

TESTIMONY OF LISA HEINZERLING

My name is Lisa Heinzerling. I am a Professor of Law at the Georgetown University Law Center. I have also taught at the Yale Law School. I am a graduate of the University of Chicago Law School, where I served as editor-in-chief of the University of Chicago Law Review. After law school I clerked for Judge Richard Posner on the U.S. Court of Appeals for the Seventh Circuit, and then for Justice William Brennan of the U.S. Supreme Court. I was an Assistant Attorney General in the Environmental Protection Division of the Massachusetts Attorney General's Office for several years before coming to Georgetown. My expertise is in environmental and administrative law.

It is ironic that H.R. 1074 is called the **R**egulatory Right-to-Know Act. **I**t is ironic because, if this bill is passed, the public will likely know less rather than more about federal regulation. The bottom-line estimates of costs and benefits required by this bill hide moral and political judgments behind a mask of technical expertise. The public is likely to mistake the estimates' precision for accuracy and their technicality for objectivity. In that case the numbers generated as a result of this bill will be worse than useless. They will threaten the very public awareness the bill purports to embrace.

The danger of public confusion is illustrated by previous reports on the costs and benefits of federal regulation. Previous aggregate and individual estimates of the costs and benefits of federal regulations reflect moral judgments which many Americans may not know are reflected therein **B**ut judgments with which many Americans may disagree. They also rely on dated empirical studies whose only role appears to be to place regulation in the worst possible light. I will highlight only a handful of the crucial but nonobvious assumptions underlying previous reports on the costs and benefits of federal regulation.

Relative worth of present and future lives: Previous reports produced both by the Office of Management and Budget and by private parties have attempted to calculate the benefits of federal rules designed to save human lives. These reports have relied on **B**and their conclusions critically depend on **B**a technique called discounting. For example, a 1996 study by Robert Hahn of the American Enterprise Institute calculated the costs and benefits of 106 federal rules. OMB, in turn, relied heavily on Hahn's study in its most recent report on the costs and benefits of federal regulation. Hahn's study, and thus by extension OMB's, **A**iscounted **@**uture lives saved by 5 percent per year. In other words, the study assumed that the value of saving a life declines 5 percent every year, or that a life saved in the future is worth less than a life saved today. A 5 percent discount rate implies that the death of one billion people 500 years from now is less important than the death of one person today. The logic of discounting also implies that saving the lives of your children in the future is worth less than saving your own life in the present. It would surprise me to learn that most members of the public were aware of this feature of the OMB and Hahn reports. It would also surprise me to learn that most members of the public agreed with the moral judgments embodied in the reports's seemingly technical references to discount rates.

In my own research, I have found that estimates of the costs per life saved of federal regulations increase by as much as 1,000 times just as a result of discounting future lives saved. I have also found that few people **E**ven scholars at the top of the regulatory field **B**seem to be aware of the influence of discounting on widely circulated estimates of regulatory costs.

Valuation of health-related benefits: Another **A**health **@**ssue in previous reports on the costs and benefits of federal regulation has been the valuation of the benefits of health-protective federal rules. For example, OMB's most recent report incorporated an estimate of the benefits of reducing

lead in gasoline. These benefits included the prevention of IQ loss in children. This benefit was measured by considering how much future income a child would have lost as a result of the loss in IQ. Few parents, I think, would regard their child's loss of IQ due to air pollution as adequately captured by the child's loss of future earning capacity. Yet this is one of the many judgments buried in the numbers presented in OMB's report. In this and many other cases, one must read the fine print not only of the OMB report, but also of the reports on which OMB relied, in order to learn what judgments are reflected in the bottom-line estimates of costs and benefits.

Valuation of human life: Previous reports on the costs and benefits of federal regulation have also had to grapple one of the central questions of the modern regulatory state: how much is it worth to save a human life? Analysts at both OMB and private institutions appear to be converging on a range of about \$3 to 7 million for the value of a statistical life. I think it unlikely that most members of the public are aware that existing numerical estimates of the costs and benefits of federal regulation embody a precise figure for the value of a human life. I also think it unlikely that they are aware that OMB has suggested, bizarrely, that the value of a life may go *down* as the involuntary risks of death go *up*. Finally, I think it even more unlikely that members of the public realize how the current consensus value of a human life has been calculated—that is, based on the increased wages workers supposedly accept, voluntarily, in return for increased on-the-job risks, despite research suggesting that people understand risks only poorly, if at all, and despite the fact that many of the risks prevented by federal regulation are imposed involuntarily from without rather than accepted voluntarily from within.

Dated empirical studies: In its reports on the costs and benefits of federal regulation, OMB has relied on a 1991 study by Robert Hahn and John Hird. For its estimates of the costs and benefits

of environmental regulation, the Hahn and Hird study itself relied on earlier studies. Specifically, it relied on studies by a researcher named Myrick Freeman. Freeman's studies were based on empirical work done in the late 1970s — 20 years ago. The Hahn and Hird study therefore does not reflect scientific knowledge developed in the last two decades concerning the human and ecological effects of air pollution. It also reflects a value for human life that OMB acknowledges is 50 percent too low; it includes costs but not benefits for some regulatory programs; and it assumes that air quality would not have gotten any worse than it was in 1970 if Congress had never passed the Clean Air Act. Based on this dated and problematic study, OMB suggested in its most recent report that the net benefits of environmental regulation may be negative. **B**implying, it seems, that we would have been better off during the last three decades if no environmental law had ever been passed in this country. The only support for this striking suggestion is a single report based on data that are 20 years old.

The quantitative analysis required by H.R. 1074 will not increase public understanding of federal regulation. Just the opposite is true. The danger that public misunderstanding will result if H.R. 1074 becomes law is compounded by the bill's provision for **A** peer review **@**f OMB's estimates of costs and benefits. The submission of these estimates to peer review would encourage the false impression that the estimates belong in the province of experts, and that they are generated through a technical, objective, even scientific process. But these estimates contain numerous judgments about who in our society is worth saving, and at what cost. These are not scientific judgments.