Need Laws: Are They Achieving Their Goals?," Mercatus Policy Brief (Arlington, VA: Mercatus Center at George Mason University, August 2017).

36. Stigler, "The Theory of Economic Regulation," April 1, 1971. Emphasizing the fact that Stigler's theory was grounded in the economic logic of supply and demand it was Posner who termed it "the economic theory of regulation." Posner, "Theories of Economic Regulation," 343. See, also, the important generalization of this theory, Sam Peltzman, "Toward a More General Theory of Regulation," Journal of Law and Economics 19, no. 2 (August 1, 1976): 211–40, journals.uchicago.edu/doi/abs/10.1086/466865.

37. Roger Koppl and Steven Horwitz, eds., *Entangled Political Economy* (Bingley: Emerald Group Publishing Limited, 2014); Richard E. Wagner, "Entangled Political Economy: A Keynote Address," in *Entangled Political Economy*, ed. Roger Koppl and Steven Horwitz (Bingley,

UK: Emerald Group Publishing, 2014); Richard E. Wagner, *Politics As a Peculiar Business: Insights from a Theory of Entangled Political Economy* (Cheltenham, UK ; Northampton, MA: Edward Elgar Pub, 2016).

38. David B. Truman, *The Governmental Process: Political Interests and Public Opinion* (New York, NY: Knopf, 1951); Bernstein, *Regulating Business by Independent Commission*; Grant McConnell, *Private Power & American Democracy*, 1st edition (Knopf, 1966); Theodore J. Lowi, *The End of Liberalism: The Second Republic of the United States*, 40th Anniversary Edition (W. W. Norton & Company, 1969).

39. This idea is typically attributed to the political economist Mancur Olson. It is also evident in the work of Lowi, Wilson, and Berry and Wilcox. Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups, Second Printing with New Preface and Appendix*, Revised (Harvard University Press, 1965); Lowi, *The End of Liberalism*; James Wilson, *Bureaucracy: What Government Agencies Do And Why They Do It* (Basic Books, 1991); Jeffrey M. Berry and Clyde Wilcox, *The Interest Group Society*, 5th ed. (Pearson, 2009).

40. Richard E. Wagner, "Entangled Political Economy: A Keynote Address," in *Entangled Political Economy*, ed. Roger Koppl and Steven Horwitz (Bingley, UK: Emerald Group Publishing, 2014); Richard E. Wagner, *Politics As a Peculiar Business: Insights from a Theory of Entangled Political Economy* (Cheltenham, UK ; Northampton, MA: Edward Elgar Pub, 2016); Roger Koppl and Steven Horwitz, eds., *Entangled Political Economy* (Bingley: Emerald Group Publishing Limited, 2014).

41. Quoted in Thomas K McCraw, *Prophets of Regulation* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1984), 272.

42. Derek Thompson, "How Airline Ticket Prices Fell 50 Percent in 30 Years (And Why Nobody Noticed)," *The Atlantic*, February 28, 2013, https://www.theatlantic.com/business/archive/2013/02/how-airline-ticket-prices-fell-50-in-30-years-and-why-nobody-noticed/273506/.

43. Patrick A. McLaughlin and Casey B. Mulligan, "Three Myths about Federal Regulation," Mercatus Special Study (Arlington, VA: Mercatus Center at George Mason University, May 20, 2020), 9, https://www.mercatus.org/publications/regulation/three-myths-about-federal-regulation.

44. McLaughlin and Williams, "Consequences of Regulatory Accumulation," 35.

45. Page counts of the *Code of Federal Regulations* from the website of the Office of the Federal Register, https://uploads.federalregister.gov/uploads/2020/04/01123111/cfrTotalPages2019.pdf. Accessed on September 1, 2020.

46. The initial RegData data release occurred in 2012, as explained in Omar Al-Ubaydli and Patrick A. McLaughlin, "RegData: A numerical database on industry-specific regulations for all United States industries and federal regulations, 1997–2012." *Regulation & Governance*, 11 (2017): 109–123. Later versions, including those that use machine learning algorithms to map regulations to relevant industries, are detailed in Patrick A. McLaughlin and Oliver Sherouse, "RegData 2.2: A Panel Dataset on US Federal Regulations." *Public Choice* 180, no. 1-2 (2019): 43-55. RegData datasets are freely available at https://www.quantgov.org/.

