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TESTIMONY

ADMINISTRATIVE RULE REFORM IN OKLAHOMA

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Oklahoma Senate Rules Committee; Oklahoma House Committee on Administrative Rules

September 22, 2020

Chair Jech, Chair Gann, and members of the committees:

Good morning. Thank you for the opportunity to speak today regarding the joint study being produced on Oklahoma administrative rules reform. My name is James Broughel, and I am a senior research fellow at the Mercatus Center at George Mason University in Arlington, Virginia, and an adjunct professor at the Antonin Scalia Law School at George Mason University. My research focuses on state regulatory institutions, the sources of economic growth, and the economic analysis of regulations.

I will be touching on three topics today:

1. Regulation is necessary in some cases. It can be justified to protect health, safety, and the environment. The accumulation of regulation, however, has a real cost, which should be kept in mind.
2. The Mercatus Center is leading a project to quantify regulation across the 50 states using modern technology, in an effort to provide answers to long-held questions. I will discuss how much regulation exists across the states and how Oklahoma compares to some of its neighbors.
3. There are innovative efforts to reform regulatory procedures in several states right now, and I will emphasize three reforms that stand out: red tape reduction efforts, periodic review requirements, and economic analysis requirements.

THE COSTS OF REGULATORY ACCUMULATION

The accumulated body of regulations in a state has an effect on the economy that is greater than the sum of the effects of each individual regulation.[1] The effect of regulation on the economy can be thought of as akin to dropping pebbles in a stream.[2] The first pebble is insignificant, a thousand pebbles may slow the flow, but a hundred thousand pebbles could dam the stream even when that last pebble, by itself, also has an insignificant effect.

1. James Broughel, *Regulation and Economic Growth: Applying Economic Theory to Public Policy* (Arlington, VA: Mercatus Center at George Mason University, 2017).
2. Michael Mandel and Diana G. Carew, "Regulatory Improvement Commission: A Politically Viable Approach to US Regulatory Reform" (Washington, DC: Progressive Policy Institute, 2013).

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The empirical connection between regulation and economic growth is well documented in the peer-reviewed academic literature:

- A 2013 study in the *Journal of Economic Growth* estimates that federal regulation slowed the growth of the US economy by 2 percentage points per year on average from 1949 to 2005.[3] This estimate suggests that, had regulation remained at its 1949 level, 2011 GDP would have been about $39 trillion larger, or 3.5 times larger, than it actually was.
- A study published in the *Review of Economic Dynamics* estimates that economic growth has been slowed by 0.8 percentage points per year on average by federal regulations implemented since 1980.[4] That number suggests that had the federal government imposed a cap on regulation levels in 1980, then by 2012 the economy would have been $4 trillion larger, which amounts to $13,000 per person in the United States.
- Researchers at the World Bank estimate that the economies of countries with the least burdensome business regulations grow 2.3 percentage points faster annually than countries with the most burdensome regulations.[5]
- A review of the peer-reviewed studies that rely on measures of regulation constructed by the World Bank and Organisation for Economic Co-operation and Development finds an apparent consensus that entry regulation and anticompetitive product and labor market regulations are generally harmful to productivity and growth.[6]

A lost percentage point or two in annual growth may not sound like a lot, but consider this: Oklahoma's real GDP grew at a rate of 0.3 percent from the first quarter of 2019 through the first quarter of 2020.[7] This was better than many states, many of which saw their economies shrink during this period as a result of the coronavirus pandemic. However, other states, such as Texas, were growing as fast as 2.2 percent,[8] highlighting that faster growth is indeed possible. Over the past decade, Oklahoma real GDP grew at an average annual rate of 2.4 percent, while the national average was 2.3 percent.[9]

If the past decade is a good indicator, it will take about 30 years for the state's economy to double in size. Growing at about the average rate for the nation isn't bad. But consider this: if Oklahoma's economy were to grow 4 percent per year consistently, it would take just 18 years for its real GDP to double. To put this in context, after a century, an economy growing at 4 percent a year will be five times the size of an economy growing at 2.3 percent a year. This is roughly the difference between the US economy today and the economy in 1963.

3. John W. Dawson and John J. Seater, "Federal Regulation and Aggregate Economic Growth," *Journal of Economic Growth* 18, no. 2 (2013): 137–77.
4. Bentley Coffey, Patrick A. McLaughlin, and Pietro Peretto, "The Cumulative Cost of Regulations," *Review of Economic Dynamics*, published ahead of print (April 2, 2020), https://doi.org/10.1016/j.red.2020.03.004.
5. Simeon Djankov, Caralee McLiesh, and Rita Maria Ramalho, "Regulation and Growth," *Economics Letters* 92, no. 3 (2006): 395–401.
6. James Broughel and Robert Hahn, "The Impact of Economic Regulation on Growth: Survey and Synthesis" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, August 2020).
7. Bureau of Economic Analysis, "SQGDP1 Gross Domestic Product (GDP) summary, quarterly by state" (dataset), accessed September 1, 2020, https://apps.bea.gov/iTable/iTable.cfm?reqid=99&step=1#reqid=99&step=1.
8. Bureau of Economic Analysis, "SQGDP1."
9. Bureau of Economic Analysis, "BEARFACTS" (Oklahoma), March 24, 2020, https://apps.bea.gov/regional/bearfacts/pdf.cfm?fips=40000&areatype=40000&geotype=3.

Before the pandemic, some states were achieving rates of growth around 4 percent annually.[10] Faster growth would bring increased employment opportunities and higher wages for Oklahomans and improve living conditions for state residents now and in the future. Most importantly, higher rates of growth mean that overall wellbeing for society eventually increases, because at some point an economy growing faster than another will be so much wealthier that it can be considered objectively better off.[11]

INTRODUCING STATE REGDATA

Generally speaking, state regulatory codes are too large for any single individual to read from start to finish. The online version of the *Oklahoma Administrative Code* (OAC) contained 9.2 million words in mid-2020.[12] It would take an ordinary person about 512 hours—or almost 13 weeks—to read the entire OAC, assuming the person reads regulations 40 hours per week as a full-time job.[13]

At the Mercatus Center, my colleagues and I have launched State RegData, a first-of-its-kind effort to quantify regulation across the 50 states.[14] State RegData uses text analysis technology to scan through bodies of legal text—in this case, state administrative codes. Modern technology is allowing us to overcome barriers traditionally associated with parsing millions of words of regulatory text.

