PACIFIC LEGAL FOUNDATION

MEANINGFUL LEGISLATIVE OVER-SIGHT OF REGULATORY AGENCIES

THE PROBLEM: TOO OFTEN, REGULATORY AGENCIES OPERATE WITHOUT ACCOUNTABILITY

Many regulatory agencies lack meaningful legislative oversight. Without such oversight, it is all too easy for these agencies to enact substantive rules that infringe on the liberty and property of private persons. It is fundamentally the job of the legislature to write laws. Agencies may act to fill in minor gaps in legislative language, but this gap-filling authority should not be interpreted so broadly that the agencies grab lawmaking authority from legislatures. In many states, though, agencies have exceeded the bounds of this minor gap-filling authority and usurped the legislature's proper role.

THE SOLUTION: ENSURE LEGISLATORS HAVE EFFECTIVE TOOLS TO HOLD REGULATORS ACCOUNTABLE

Legislators need effective tools to make sure that regulatory agencies stay within the boundaries of the authority granted by the legislature.

1. **Establish a Legislative Joint Committee on Administrative Rules (JCAR).** A JCAR can conduct systematic review of administrative rules. While generally any JCAR is better than no JCAR, some JCARs have more practical and powerful tools than others.

   For oversight to be meaningful, legislators need actionable information and analysis throughout the year when agency rules are proposed and issued. A JCAR that focuses on regulatory review and which meets year-round can keep pace with all the rules issued by regulatory agencies. Without such a JCAR, many rules will escape oversight entirely.

   The legislators who serve on a JCAR are also directly voted into office by the people and therefore accountable to voters; the bureaucrats who serve in regulatory agencies generally are not elected officials. Because of legislators' democratic accountability, they are more likely to be responsive to the views of the people.

2. **Enact a Targeted Legislative Review Act.** This provides legislators with tools to make sure that executive agencies do not reach beyond the bounds of their statutorily granted authority. Among the most important of these tools is the creation of a Legislative Economic Analysis Unit to provide independent and reliable economic analysis of regulatory agencies' rules. The Legislative Economic Analysis Unit would determine if rules issued by executive agencies are "major rules" based on their annual effects on the economy, significant effects on competition, or significant effects on social and cultural relations. Such rules may not go into effect unless the legislature ratifies the rule or the expiration of 60 legislative days after submission to the legislature without a final vote in both chambers on the rule.