47. Patrick A. McLaughlin, Jonathan Nelson, Thurston Powers, Walter Stover, and Stephen Strosko, "RegData US 3.2 Annual (dataset)," QuantGov, Mercatus Center at George Mason University, Arlington, VA, 2020.

48. See, for example, Missouri's red tape cutting initiative launched in 2017, detailed in: Justin D. Smith, *Regulatory Reform at the State Level: A Guide to Cutting Red Tape for Governors and Executive Branch Officials*, 3 Bus. Entrepreneurship & Tax L. Rev. 276 (2019). Available at: https://scholarship.law.missouri.edu/betr/vol3/iss2/8.

49. OMB, Office of Information and Regulatory Affairs, Information Collection Budget of the United States Government, 2016.

50. McLaughlin and Mulligan, "Three Myths about Federal Regulation," 13.

51. Harvey Leibenstein, "Allocative Efficiency vs. 'X-Efficiency,'" *The American Economic Review* 56, no. 3 (June 1, 1966): 392–415.

52. Matthew Mitchell, "The Pathology of Privilege: The Economic Consequences of Government Favoritism," Special Study (Arlington, VA: Mercatus Center at George Mason University, July 9, 2012).

53. Gordon Tullock, "The Welfare Costs of Tariffs, Monopolies, and Theft," *Western Economic Journal [Economic Inquiry]* 5, no. 3 (June 1, 1967): 224–32; Anne O. Krueger, "The Political Economy of the Rent-Seeking Society," *American Economic Review* 64, no. 3 (1974): 291–303; Matthew D. Mitchell, "Rent Seeking at 52: An Introduction to a Special Issue of Public Choice," Public Choice 181, no. 1 (October 1, 2019): 1–4,.

54. Bentley Coffey, Patrick A. McLaughlin, and Pietro Peretto, "The Cumulative Cost of Regulations," *Review of Economic Dynamics*, in press (2020). https://doi.org/10.1016/j.red.2020.03.004.

55. Alberto Alesina, Silvia Ardagna, Giuseppe Nicoletti, and Fabio Schiantarelli. "Regulation and Investment." *Journal of the European Economic Association*, 3, no. 4 (2005): 791–825.

56. Diana Thomas, "Regressive Effects of Regulation" *Public Choice*, 180 no. 1-2 (2019): 1–10.

57. Dustin Chambers, Courtney A. Collins, and Alan Krause, "How Do Federal Regulations Affect Consumer Prices? An Analysis of the Regressive Effects of Regulation," *Public Choice*, 180 no. 1-2 (2019): 57–90.

58. Dustin Chambers, Patrick A. McLaughlin, and Laura Stanley, "Barriers to Prosperity: The Harmful Impact of Entry Regulations on Income Inequality," *Public Choice*, 180 no. 1-2 (2019): 165–190.

59. Dustin Chambers and Colin O'Reilly, "Regulation and Income Inequality in the United States," Mercatus Working Paper (May 2020); Dustin Chambers, Patrick A. McLaughlin, and Laura Stanley, "Regulation and Poverty: An Empirical Examination of the Relationship between the Incidence of Federal Regulation and the Occurrence of Poverty across the US States," *Public Choice*, no. 1-2 (2019): 131–144.

60. Adam Thierer, "How the US Botched Coronavirus Testing," American Institute for Economic Research, March 12, 2020, https://www.aier.org/article/how-the-us-botched-coronavirus-testing; Alec Stapp, "Timeline: The Regulations—and Regulators—That Delayed Coronavirus Testing," *Dispatch*, March 20, 2020.