As part of our project, we pull key information from state codes, including word counts and counts of regulatory restrictions, which are instances of the terms *shall*, *must*, *may not*, *prohibited*, and *required*. These restrictions can signify legal constraints and obligations of various kinds.[15] Using machine learning algorithms, we are also able to estimate which industries are most targeted by state regulation and assess which types of regulation are most prevalent.

Oklahoma had 142,604 regulatory restrictions in its administrative code as of mid-2020.[16] To put that in context, the average state has roughly 135,000 restrictions, putting Oklahoma a little above average. Oklahoma has about 100,000 more restrictions in its regulatory code than Idaho, the least regulated state by our measure. It also has considerably more regulations than some of its neighbors, such as Kansas, Missouri, and New Mexico, although not as much regulation as Texas or Colorado (see figure 1). A policy brief attached to this testimony provides more in-depth analysis comparing Oklahoma to other states in the southwest region of the United States.

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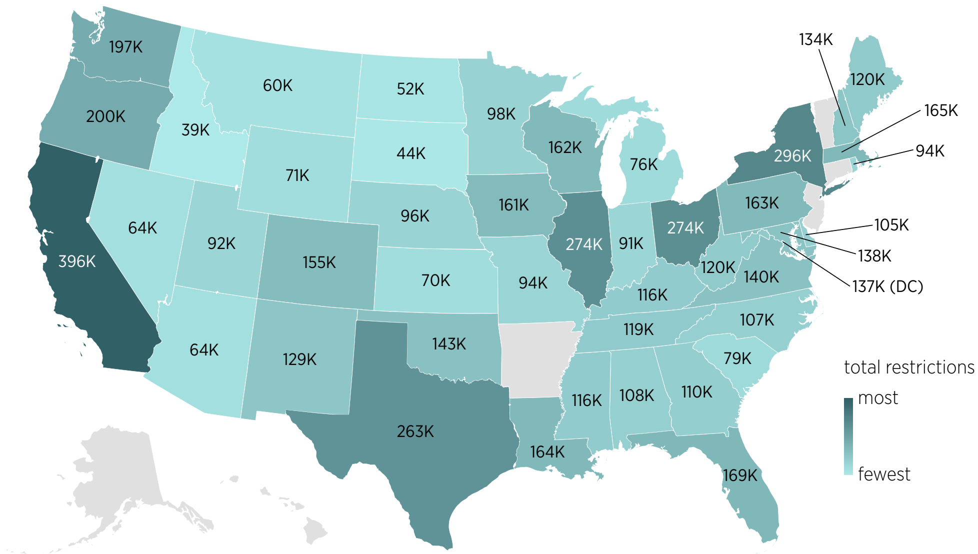
10. For example, Texas and Utah both grew at an annual rate of 4.2 percent from Q4 of 2018 to Q4 of 2019. Washington grew at a rate of 3.7 percent.
11. Tyler Cowen, *Stubborn Attachments: A Vision for a Society of Free, Prosperous, and Responsible Individuals* (San Francisco, CA: Stripe Press, 2018).
12. Patrick A. McLaughlin et al., State RegData 2.0 (dataset), QuantGov, Mercatus Center at George Mason University, Arlington, VA, accessed July 2020, at https://quantgov.org/state-regdata/.
13. This assumes the person reads 300 words per minute.
14. McLaughlin et al., State RegData 2.0 (dataset).
15. Restrictions can also occur in legal text for other purposes, such as for definitional purposes. At times, restrictions may relate to government employees, rather than to the private sector.
16. McLaughlin et al., State RegData 2.0 (dataset).

FIGURE 1. STATE-LEVEL REGULATORY RESTRICTIONS



Source: James Broughel and Patrick McLaughlin, "Quantifying Regulation in US States with State RegData 2.0," August 31, 2020.

The RegData technology (from which State RegData derives) is now well established in the peer-reviewed economics literature. Recent research utilizing RegData has studied the connection between regulation and employment growth,[17] startup rates,[18] firm size,[19] wages and income inequality,[20] prices,[21] and even corruption.[22]

In addition to being useful in academic research into the causes and consequences of regulation, we believe that State RegData has a practical policy use as well. In recent years a number of states have instituted red tape cutting reforms and measured their progress using Mercatus data tools (or metrics inspired by Mercatus data tools). Four of the six states that saw the largest percentage reduction in regulatory restrictions between the releases of version 1.0 and version 2.0 of State RegData are states

17. James B. Bailey and Diana W. Thomas, "Regulating Away Competition: The Effect of Regulation on Entrepreneurship and Employment," *Journal of Regulatory Economics* 24, no. 2 (2017): 243–59.
18. Nathan Goldschlag and Alex Tabarrok, "Is Regulation to Blame for the Decline in American Entrepreneurship?" *Economic Policy* 33, no. 93 (2018): 5–44.
19. Dustin Chambers, Patrick A. McLaughlin, and Tyler Richards, "Regulation, Entrepreneurship, and Firm Size" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, April 2018).
20. James B. Bailey, Diana W. Thomas, and Joseph R. Anderson, "Regressive Effects of Regulation on Wages," *Public Choice* 180 (2019): 91–103; Dustin Chambers, Patrick A. McLaughlin, and Laura Stanley, "Barriers to Prosperity: The Harmful Impact of Entry Regulations on Income Inequality," *Public Choice* 180, no. 1 (2019): 165–90.
21. Dustin Chambers, Courtney A. Collins, and Alan Krause, "How Do Federal Regulations Affect Consumer Prices? An Analysis of the Regressive Effects of Regulation," *Public Choice* 180, no. 1 (2019): 57–90.
22. Oguzhan Dincer and Burak Gunalp, "The Effects of Federal Regulations on Corruption in U.S. States," *European Journal of Political Economy* 65, published ahead of print (December 2020), https://doi.org/10.1016/j.ejpoleco.2020.101924.

that have cited Mercatus research or used State RegData metrics to guide their red-tape-cutting efforts.[23] These states are Idaho,[24] Kentucky,[25] Missouri,[26] and Nebraska.[27]

These reforms have been primarily led by governors trying to review the stock of rules in their states to identify outdated or unnecessary regulatory clutter. For example, Idaho Governor Brad Little issued an executive order kicking off a red-tape-cutting effort in early 2019.[28] Governor Kevin Stitt of Oklahoma also issued an executive order in early 2020, which references Mercatus data.[29] Ohio passed regulatory reform legislation in 2019 that refers to metrics similar to the RegData restriction count.[30]

THREE REFORMS WORTH CONSIDERING

A number of states have engaged in innovative regulatory reform efforts in the past several years. These states can serve as a model for further Oklahoma reforms. However, even the states leading the charge in this area could go further. In that sense, Oklahoma is well positioned to become a leader in regulatory reform and a model for other states. To that end, Oklahoma policymakers should consider the following three reforms.

