

OPINION

LETTERS TO THE EDITOR

Restoring the Lawful Separation of Powers

David B. Rivkin Jr. and Elizabeth Price Foley's "Five Ways to Restore the Separation of Powers" (Dec. 20) advocates the Reins Act (Regulations From the Executive in Need of Scrutiny) providing that "[i]f Congress does not affirmatively approve a regulation, it never goes into effect." This would strip rule-making power from executive-branch agencies. Proposed agency rules would simply be ideas for congressional consideration. Congressional inaction would kill the proposed agency rule. The Reins Act might simply incentivize agencies to announce rules in piecemeal fashion through case-by-case adjudications rather than in rules. This would make compliance more difficult, not less difficult, for regulated parties.

Ask yourself this: Would President Donald J. Trump (or any president) support (or veto) the diminu-

tion of executive-branch power entailed by the Reins Act?

The authors mention the 1996 Congressional Review Act (CRA), which empowers the new 115th Congress to overrule some recent Obama-era regulations. But only regulations issued after June 2, 2016, would be CRA-reviewable by the 115th Congress. Older Obama agency rules, including many on the Republicans' "to-undo" list, are beyond the reach of the CRA. The proposed Midnight Rules Relief Act would allow Congress to consider and disapprove several agency rules at once.

The authors recommend that Congress eliminate judicial deference to agency interpretations of constitutional, statutory and regulatory provisions. The statutes enacted by Congress might better indicate how much deference it intends to accord to executive-branch interpretations. And it remains to be seen whether President Trump and the Republican-dominated 115th Congress will favor legislation stripping power from the executive branch and giving more power instead to the federal courts, which now contain a large number of Obama-appointed judges.

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