61. Stapp, "Timeline."

62. US Food and Drug Administration, "Coronavirus (COVID-19) Update: FDA Provides Guidance on Production of Alcohol-Based Hand Sanitizer to Help Boost Supply, Protect Public Health," news release, March 20, 2020, https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-provides-guidance-production-alcohol-based-hand-sanitizer-help-boost; US Food and Drug Administration, *Enforcement Policy for Face Masks and Respirators during the Coronavirus Disease (COVID-19) Public Health Emergency (Revised)*, April 2020.

63. US Food and Drug Administration, "Coronavirus (COVID-19) Update: FDA Takes Action to Help Increase U.S. Supply of Ventilators and Respirators for Protection of Health Care Workers, Patients," news release, March 27, 2020, https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-takes-action-help-increase-us-supply-ventilators-and-respirators; Justin Wise, "FDA Issues Emergency-Use Authorization for Anti-Malaria Drugs amid Coronavirus Outbreak," *The Hill*, March 30, 2020.

64. Lori Aratani, "TSA Will Allow Travelers to Bring Larger Bottles of Hand Sanitizer in Their Carry-Ons," *Washington Post*, March 13, 2020.

65. Jacqueline Varas, "Coronavirus, Tariffs, and Buy American Laws," *Insight*, American Action Forum, March 18, 2020.

66. Alex Leary and William Mauldin, "U.S. Plans to Stop Collecting Import Tariffs for Three Months, Officials Say," *Wall Street Journal*, March 27, 2020.

67. Leary and Mauldin, "U.S. Plans to Stop Collecting Import Tariffs for Three Months."

68. Eric Knickrehm and Morgan Lewis, "HHS and States Relax Telehealth Licensing Rules for Healthcare Professionals amid COVID-19 Emergency," JD Supra, March 17, 2020, https://www.jdsupra.com/legalnews/hhs-and-states-relax-telehealth-83893.

69. Centers for Disease Control and Prevention, *Prescription Drug Physical Examination Requirements*, January 29, 2015.

70. Arizona Exec. Order No. 2020-15 (March 25, 2020).

71. E. Kathleen Adams and Sara Markowitz, "Improving Efficiency in the Health-Care System: Removing Anticompetitive Barriers for Advanced Practice Registered Nurses and Physician Assistants" (Policy Proposal No. 2018-08, Hamilton Project, Washington, DC, 2018), 8.

72. Matthew D. Mitchell, "First, Do No Harm: Three Ways That Policymakers Can Make It Easier for Healthcare Professionals to Do Their Jobs" (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, March 26, 2020).

73. Ethan Bayne, Conor Norris, and Edward Timmons, "A Primer on Emergency Occupational Licensing Reforms for Combating COVID-19" (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, March 26, 2020).

74. Matthew D. Mitchell, "Do Certificate-of-Need Laws Limit Spending?" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, September 2016).

75. Thomas Stratmann and David Wille, "Certificate of Need Laws and Hospital Quality" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, September 2016).

76. Matthew D. Mitchell, "Certificate-of-Need Laws: Are They Achieving Their Goals?" (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, August 2017).

77. Mitchell, "First, Do No Harm."

78. Mitchell, "First, Do No Harm."

79. Thomas Stratmann and Jacob W. Russ, "Do Certificate-of-Need Laws Increase Indigent Care?" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, July 2014).

80. Matthew Mitchell, Thomas Stratmann, and James Bailey, "Raising the Bar: ICU Beds and Certificates of Need." (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, April 2020).

81. Sriparna Ghosh, Agnitra Roy Choudhury, and Alicia Plemmons, "Certificate-of-Need Laws and Healthcare Utilization during COVID-19 Pandemic," (SSRN Working Paper, July 29, 2020).

82. Mitchell, "First, Do No Harm"; Angela C. Erickson, "States Are Suspending Certificate of Need Laws in the Wake of COVID-19 but the Damage Might Already Be Done," Pacific Legal Foundation, March 31, 2020, https://pacificlegal.org/certificate-of-need-laws-covid-19/.

83. Special interests enjoy a number of advantages that permit them an outsized influence on public policy. For more details, see Matthew Mitchell, "Overcoming the Special Interests That Have Ruined Our Tax Code," in *For Your Own Good: Taxes, Paternalism, and Fiscal Discrimination in the Twenty-First Century*, ed. Adam J. Hoffer and Todd Nesbit (Arlington, VA: Mercatus Center at George Mason University, 2018).