RED TAPE REDUCTION

In recent years, a number of states, including Oklahoma, have been experimenting with the creation of a regulatory budget, which places caps on the overall amount of regulation agencies can issue.[31] Most observers acknowledge that it would not be sensible to allow regulatory agencies unlimited license to spend taxpayer dollars without constraint—that's why fiscal budgets exist. But the same lessons are only beginning to carry over to regulations, as agencies are in a sense given free rein to "spend" seemingly unlimited amounts of public money through regulation.

A regulatory budget helps address this issue, and two states in particular are making significant headway in this area. In 2018, Virginia passed a law called the Regulatory Reduction Pilot Program.[32] The law first requires two state agencies, the Department of Criminal Justice Services and the Department of Professional and Occupational Regulation, to produce a count of all regulatory requirements under their purview. The agencies published their initial counts in 2018 and had roughly 6,000 requirements between them.[33] After that, the agencies were given three years to reduce their requirements by 25 percent, or roughly 1,200 requirements. In October of 2019, the two agencies announced that they have each cut 10 percent of existing requirements, meaning that they were ahead

23. James Broughel and Patrick A. McLaughlin, "Quantifying Regulation in US States with State RegData 2.0," Mercatus Center at George Mason University, August 31, 2020.
24. Idaho Exec. Order No. 2019-02 (January 21, 2019).
25. James Broughel, "Tracking the Progress of Kentucky's Red Tape Reduction Initiative" (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, June 2019).
26. Justin D. Smith, "Regulatory Reform at the State Level: A Guide to Cutting Red Tape for Governors and Executive Branch Officials," *Business, Entrepreneurship & Tax Law Review* 3, no. 2 (2019): 276.
27. Nebraska Exec. Order No. 17-04 (July 6, 2017).
28. Idaho Exec. Order No. 2019-02 (January 21, 2019).
29. Oklahoma Exec. Order No. 2020-03 (February 3, 2020).
30. H. B. 166, 133rd Gen. Assemb. (Ohio 2019), title 1, § 121.95(B): "a state agency shall review its existing rules to identify rules having one or more regulatory restrictions that require or prohibit an action and prepare a base inventory of the regulatory restrictions in its existing rules. Rules that include the words 'shall,' 'must,' 'require,' 'shall not,' 'may not,' and 'prohibit' shall be considered to contain regulatory restrictions."
31. James Broughel, "The Mighty Waves of Regulatory Reform: Regulatory Budgets the Future of Cost-Benefit Analysis," *Business, Entrepreneurship & Tax Law Review* 3, no. 2 (2019): 206–23.
32. H. B. 883, Gen. Assemb., Reg. Sess. (Va. 2018).
33. Letter from Aubrey L. Layne Jr., Va. Secretary of Finance, to members of the Va. House of Delegates and Senate (Oct. 22, 2018).

of schedule.[34] Sometime in 2020, all state agencies subject to the state Administrative Process Act are expected to report a count of their own requirements. Eventually, the pilot program may be extended to require reductions in regulatory burdens at these other agencies.[35]

Ohio passed similar legislation in July of 2019.[36] That legislation requires that departments across the state produce a count of their regulatory restrictions (called a "base inventory"). This initial count will then form the basis for tracking the progress of a deregulatory effort, which mandates the removal of two regulatory restrictions for each new one added until mid-2023.[37] Oklahoma also has an ongoing red tape reduction effort in place called the Break the Tape Initiative.[38] This initiative followed an executive order issued by Governor Stitt that required a review of regulatory restrictions, imposed a "one-in, two-out" requirement for regulations, and set a 25 percent across-the-board reduction goal for regulatory restrictions.[39] The Oklahoma order can be considered a best practice. However, the legislature should consider whether locking these reforms in place through legislation would prove more effective and enduring than the current approach.

PERIODIC REVIEW

Most states have an administrative procedure act in place, which establishes a formal process for creating new regulations. However, historically far less attention has been devoted to designing a process for periodically reviewing regulations once they are in place. A red tape reduction effort, as discussed earlier, is one way to undergo a review of regulations. However, two other methods are also worth considering: sunset provisions and mandated rule repeals.

One way to encourage periodic review is to force regulations to go through the rulemaking process anew, which can be done by incorporating sunset provisions into the regulations. Sunset provisions are automatic expiration dates attached to laws. So, for example, if a seven-year sunset were attached to a regulation, the regulation would automatically expire seven years after enacted. If the regulating agency felt it was worth it to keep the regulation, the agency would then have to repromulgate the rule as if it were a new regulation, and the rule would then be subject to the scrutiny new regulations receive, which often includes comments from the public, economic analysis, and sometimes third-party review by the legislature or an executive office.

New Jersey and Indiana are two states that attach seven-year sunsets to administrative rules.[40] North Carolina requires that rules be reviewed every 10 years.[41] (Some other states, such as Colorado, Idaho, Tennessee, and Utah, have one-year sunset provisions where the legislature votes on whether rules are extended or not. In practice, these sunsets tend to operate more like a legislative review process for new regulations than a periodic review requirement for rules that have existed on the books for some time.)

