

REGULATORY TRANSITION ACT OF 1995

SPEECH OF

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 23, 1995

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 450), to ensure economy and efficiency of Federal Government operations by establishing a moratorium on regulatory rulemaking actions, and for other purposes:

Mr. STOKES. Mr. Chairman, I rise in strong opposition to H.R. 450, the Regulatory Transition Act of 1995. We cannot and should not, in an attempt to reform regulations, shirk our responsibility to act in the best interest of the American people by totally curtailing essential regulations that protect the public. This flawed and hurried legislation will not only fail to truly reform the few regulations that need it but will endanger the American public by stripping away the services and protections Congress is obligated to provide.

The bill before us today, the Regulatory Transition Act of 1995, will not only attempt to undo many of the important accomplishments of the U.S. Congress, Federal agencies, and the President of the United States but also seeks to undermine many of our most important efforts to improve the quality of life for all Americans.

The stated purpose of the Regulatory Transition Act is to impose a moratorium on regulatory rulemaking actions by Federal agencies. The bill establishes a moratorium period beginning on November 9, 1994, and ending June 30, 1995. Except for a few special interest exceptions granted to friends of the new majority, any regulatory action taken during this period would be suspended until July 1, 1995.

While I agree that Congress should reform regulations where needed, this proposed measure goes well beyond this legitimate objective of balancing responsibilities. In fact, this bill is specifically designed to inhibit the will of the people by creating artificial obstacles to congressional support for programs the current majority has long sought to weaken, if not totally eliminate, including laws that protect the environment, strengthen crime control, and heighten worker and citizen safety.

H.R. 450 will have a devastating impact on the environment. As a Representative of the urban district of Cleveland, OH, I have witnessed the severity of the environmental problems this Nation and its inner cities now face. The quality of most urban air and water in this country is in dire need of immediate attention.

Mr. Speaker, without regulations concerning the Clean Water Act, the Clean Air Act, and others promulgated by the Environmental Protection Agency or OSHA—all measures that represent significant steps toward remedying the effects of environmental devastation and injustice—the American people and all future generations will be harmed forever.

I am certain that no one in this House would want to increase the risk of disease, dysfunction, and premature deaths caused by exposure to toxic emissions from cadmium, lead, mercury, or dioxin. But that is exactly what H.R. 450 would do. It would slam the door on an EPA rule that would reduce emissions from

cadmium, lead, and mercury from municipal waste incinerators.

Of equal importance is the negative impact of H.R. 450 on the FDA rule designed to ensure that mammograms for breast cancer detection are properly administered and interpreted. The breast cancer incidence rate in women increased from 85 per 100,000 in 1980 to 112.3 in 1991. This trend calls for more intensive breast cancer screening that includes mammography, a procedure which clearly reduces death from the disease. FDA regulation would enhance our effort to alter the course of the breast cancer epidemic. But none of these regulations written for the good of the public may survive and Republicans plan to dismantle the general public's Federal protection against needless death.

This bill will also significantly compromise citizen and worker safety. Last year, over 10,000 American workers died in the workplace. Another 70,000 were permanently disabled, and more than 100,000 contracted fatal occupational illnesses. H.R. 450 will greatly inhibit our ability to protect the American population from unsafe products, dangerous working conditions, and avoidable disasters. I cannot in good conscience endanger American workers by supporting this bill.

In addition to endangering the health and lives of Americans, approval of H.R. 450 would result in additional Government waste. Surprisingly enough, the antilobbying Republicans have included in this legislation provisions that will lead to a proliferation of administrative lawsuits. H.R. 450 creates a new cause of action for those who claim that they have been adversely affected by Agency action. This law will lead to a myriad of lawsuits brought by anyone who does not like some regulation created by the Federal Government, wasting time, money, and limited Government resources.

Mr. Speaker, this legislation is unprecedented in its scope. Few areas of Federal regulation will be unaffected by this measure, yet, with very little opportunity for open hearing, and with limited debate, this act has been placed before us. A measure of this kind requires detailed analysis of the impact it may have on the American people, but no such review has or will take place. In the current rush to force this bill to the floor of this House, the will of the American people will certainly be compromised.

Furthermore, Mr. Speaker, this legislation will not only have a dramatic and disastrous impact on future regulation, it will also affect existing regulations. Important rules essential to efficient clarification, tailoring, and consolidation, by enhancing standards, or by enhancing the scope of the original regulation, will all be inhibited by this bill.

Important measures placed in jeopardy by this proposed legislation include virtually every aspect of governmental activity, from the protection of our citizens' civil rights to ensuring safe food and drink for our children. Any proposed regulation that is designed to protect workers and citizens from unnecessary injury, protect the environment, or promote equity, will be subject to exclusion under this bill.

Mr. Speaker, it is my belief that H.R. 450 and the circumstances under which it is presented in this House is an attempt to mislead the American people to believe that cookie-cutter, simplistic solutions will cure what ails this Nation. Nothing could be further from the truth. As our Nation faces an epidemic of pol-

lution, discrimination, and poverty, the solution to these problems will not be found in quick fixes like H.R. 450. The American people elected us to act in their best interest, not compromise their welfare because Government refuses to have the courage to meet its obligations. I urge my colleagues to vote against this bill.

