Congressional Record Statement
Senator Alex Padilla
May 19, 2025

Objection to Proceeding to Nominations for the U.S. Environmental Protection Agency

Mr. PADILLA. Mr./Madam President, I must object to the Senate proceeding to any of the four nominations pending on the Senate's Executive Calendar for the U.S. Environmental Protection Agency (EPA).

This objection is a direct result of the agency's cynical attempt to weaponize the Congressional Review Act (CRA) by attempting to submit as "rules" three waivers issued to the State of California under the Clean Air Act (CAA). If this attempt is successful, the consequences will be far-reaching, not only for our clean energy economy, the air our children breathe, and for our climate, but for the future of the CRA and for the Senate as an institution.

The EPA has issued over 100 individual waivers or waiver-related decisions to California pursuant to the waiver authority that Congress passed with overwhelming bipartisan support in 1967. During Administrations of both parties, for over fifty years, the EPA has never once submitted these waivers to the Government Accountability Office (GAO) or Congress as "rules" because the agency knew that they were not rules. Even as EPA Administrators denied or attempted to withdraw a previously granted waiver, as under the George W. Bush and prior Trump Administrations, the EPA explicitly stated that their actions denying or withdrawing a waiver did not qualify as a rule.

During the first Trump Administration, in 2019, the EPA attempted to use administrative procedures to rescind a waiver. The current Trump Administration could pursue its own strategy from 2019 and again attempt to rescind these waivers administratively. Instead, it is choosing a much more reckless track, with far-reaching consequences for future Senate procedures. Perhaps because the EPA is firing so many of its own staff experts, they worry the agency does not have the capacity to take an administrative route, so they must seek a made-up shortcut.

In 2022, a U.S. Senator sought GAO's legal opinion as to whether EPA's restoration of a prior waiver was a rule for the purposes of the CRA. GAO's legal opinion was clear: no, California's waivers are not rules. Further, GAO found that even if the waivers were somehow rules, they would *still* not be covered by the CRA because they would be rules of particular applicability which are not covered under the CRA.

Only now, in 2025, the EPA clumsily attempted – multiple times – to submit three of California's waivers to Congress. One might ask why they only submitted three of the six waivers issued under the prior Administration if the agency's viewpoint is suddenly that the California waivers are rules. EPA's press release announcing their intent to transmit the three California waivers to Congress makes clear that their intent is to have Congress overturn these three waiver decisions.

And by attempting to use the CRA, they seek expedited procedures and a majority vote, instead of the Senate's usual cloture procedure and 60-vote threshold.

Thankfully, political appointees at executive branch agencies do not have the ability to determine questions of privilege on the floor of the Senate, or the Senate Floor would become a mockery. That role belongs to the nonpartisan, expert Senate Parliamentarian. In this case, the Senate Parliamentarian has made a very clear determination that resolutions related to California's CAA waivers are NOT privileged under the CRA, and can only be considered under regular order, and thus subject to cloture.

Importantly, the Parliamentarian's determination stands on the same foundation that has governed similar CRA determinations for nearly 20 years. It has long been established and respected by both parties that if an agency fails to submit a matter that is a "rule" under the CRA (whether by mistake or by an attempt to avoid Congressional authority), that rule does not automatically escape scrutiny under the CRA. The federal agency doesn't get to be the final arbiter of what counts as a rule. Instead, any member may go to GAO and ask for a legal opinion. If the GAO finds that the matter is a rule under the CRA's definition, then the Parliamentarian determines if the relevant resolutions can be considered under the CRA's expedited procedures if they meet the rest of the criteria.

Here, for the first time in the history of the CRA, an agency submitted matters that they *knew* were not rules. Some of my Republican colleagues are now arguing that the Parliamentarian should have no role to limit this partisan gamesmanship, and the Senate should throw out the rulebook and overturn the Parliamentarian.

Why would we only look to the GAO and the Parliamentarian when an agency refuses to submit something to dodge the CRA, and not also when an agency submits something in order to exploit the CRA? Just as the Parliamentarian determined that there should be a check against an agency that tries to dodge the CRA by withholding a rule, the Parliamentarian has determined there should be a check when an agency tries to exploit the CRA by submitting something that isn't actually a rule. This ensures the CRA process can't be abused in either direction, and the Parliamentarian's decision protects the legislative branch from executive overreach.

But if the Trump EPA and Senate Republicans are successful at this ploy, the Senate will have no choice but to accept this as status quo in the future. This would grant agencies unchecked control over the Senate floor – an unprecedented encroachment by the executive branch into the Senate's internal operations.

The current Administration could submit any type of agency action from prior Administrations going back to 1996 to Congress and trigger the CRA's expedited procedures for related resolutions of disapproval. The Chairman of the Federal Communications Commission could submit broadcast licenses and other approvals for media outlets when he disapproves of their news coverage. The Secretary of Health and Human Services could submit approvals by the

Food and Drug Administration that he disagrees with, such as vaccines, birth control, or mifepristone. Numerous agencies could submit decisions related to specific organizations that are targets of the President's political retribution campaigns.

None of these actions are rules, which is why they've never been submitted to Congress as rules. But if my Republican colleagues open this door and overturn the Parliamentarian's wise safeguards on this type of abuse, there would be no practical limit, and the Senate could be forced to vote repeatedly on such matters that are clearly not "rules" notwithstanding the plain language of the CRA.

Further, a future Democratic Administration could respond in kind. When it comes to the environment and climate issues, future agency heads could submit individual fossil fuel project leases, loan agreements, or permitting approvals for congressional review, arguing that these are clearly highly significant agency actions with wide-ranging impacts. LNG export terminals and major interstate and cross-border pipelines would be fair game. In other areas, there are many Trump Administration actions – from immigration to foreign policy to unilateral budget and staff cuts by DOGE – for which a future administration and Congress could use the CRA.

Since this cynical attempt to weaponize the CRA was triggered by the administration's political leadership at the EPA, at the urging of their Big Oil allies, I must object to proceeding to any nominations for the EPA pending on the Senate's executive calendar. I will continue to object until the agency withdraws its false submissions to Congress or the Majority Leader commits not to overturn the Parliamentarian's determination on this matter.