Periodically repealing regulations is another potential model, similar to sunset provisions. Idaho governor Brad Little signed an executive order in January 2020 requiring that state agencies review

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34. Virginia Secretary of Finance, *Progress Report on the Regulatory Reduction Pilot Program*, October 1, 2019, https://rga.lis.virginia.gov/Published/2019/RD403.
35. According to a recent news article, "Eventually, the plan is to drop 25% of regulatory requirements, and to roll out a similar effort for another 41 state agencies." Dave Ress, "Shad Plank: A Quiet Virginia Regulatory Reform Makes Progress," *Daily Press*, October 8, 2019.
36. James Broughel, "A Dark Day for Red Tape in the Buckeye State," *Wall Street Journal*, August 3, 2019.
37. H. B. 166, 133rd Gen. Assemb. (Ohio 2019).
38. Break the Tape (website), accessed September 1, 2020, https://breakthetape.ok.gov/.
39. Oklahoma Exec. Order No. 2020-03 (February 3, 2020).
40. N.J. REV. STAT. § 52:14B-5.1 (2020); Indiana Code § 4-22-2.5-2 (2020).
41. North Carolina Gen. Stat. § 150B-21.3A.

their rules on a five-year staggered basis.[42] The order directs agencies to issue rules formally repealing existing rule chapters; and if an agency wants to keep a chapter, it must refile it as a new rule, thereby subjecting it to the public commenting process as well as to new economic analysis requirements. Governor Little issued a similar order during the coronavirus pandemic, requiring agencies to repeal any regulations waived or suspended during the pandemic.[43] That order set up a process by which agencies could appeal to the state budget department if they felt there was a compelling reason a rule should be kept. Notably, Idaho's review requirements have been instituted through executive actions, but they could be made more permanent through legislation.

The benefit of forcing rules to be sunset or periodically repealed is that it switches the burden of proof and forces the regulating agency to justify why regulations should be maintained. Without such a process, regulations are kept by default unless regulators repeal them voluntarily. In general, this is unlikely to happen, which explains why 68 percent of federal regulations have never been updated.[44] With a sunset or periodic repeal requirement, regulations are discarded by default unless regulators offer sound reasons to keep them. Clutter is thereby removed quickly and easily, and regulations that are kept are subjected to the same scrutiny new regulations receive.

ECONOMIC ANALYSIS

The effectiveness of any red-tape-cutting effort or periodic review requirements will be limited if the effort is not supplemented by high-quality information about the effectiveness of various regulations and programs. Without such evidence, policymakers will often opt to maintain the status quo, as this is the path of least resistance. The federal government has experimented with requirements for cost-benefit analysis for regulations going back to the 1970s, and such analysis generally enjoys considerable bipartisan support.[45] However, the federal process leaves a lot to be desired. One reason is that agencies analyze their own rules, which represents an obvious conflict of interest, since regulators have strong incentives to produce analysis flattering of their own programs while downplaying any negative aspects.

As a result, Oklahoma may want to look at states that have more independent analytical institutions. West Virginia is in the process of creating a new Office of Regulatory and Fiscal Affairs within a committee in the legislature. Although the office is still being created, it is likely to look a lot like how the office was envisioned in bipartisan legislation that passed both chambers in 2020 (but was not signed into law).[46] The benefit of this kind of office is that regulatory analysis will be produced separately from the agencies that regulate and will be subject to oversight by both parties in the legislature.

Similarly, New Hampshire requires a fiscal impact statement for proposed regulations.[47] In addition to looking at the budgetary impacts of rules on state government finances, the analysis also includes some assessment of costs and benefits to the public. The Joint Legislative Committee on Administrative Rules in the state reviews regulations and the accompanying analysis,[48] meaning that both the production and the review of analysis take place outside of the executive branch, in the legislative branch.

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42. Idaho Exec. Order No. 2020-01 (2020).
43. Idaho Exec. Order No. 2020-13 (2020).
44. William D. Eggers and Mike Turley, *The Future of Regulation: Principles for Regulating Emerging Technologies* (New York City: Deloitte Center for Government Insights, 2018).
45. James Broughel and Patrick A. McLaughlin, "Principles for Constructing a State Economic Analysis Unit" (Mercatus Policy Primer, Mercatus Center at George Mason University, Arlington, VA, 2018).
46. H. B. 4645, 84th Leg, 2nd Sess. (W. Va. 2020).
47. N.H. Rev. Stat. Ann. § 541-A:5 (2020).
48. N.H. Rev. Stat. Ann. § 541-A:13(IV)(d).

It is also important to invest in the personnel capable of producing analysis competently. In other words, sometimes it takes money to save money. If analysis saves the economy even a fraction of a percentage point of growth, these savings could pay for the analyst salaries many times over. Agencies in Oklahoma currently have some minimal requirements for producing Rule Impact Statements.[49] These requirements may be insufficient, however, given that that the analysis is currently produced by regulatory agencies, and it is unclear whether the analysis is being produced by trained analysts. Oklahoma legislators might wish to examine the examples of West Virginia and New Hampshire more closely as a potential model for more independent production of analysis.

CONCLUSION

If Oklahoma can consistently increase its economic growth rate each year, the opportunities available to state residents will increase, to their benefit. This testimony has presented three reforms that would represent smart steps toward achieving this goal. These are red tape reduction reforms, periodic review requirements, and economic analysis requirements.

Oklahoma is well-positioned to adopt any or all of these reforms, especially given the priority Governor Stitt's administration is giving to regulatory reform. Actions from the legislature would likely prove more powerful and enduring than executive actions, however.

Thank you again for your time and for the opportunity to submit this testimony. I am happy to answer any questions you may have.

ATTACHMENTS (2)

James Broughel and Kofi Ampaabeng, "A Snapshot of Regulation in Southwest US States" (Mercatus Policy Brief)

James Broughel, "Oklahoma Can Be a Top 10 State for Regulation" *Oklahoman*, April 9, 2019

49. OKLA. STAT. TIT. 75, § 303(D) (2020).

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POLICY BRIEF

A Snapshot of Regulation in Southwest US States

James Broughel and Kofi Ampaabeng

September 2020

This policy brief summarizes and contextualizes the volume of regulatory restrictions in four southwestern states using RegData, an innovative tool from the Mercatus Center at George Mason University. These states are officially classified as the Southwest by the Bureau of Economic Analysis (BEA). In 2012, the Mercatus Center launched RegData to quantify regulation at the federal level in the United States. RegData uses text analysis and machine learning algorithms to convert legal text into quantitative data. Using these data, researchers quantify the number of regulatory restrictions in a jurisdiction. Regulatory restrictions are the primary unit of measurement of regulation used by RegData and are defined as instances of the terms *shall*, *must*, *may not*, *prohibited*, and *required* appearing in laws. Regulations by nature impose restrictions on regulated individuals and businesses, either by requiring or prohibiting some activities. These terms approximate the restrictions that regulators impose on a jurisdiction.[1]

In 2019, the Mercatus Center launched State RegData, which extended the technology underlying RegData to state administrative codes. This allowed for aggregate levels of regulation across the various states to be compared to one another. This report takes a deeper dive into the data generated by the various RegData projects to better understand the regulatory landscape in the Southwest. Specifically, this report summarizes data for four states: Arizona, New Mexico, Oklahoma, and Texas. Using data from State RegData version 2.0, as well as other sources, the report compares these states' regulatory environments along a variety of dimensions, including overall word counts in state administrative codes, restrictiveness of regulations in state administrative codes, restrictions across industries, federal regulation affecting the various states, and population-adjusted restrictions.