GOP WELFARE PLAN IGNORES WORK

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. MILLER of California. Mr. Speaker, the so-called welfare reform legislation developed by Republicans fails to address the single most urgent need for ending the current welfare system: putting people to work.

The Republicans have walked away from their early commitment to work as a key component of welfare reform. In the Contract With America, half of the welfare caseload would have been required to work by 2003. And the contract promised nearly \$10 billion to pay for the new work requirement programs; the pending Republican bill has no money, and no work programs to speak of. In fact, as the New Republic points out, the great model program in Michigan by Republican leaders would authorize activities like checking a book out of a library as constituting work activity.

The Democratic leadership of the House, together with the Clinton administration, has endorsed a much tougher policy that would require recipients to accept work and training, and would require States to provide welfare recipients with a plan for moving from dependence to self-sufficiency.

Only in such a way will we end not only welfare, but poverty, too. By contrast, the Republican legislation promises only to throw people off welfare, whether or not any effort has been made to prepare them for self-sufficiency. The Republican scheme will mean millions of former welfare recipients without jobs, without homes and without any way to provide for their children. It will mean even more homelessness and huge additional costs for local communities and property taxpayers who will have to support this army of the impoverished through local general assistance programs.

In short, the Republican plan is not to end poverty, but to throw people off welfare. That will solve neither their problems, nor ours. We cannot allow the Republican plan to masquerade as welfare reform.

[From the New Republic, March 13, 1995]

WORKFARE WIMP-OUT

(By Mickey Kaus)

Call me naive, but I almost believed House Republicans when they pledged in their "contract" to reform welfare through "a tough two-years-and-out provision with work requirements." Making welfare recipients work, after all, is wildly popular (if it weren't, it wouldn't be in the contract). Newt Gingrich's political action committee once even listed "workforce" as one of the "Optimistic Positive Governing Words" it recommended to fellow revolutionaries. I figured Gingrich himself had talked so much about the need for a "mandatory requirement of work for everybody" that he might

actually mean it, or at least would be too embarrassed to admit he didn't mean it. I underestimated him.

House Republicans unveiled their welfare reform plan on February 10. Most welfare-watchers expected the new bill to dilute somewhat the contract's work provisions. But few expected the abject abandonment of any credible attempt to require work. Yet that's more or less what Representative Clay Shaw, the lead Republican on welfare reform, announced. The new GOP bill, which has cleared Shaw's subcommittee, is not only weaker on the work issue than President Clinton's welfare proposal, it is in some respects weaker than the current welfare law Republicans deride.

It's certainly a long way from the Contract with America. The contract would have required work by those who had received welfare "for at least twenty-four months." Work meant "an average of not fewer than thirty-five hours per week." No funny business. By 2003, 50 percent of the welfare caseload (which currently consists of more than 5 million households) would be working.

The rationale behind these provisions was obvious: if potential welfare recipients (mainly young women) knew they were really going to have to work after two years, they might think twice before doing the things (mainly becoming single mothers) that put them on welfare in the first place. But Republican governors, it turns out, don't like work requirements much—in part because putting a welfare mother to work costs money (an extra \$6,000, over and above the cost of benefits, to pay for supervisors and day care, according to the Congressional Budget Office).

Why raise state taxes to make welfare recipients perform community-service work—annoying public employee unions in the process—when you can do what Michigan's Republican Governor John Engler does: cycle recipients through inexpensive education and "job search" programs while claiming to be a great reformer? Engler's inflated reputation was recently punctured by journalist David Whitman (see "Compleat Engler," TNR February 6). But that didn't stop him from leading the charge to gut the contract's work requirements when House Republicans decided, after the election, to negotiate with GOP governors over replacing the federal welfare program with a "block grant" to the states.

Engler's mission was successful. Look first at the numbers. The bill unveiled by Shaw requires that, in 1996, states place 2 percent of the welfare caseload "in work activities." The requirement rises to 20 percent—not the contract's 50 percent—by 2003. In meeting this requirement, governors could count the 6 percent of recipients who already work at least part-time. Another 5 percent are already required to work by a 1988 reform law now in effect (which the Republican bill would repeal). That makes 11 percent already working. With a little creative bookkeeping—say, by counting all those who work, even for a few days, over the course of a year—most governors could meet the 20 percent "work activity" standard without doing anything they're not already doing.

But creative bookkeeping won't be necessary, because the Shaw bill lets the states decide what a "work activity" is. It needn't be actual work. Under the bill, a governor could declare, as Engler has, that checking a book out of a library counts as a "work activity." Leafing through the want ads might also qualify, or circulating a résumé or attending a "self-esteem" class.

Republicans criticized President Clinton's ill-fated two-years-and-work plan because it only would have required approximately 500,000 recipients, or about 10 percent of the

caseload, to be in a work program by 2003. But at least in Clinton's plan those 500,000 people would really have to be working. (An additional 900,000 or so would be in education and training programs.) The House Republicans say they will put "at least 1 million cash welfare recipients in work programs by 2003," but the "work" could be completely phony. Workfake, you might call it.

