Institute *for*
Policy Integrity
NEW YORK UNIVERSITY SCHOOL OF LAW

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NEW DATA REVEALS STARK TRENDS IN LITIGATION OVER FEDERAL REGULATIONS

Updated analysis of every major rule challenged since 1996 shows increases in lawsuits and forum shopping combined with decreases in wins for federal agencies.

The Institute for Policy Integrity at NYU School of Law has released a major update to its comprehensive study tracking all legal challenges to "major rules" issued by federal agencies. The updated analysis now includes data on the Biden Administration, providing the most complete picture to date of how federal regulations have fared in court across nearly three decades.

The study covers all 2,321 major rules issued from 1996 (when the Congressional Review Act created the "major rule" designation) through the end of the Biden Administration. The updated findings reveal that agency win rates have continued their decline, with both the Trump and Biden Administrations achieving significantly lower success rates than their predecessors. The Biden Administration successfully defended only 41% of its major rules and the first Trump Administration successfully defended only 32%, both dramatically lower win rates than earlier administrations.

The percentage of rules that face legal challenges has also increased substantially over time. While only 17% of the major rules issued in the second term of the Clinton Administration were challenged in court, this figure rose to 29% for the Biden Administration. The Environmental Protection Agency remains the most frequently challenged agency, with 78% of its major rules ending up in litigation. These numbers have increased over time, with 90% of the Environmental Protection Agency's rules from the Obama Administration onwards ending up in court.

The study also documents continued growth in "forum shopping," with litigants increasingly abandoning traditional venues like the D.C. Circuit in favor of courts perceived as more favorable to their arguments. Under Presidents Clinton and George W. Bush, nearly two-thirds of major rule challenges were filed in D.C. courts. This fell to just 22% under the Biden Administration, with 40% of challenges instead filed in the Fifth Circuit, where the Administration lost nearly 80% of cases. Similar, although somewhat less pronounced, forum-shopping trends were seen during the first Trump Administration, with 32% of challenges filed in the Second and Ninth Circuits, and lower win rates in those circuits.

Don Goodson, Executive Director at the Institute for Policy Integrity and a co-author of the study, released the following statement:

"This updated analysis paints a sobering picture of how federal regulations are faring in the courts. We're seeing a fundamental shift where agencies are now more likely to lose than win, regardless of which party controls the White House. These declining win rates may, in part, be attributable to increased forum shopping, which appears to be transforming the legal landscape for federal regulations. These trends raise important questions about how our system of judicial review for regulations is functioning."

Goodson and others involved with the study are available for interviews on these issues.

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The Institute for Policy Integrity *at New York University School of Law is a non-partisan think tank dedicated to improving the quality of government decisionmaking. The institute produces original scholarly research in the fields of economics, law, and regulatory policy; and advocates for reform before courts, legislatures, and executive agencies.*