The analysis presented here provides new insights into the size and scope of regulation across the Southwest, which should prove useful to academics, policymakers, and even the regulators themselves as these groups seek to understand the consequences of the regulatory state in America.

The views presented in this document do not represent official positions of the Mercatus Center or George Mason University.

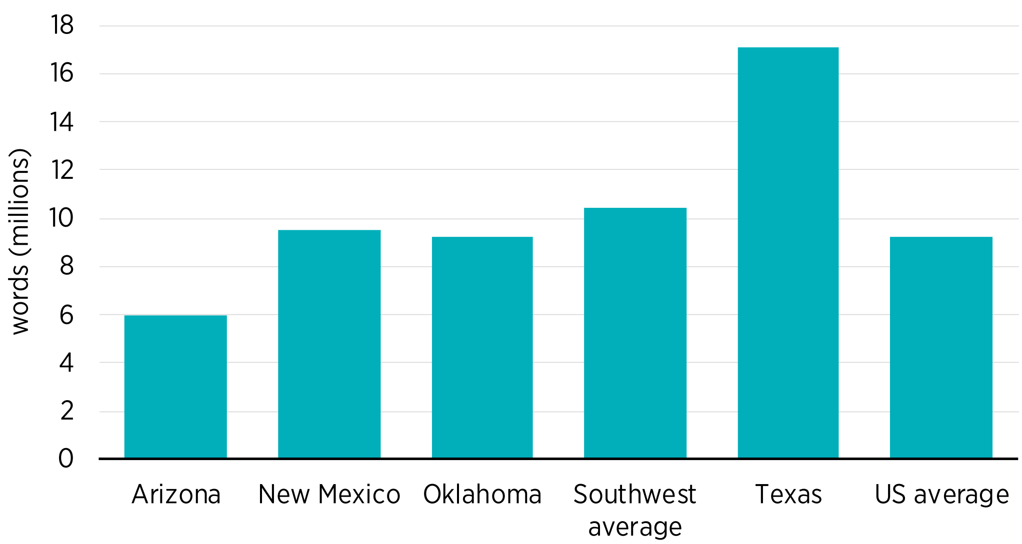
WORD AND RESTRICTION COUNTS IN STATE REGULATIONS

Almost every state in the country has a regulatory code where its administrative laws are housed.[2] Regulations are distinct from traditional laws written by legislators in that they are written by mostly unelected officials working at executive branch agencies that are delegated lawmaking powers from elected representatives in a legislature. Regulatory agencies are typically run by political appointees (although sometimes they are run by elected officials), and the staff who work at agencies are career civil servants. Thus, the administrative laws (i.e., regulations) written by these officials are different from statutes written by legislators in that there is generally no direct line of accountability from voters to the writers of these laws.

The simplest way to quantify how much state regulation exists is simply to count the words in states' administrative codes (figure 1). For example, the *Texas Administrative Code* contains 17.1 million words, while Arizona's administrative code contains just 6.0 million words. The Southwest average is 10.5 million words and the national average is 9.2 million.

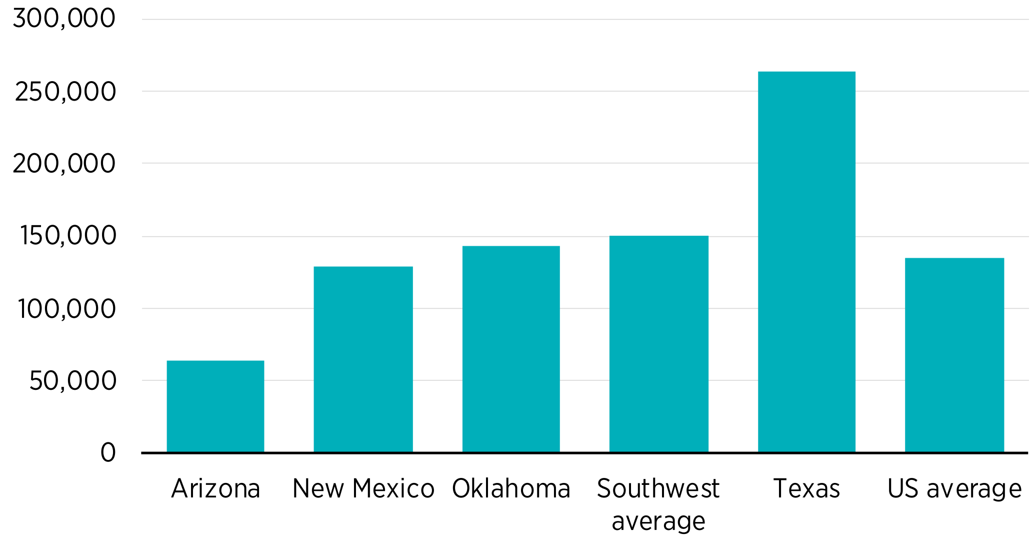
If one instead counts the restrictive terms in administrative codes, then Texas remains the most regulated Southwest state, with 263,369 restrictions (figure 2). Arizona is the least regulated state in the region by this metric, with just 64,319 restrictions.

Figure 1. Word Counts in Southwest State Administrative Codes



Source: Patrick A. McLaughlin et al., "State RegData 2.0" (dataset), QuantGov, Mercatus Center at George Mason University, Arlington, VA, 2020, https://quantgov.org/state-regdata/.

Figure 2. State Regulatory Restrictions in the Southwest



Source: Patrick A. McLaughlin et al., "State RegData 2.0" (dataset), QuantGov, Mercatus Center at George Mason University, Arlington, VA, 2020, https://quantgov.org/state-regdata/.

REGULATION OF INDUSTRY AT THE STATE AND FEDERAL LEVELS

Another way to analyze the regulatory systems in these states is to look at industries that are targeted by state and federal regulation. RegData utilizes machine learning algorithms that are trained to identify text relevant to particular industries. When the probability that a certain piece of legal text applies to a particular industry is combined with regulatory restriction data, one can produce an estimate of the regulatory restrictions targeting particular sectors of the economy.[3] Figure 3a provides state regulatory restriction information for select industries.[4] Figure 3a shows clearly that the number of industry-relevant regulatory restrictions varies widely both within and across states. In other words, for particular industries, some states impose far more regulation than others. And within different states, some industries are far more regulated than others.