84. Peter Bachrach and Morton S. Baratz, "Two Faces of Power," *American Political Science Review* 56, no. 4 (1962): 947–52.

85. Thomas Stratmann and Matthew C. Baker, "Are Certificate-of-Need Laws Barriers to Entry? How They Affect Access to MRI, CT, and PET Scans" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, January 2016).

86. For a detailed list of many of the ways that a BRAC-style commission could overcome the barriers to regulatory reform, see McLaughlin and Williams, "Consequences of Regulatory Accumulation," 33–43. See also Jerry Brito, "Running for Cover: The BRAC Commission as a Model for Federal Spending Reform," *Georgetown Journal of Law & Public Policy* 9 (2011): 131–56.

87. For other examples of reforms that eliminated special-interest privilege, see Mitchell, "Overcoming the Special Interests That Have Ruined Our Tax Code."

88. Brito, "Running for Cover," 141.

89. Patrick A. McLaughlin and Tyler Richards, "Regulatory Review Commission + Regulatory Budget = A Diet for Better, More Effective Regulations" (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, November 2019); James Broughel, "A Step-by-Step Guide to Using Mercatus Tools to Reduce State Regulation Levels" (Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, 2017); James Broughel and Laura Jones, "Effective Regu-

latory Reform: What the United States Can Learn from British Columbia"

(Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, 2018), 5–6.

90. For details on the possible composition of the commission, see McLaughlin and Williams, "Consequences of Regulatory Accumulation," 46–50.

91. Broughel and Jones, "Effective Regulatory Reform."

92. McLaughlin and Williams, "Consequences of Regulatory Accumulation"; Brito, "Running for Cover."

93. Trace Mitchell and Adam Thierer, "Licensing Restrictions for Health Care Workers Need to be Flexible to Fight Coronavirus," *Dallas Morning News*, March 23, 2020.

94. Patrick McLaughlin, Matthew D. Mitchell & Adam Thierer, "Idaho 'Spring Cleaning' Order a Model for Other States," *The Bridge*, June 29, 2020, https://www.mercatus.org/bridge/commentary/idaho-spring-cleaning-order-model-other-states.

95. Gov. Brad Little, State of Idaho, Executive Order No. 2020-13, "Regulatory Relief to Support Economic Recovery," June 22, 2020, https://gov.idaho.gov/wp-content/uploads/sites/74/2020/06/eo-2020-13.pdf

96. Ibid.

97. James Freeman, "The Great Idaho Do-Over," *The Wall Street Journal*, May 16, 2019, https://www.wsj.com/articles/the-great-idaho-do-over-11558027019

98. James Broughel & Krista Chavez, "Idaho is the Least Regulated State and a Model for the Rest of the Country," *The Bridge*, January 2, 2020, https://www.mercatus.org/bridge/commentary/idaho-least-regulated-state-and-model-rest-country.

99. Ibid.

100. Patrick McLaughlin, Matthew D. Mitchell & Adam Thierer, "How to Create a Fresh Start Initiative in Your State: A Step-by-Step Guide," Mercatus Center at George Mason University, *Policy Briefs*, May 15, 2020, https://www.mercatus.org/publications/regulation/how-create-fresh-start-initiative-your-state-step-step-guide.

101. Executive Order 2021-02, "Moratorium on Rulemaking to Promote Job Creation and Economic Development; Internal Review of Administrative Rules," Feb 12, 2021, https://azgovernor.gov/executive-orders.

102. Executive Order 1-2021, "Creating The Red Tape Relief Advisory Council To Implement Regulatory Reform," Jan 5, 2021, https://governor.mt.gov/_docs/EOs/EO-1-2021.pdf

103. Senate Bill 671, "An Act Providing For Retaining Health Care Innovations During the COVID-19 Pandemic and Imposing Duties on the Joint State Government Commission," https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=S&type=B&bn=671.