It is all the more likely to be fake because the Shaw bill provides no money to make it real. The Contract with America, in a fit of honesty, earmarked \$9.9 billion to pay for its work programs. The new bill contains no new funds. It does retain language that seems to require states to make recipients work—sorry, "engage in work activities"—after two years. But GOP aids admit this provision is "mostly rhetoric" not meant to be obeyed. There are no penalties for states that ignore it. (If it were obeyed, a lot more than 20 percent of the caseload would wind up "working.")

House Republicans don't even try very hard to pretend they haven't caved on the work issue. It was the price, they argue, of getting the governors to agree to a stingy "block grant," and to accept the contract's cutoff of aid to young unwed mothers. Priorities! Bizarrely, the Newtoids sacrificed the popular parts of the contract ("make 'em work") to save the unpopular parts ("cut 'em off"). It was too much even for some conservatives. Robert Rector, the Heritage Foundation's welfare expert, called the Shaw work provisions a "major embarrassment." Jack Kemp issued a statement warning that Republicans were squandering welfare reform in the pursuit of a decentralized "funding mechanism."

Shaw now says he will try to shore up the work provisions—specifying what counts as a "work activity," for example. But it may be difficult to convince the governors to endorse a major tightening—after all, the chief virtue of Shaw's bill, for them, was that it let them weasel out of the contract's work requirements.

It also may be too late. The premise of the GOP's new state-based welfare bill is that the nation's governors are reformist tigers who need only to be unlashd by the bureaucrats in Washington. But the governors have now shown their hand, and it's obvious to all that they have no appetite for radical reform especially reform based on work. Instead, they have with great effort turned the contract's ambitious plan into a bill that allows them to preserve the status quo. Even the controversial cutoff of young unwed mothers may be mainly an accounting trick. (States can simply pay the benefits out of their "own" funds.) The Republicans' welfare reform is looking less like a menace and more like a fraud.

SAVING LIVES—SETTING STANDARDS FOR DIALYSIS

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. STARK. Mr. Speaker, there are approximately 200,000 Medicare beneficiaries in the Endstage Renal Disease [ESRD] Program, initially established by the Social Security Act §1881. This debilitating disease costs approximately \$10 billion per year translating to a cost of \$51,000 per patient.¹ Dialysis treatment for the ESRD patient is in essence an artificial kidney, and while there have been

multitudes of research papers and numerous conferences addressing the issue of standards for dialysis treatment, the development of these standards has been a slow process. There is presently a need for quality assessment and continuous quality improvement (QA & CQI) within dialysis facilities, reformation of reimbursement schedules, improved data collection, and the introduction of industry-wide treatment standards for the benefit of the patient as well as the providers.

In recent years, numerous studies have shown relatively unexplained and dramatic differences in survival rates between kidney dialysis facilities. While it is often explained that facilities with higher mortality rates also treat sicker patients, this only explains part of the story. Mortality rates between facilities range from 0 to 43 deaths per 100 dialysis years, which means that there are other causes of death attributable to the treatment centers that cannot be explained by how sick their patients are.² To be blunt, some facilities are allowing their patients to die prematurely and needlessly. I believe that there is now a relative consensus among kidney disease experts that if certain quality standards are met during the course of dialysis treatment, a patient has an improved chance of prolonged survival.

Mortality rates for dialysis patients remain consistently greater than 20 percent.^{3,4} Similarly, renal failure has a significant impact on the life expectancies of its victims. According to a recent NIH Consensus Panel, at 49 years of age, the average life expectancy of a patient with ESRD is 7 years, compared with 30 years for an age-matched person without ESRD.⁵

The mortality rates for patients with ESRD are increased for men, whites, elderly, diabetics, and patients with impaired functional status and malnutrition.^{2,3,6-8} Survival is further complicated by the changes within the ESRD patient population and the growing list of comorbidities that contribute to their worsened state of health. Although differences between patient subgroups can result in variable risk factors for death, it seems that dialysis treatment times consistently effect the mortality rates of renal failure patients.

Dialysis functions as an artificial kidney by removing waste products from the blood, and the standard for dialysis should be expressed in terms of the formula KT/V. This formula has been offered as the most effective measurement in determining the adequacy of hemodialysis treatment. Most authors agree that the KT/V must be at least 1.0 or greater to achieve an adequate dose of dialysis, and many have concluded that levels as high as 1.2–1.4 are necessary to reduce mortality.

Therefore, I am introducing a bill today to require the Secretary of HHS to deny payment to a facility after January 1, 1997, if a majority of its patients do not receive a dialysis treatment which sufficiently cleans the blood. Hemodialysis must be supplied to achieve a delivered KT/V of 1.2. This bill will also establish contingencies whereby dialysis facilities could calculate treatment effectiveness using the urea reduction ratio [URR] instead of the KT/V. In simple terms, the URR measures the percentage of waste products cleansed from the blood over the course of a single dialysis treatment. The standards would be set to achieve a delivered URR of ≥ 65 percent. Although the URR does not have the accuracy

¹Footnotes at end of article.