Several interesting observations can be made about the data in figure 3a. For example, Texas tends to impose more regulation on these industries than do the other states, which is consistent with its larger overall volume of regulations. Real estate is relatively lightly regulated across these states. Mining (except oil and gas) is the most regulated of these industries in New Mexico and Oklahoma; yet this industry has relatively few restrictions in Arizona.

The variation in the number of restrictions on various industries across this region could be explained by the relative importance of each sector to each state's economy. Without assuming any direct causal relationship between the volume of regulations that falls on an industry and that industry's contribution to GDP, in figure 3b we present the percentage of state GDP associated with each of these industries for the four states. Chemical manufacturing contributes a larger share to

Figure 3a. State Regulatory Restrictions for Select Industries in Southwest States

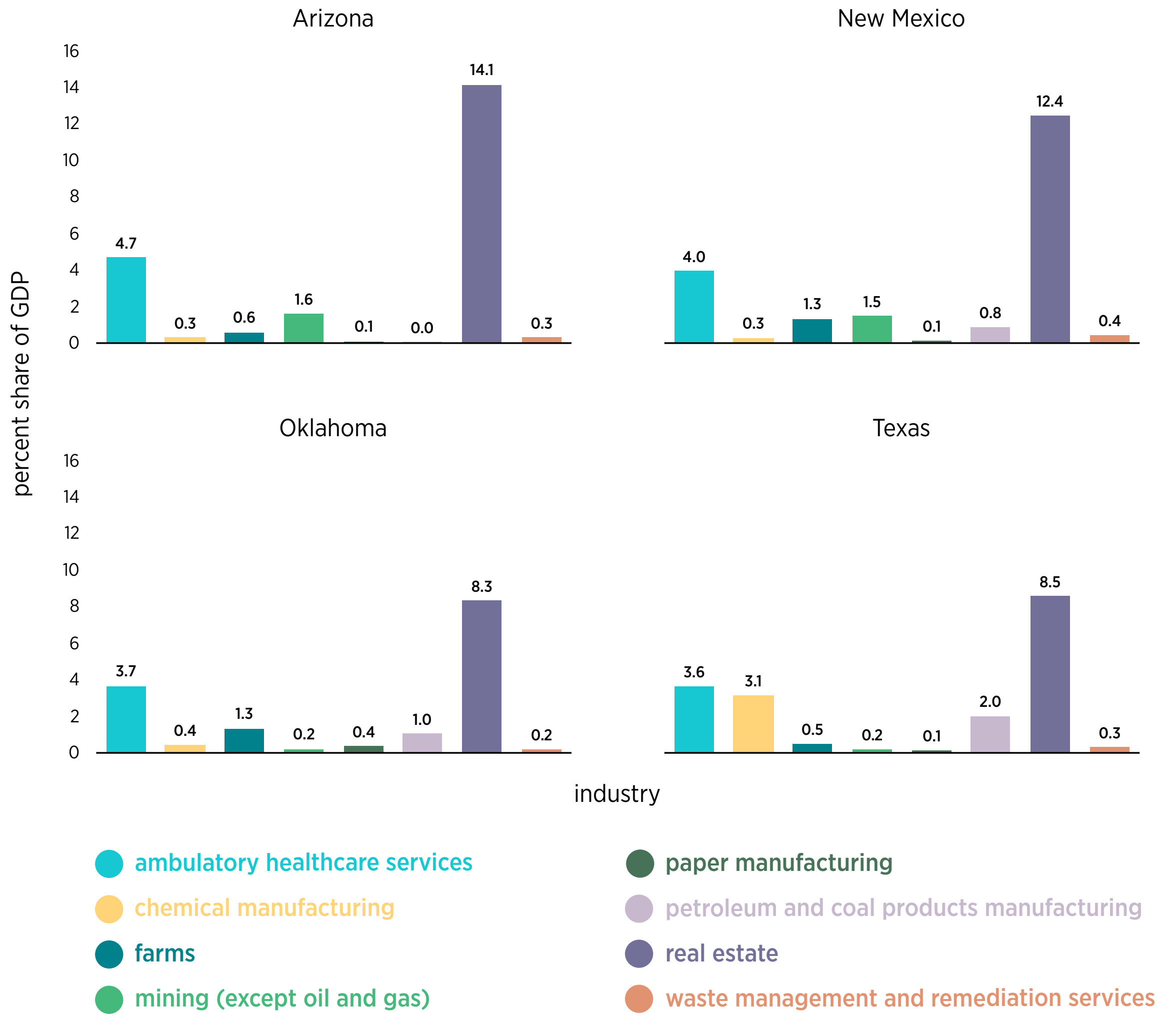
Source: Patrick A. McLaughlin et al., "State RegData 2.0" (dataset), QuantGov, Mercatus Center at George Mason University, Arlington, VA, 2020, https://quantgov.org/state-regdata/.

the Texas economy than to the other states, and it is more regulated too. Real estate is relatively important in all the states' economies and is lightly regulated in all states too.

States also vary in terms of the degree to which their economies are targeted by federal regulation. For example, the average number of regulatory restrictions of the four states reviewed here is 149,810. By comparison, there are approximately 1.08 million regulatory restrictions in the US *Code of Federal Regulations*.[5] Therefore, it is quite possible that federal regulations have a larger impact on these state economies than do the states' own regulatory restrictions.

The Mercatus Center has also produced data to better understand the degree to which federal regulation targets states. By weighting estimates of industry-relevant federal restrictions according to how important various industries are to states' gross state product, the Federal Regulation and State Enterprise (FRASE) index is able to rank the states in terms of how regulated they are by the federal government (figure 4). Texas receives a score of 1.12. This ranking is scaled relative to the nation as a whole, which receives a score of 1.00, so a score of 1.12 means that Texas industries are targeted by federal regulation 112 percent as much as industries across the nation as a whole are. On average, the states in the Southwest are, by this measure, about as regulated as the nation as a whole.

Figure 3b. Contribution to State GDP of Select Industries

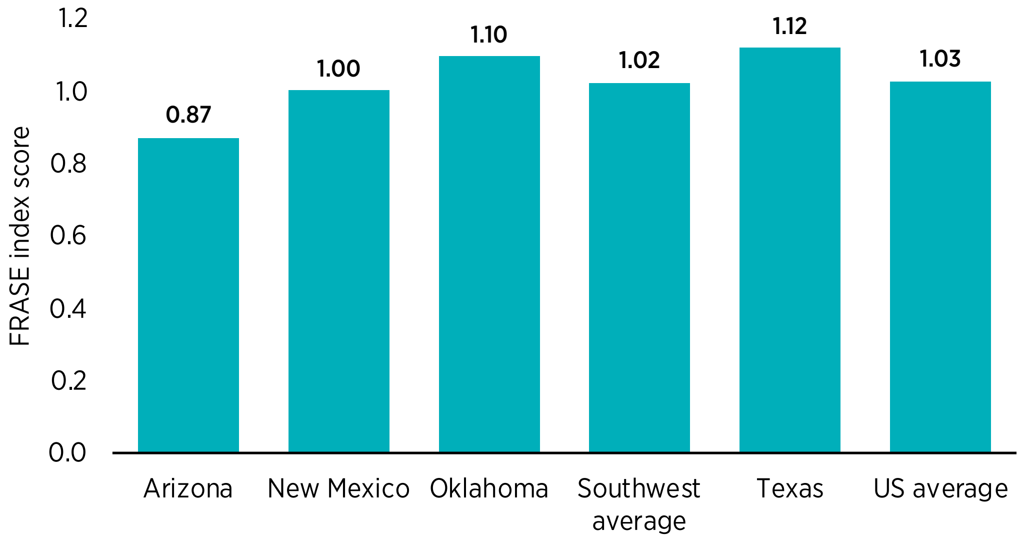


Source: "GDP by State," Bureau of Economic Analysis, accessed May 26, 2020, https://www.bea.gov/data/gdp/gdp-state.

REGULATION AND POPULATION

There are also reasons to speculate that more populous states might tend to have more regulation than less populous states. For example, more populous states might have more industries, so some forms of regulation may not be necessary in less populous states. It is possible that more populous states have denser populations than less populated states, and when more people are congregated in smaller areas, certain externalities or other market failures could be more prevalent, thereby necessitating more regulation. It may be that larger populations demand more regulation. Finally, some scholars have posited that there are fixed costs associated with regulating and that larger populations will be able to absorb these fixed costs more easily by spreading them across a greater number of people.[6] Therefore, as population increases, it becomes relatively cheaper to impose regulations, and hence the quantity of regulations tends to increase.

Figure 4. Relative Federal Regulatory Burden by State in the Southwest



Note: The score for the United States is 1.00.
Source: QuantGov, "2017 FRASE Index" (dataset), accessed March 17, 2020, https://www.quantgov.org/download-interactively.

For these reasons, it could make sense to adjust for population when reporting regulatory restrictions.[7] Figure 5a shows that New Mexico is the most regulated state in the Southwest, adjusting for population, with 61.50 restrictions per 1,000 people. By this measure, Arizona remains the least regulated state in the Southwest, with just 8.84 restrictions per 1,000 people. On average, the Southwest is less regulated on a per-capita basis than the United States is as a whole.

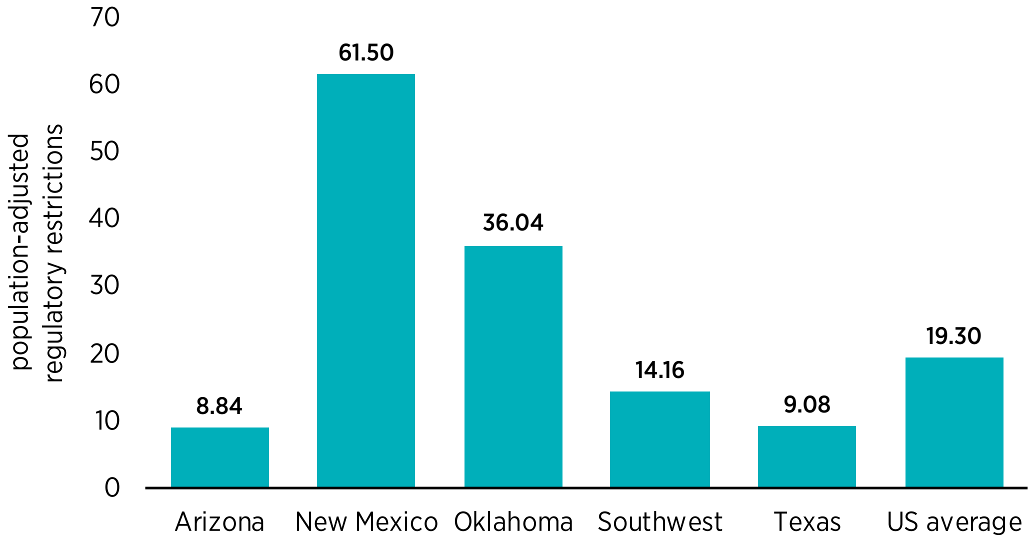
Figure 5b shows the GDP per capita for each of the states. Again, we stress that we are not attempting to establish a causal relationship between regulation and GDP, but merely putting the volume of regulatory restrictions in the context of the local economies.

CONCLUSION

There are a variety of ways in which one can compare the regulatory environments across states, as this policy brief has done for states in the US Southwest. We have looked at word counts in state administrative codes, regulatory restriction counts, restrictions targeting industries in these states, the extent to which federal regulation targets each state's industries, and the population-adjusted quantity of state regulation.

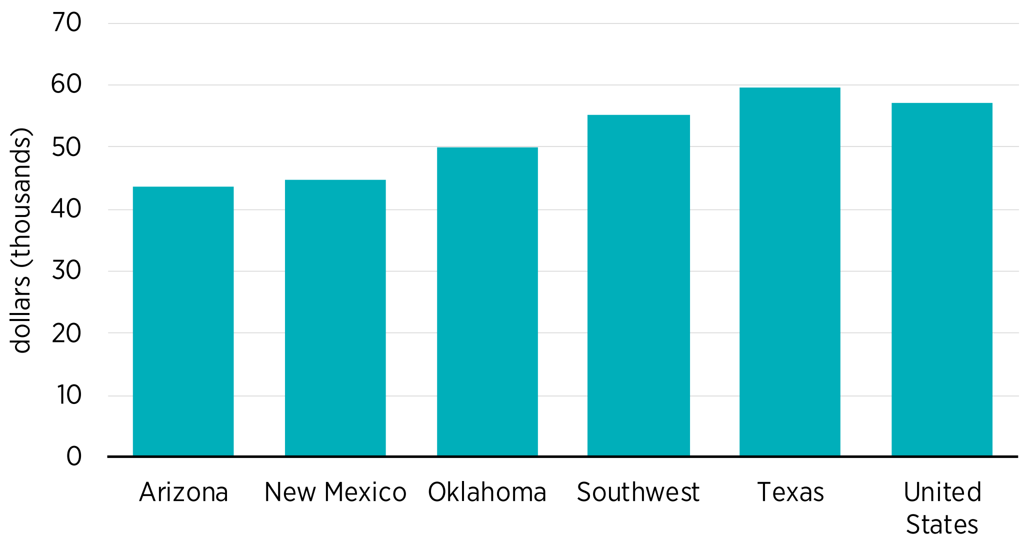
Each of these metrics has its own advantages and disadvantages. All told, the amount of regulation in the states is considerable. Further research will help gauge how levels of regulation are evolving in these states over time and what implications follow from this evolution. This snapshot of state regulations, however, provides a glimpse into the reach of various kinds of regulation in the US Southwest.

Figure 5a. Population-Adjusted Regulatory Restrictions for Southwest States



Source: McLaughlin et al., "State RegData 2.0"; Census Bureau, "2018 ACS 1-Year Estimates" (dataset), Summary File Data, American Community Survey, accessed September 8, 2020, https://www.census.gov/programs-surveys/acs/data/summary-file.html.

Figure 5b. 2018 Per Capita GDP for Southwest States



Source: "GDP & Personal Income," Bureau of Economic Analysis, accessed September 8, 2020, https://apps.bea.gov/iTable/index_regional.cfm.

ABOUT THE AUTHORS

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NOTES

1. Restrictions can also occur in legal text for other purposes, such as for definitional purposes. At times, restrictions may relate to government employees rather than to the private sector.
2. Arkansas does not yet have an administrative code, but the state is actively working on compiling one. See H. B. 1429, 92nd Gen. Assemb., Reg. Sess. (Ark. 2019), which establishes the *Code of Arkansas Rules*.
3. Omar Al-Ubaydli and Patrick A. McLaughlin, "RegData: A Numerical Database on Industry-Specific Regulations for All United States Industries and Federal Regulations, 1997–2012," *Regulation and Governance* 11, no. 1 (2017): 109–23.
4. We use the three-digit North America Industry Classification System to delineate industries. Not all industries are shown here. For more details on the algorithm that classifies regulations into industries and the methodology for assigning probabilities to industries, see Patrick A. McLaughlin and Oliver Sherouse, "RegData 2.2: A Panel Dataset on US Federal Regulations," *Public Choice* 180 (2019): 43–55.
5. "Visualize QuantGov Data," QuantGov, accessed July 18, 2020, https://www.quantgov.org/visualize-data.
6. Casey Mulligan and Andrei Schleifer, "The Extent of the Market and the Supply of Regulation," *Quarterly Journal of Economics* 120, no. 4 (2005): 1445–73.
7. That said, a regulatory restriction in a larger state may also carry a larger impact than the same restriction in a smaller state, simply because it affects more people.

NewsOK: Oklahoma City News, Sports, Weather & Entertainment

Point of View: Oklahoma can be a top 10 state for regulation

BY JAMES BROUGHEL
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James Broughel

During his campaign and again in his January inaugural speech, Gov. Kevin Stitt pledged to push Oklahoma into the "top 10." To date he has been vague about the specifics, but there is one area where he can easily make a difference: Oklahoma is not considered a top 10 state for business by most observers. Its unnecessarily burdensome regulatory environment has something to do with that.

As part of a project for the Mercatus Center at George Mason University, I have spent more than two years reviewing state administrative codes. Most are too long to read from start to finish (the Oklahoma Administrative Code would take about 13 weeks), but by employing modern technology, scraping government websites for data and parsing regulatory text for critical words and phrases, we can learn a lot.

Oklahoma's regulatory code, for example, contains more than 9 million words, 145,296 of which are restrictive terms like "shall," "must" or "required" — a proxy for the number of mandates and prohibitions.

The average state among the 34 we've analyzed has 10,000 fewer restrictions than Oklahoma. Neighbor Kansas has just 71,000. Idaho and Arizona are closer to 60,000.

Not surprisingly, Idaho, with its hands-off regulatory climate, is one of the two fastest-growing states in terms of population growth. Oklahoma is a desirable place to live, with its laid-back attitude and low cost of living, but it also has stiff competition from its huge, aggressively pro-business neighbor to the south.

If Oklahoma wants to retain talent — or better yet, attract more businesses and ambitious young people — it should focus on becoming a top 10 state for smart, efficient and light-touch regulation. Some regulations have benefits, of course, but too many reduce investment, leading to fewer business startups and slower employment growth.

Fortunately, Stitt is making progress. He recently obtained authority to appoint directors at several of Oklahoma's largest regulatory agencies. This should add some much-needed oversight and accountability. He also issued an executive order requiring regulatory agencies to reveal any funds used to hire lobbyists to do their bidding at the state Capitol.

Governors in other states would be shocked to hear that until recently, Oklahoma governors couldn't appoint their own leaders at some of the largest state agencies, or that those agencies routinely used taxpayer money to lobby legislators in the same way private special interests do.

But there is more work to be done. A recent report found that there are more than 200 agencies, boards and commissions in Oklahoma, including a Boll Weevil Eradication Organization and a Sheep and Wool Utilization Research and Market Development Commission. Surely, some of these could be eliminated or consolidated into another agency.

Some states are turning the regulatory tide in the other direction. Notably, two of the least-regulated states, Arizona and Idaho, both have ongoing red tape-cutting initiatives. Idaho Gov. Brad Little recently signed an executive order requiring that for every new rule proposed, two existing rules must be repealed or significantly simplified. Oklahoma may want to follow Idaho's lead.

Oklahoma has a lot going for it. But when it comes to regulation, the Sooner State isn't close to the top 10. There are 145,000 reasons to start reining in red tape, helping make Oklahoma a magnet for people and businesses for years to come.

Broughel is a senior research fellow with the Mercatus Center at George Mason University and author of the new study "A Snapshot of Oklahoma Regulation in 2019."

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