Obama vs. Romney on Regulation

Where Do the Candidates Stand?

Small Business & Entrepreneurship Council

The Candidates and Regulatory Reform

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America's small businesses are disproportionately impacted by federal regulation. While the costs of regulations largely remain hidden from consumers, they are quite real and significant for entrepreneurs, their businesses and their employees.

The Costs of Regulation and Small Business

According to the U.S. Small Business Administration's September 2010 study titled "The Impact of Regulatory Costs on Small Firms," it was estimated that our nation's regulatory tab costs the economy $1.75 trillion. As for costs broken down by business size: "Small businesses, defined as firms employing fewer than 20 employees, bear the largest burden of federal regulations. As of 2008, small businesses face an annual regulatory cost of $10,585 per employee, which is 36 percent higher than the regulatory cost facing large firms (defined as firms with 500 or more employees)."

According to the Competitive Enterprise Institute's 2012 study titled "Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State," at the end of 2011, there were 4,128 regulations in the pipeline, and 212 were "economically significant." That means they have an impact of at least $100 million on the economy. For small businesses, 822 of these 4,128 regulations would affect this sector directly. In total, 3,807 final regulations were issued in 2011, which was a 6.5 percent increase over 3,573 new rules in 2010. That two-year total alone represents a massive amount of regulation.

The U.S. House of Representatives advanced a series of regulatory relief and reform bills, but they have gone nowhere in the U.S. Senate. New regulations and regulatory activity are generating added costs and uncertainty for small business owners and investors, which means less productive, private-sector economic activity and fewer resources devoted to investment. The economy and job growth are suffering as a result.

Where the Candidates Stand

Mitt Romney's Plan on Regulation

Governor Mitt Romney pledges to "stop the increases in regulation that are tangling job creators in red tape." He proposes, for example, to repeal Obamacare and Dodd-Frank – two key regulatory initiatives championed by President Obama – and replace these with new frameworks and reforms.

• **Repeal ObamaCare.** The Romney plan declares that "Obamacare's more than 2,400 pages give broad latitude to rulemakers. Only after regulations are issued—10,000 pages is a crude estimate of the size of the volume that is on the way—will individuals and businesses begin to know what is required of them." Romney has pledged to repeal Obamacare, starting with, on his first day in office, "an executive order paving the way for Obamacare waivers for all 50 states," followed by working with Congress for full repeal.

• **Repeal the Dodd-Frank Act.** The Romney plan highlights the vast uncertainties and enormous regulatory power occurring under "President Obama's financial reform legislation, the Dodd-Frank Act." The Romney plan proposes "to repeal Dodd-Frank and replace it with a streamlined regulatory framework."

• **Regulatory Review**: Romney proposes to initiate a review of Obama-era regulations and eliminate those that "unduly burden the economy."

• **Congressional Review Authority**: Romney supports legislation that would require congressional approval of all new "major" regulations. That is, those costing the economy more than $100 million annually.

• **Tort Reform**: Romney supports reforms to the U.S. legal liability system. The Governor's plan states: "Preventing excessive damage awards, limiting class-action lawsuits to those situations where they are actually warranted, and empowering judges to sanction more effectively trial lawyers and parties who bring frivolous claims are all steps that could protect litigants with legitimate grievances while preventing spurious litigation from inhibiting investment and job creation."

• **Cost-Benefit Analysis**: During the rulemaking process, Romney supports a process whereby proposed environmental laws properly account for costs.

• **Regulatory Transitional Period**: Romney is advocating that multi-year lead times be provided to companies to prepare for new compliance procedures resulting from onerous new environmental regulations.

• **Regulatory Budget**: Romney supports the imposition of a regulatory cap of zero dollars on all federal agencies during his first term. That is, for every new cost a regulation proposes a similar amount must be reduced.

• **Amend Sarbanes-Oxley.** Romney proposes providing relief from burdens placed on small firms under the Sarbanes-Oxley Act. As stated in the Governor's plan: "Many of its requirements were designed for large companies but impose onerous burdens when applied to mid-size firms. The result is that smaller companies are penalized for growing larger, and those attempting to make the leap are discouraged from seeking out the investment capital with which to expand. Romney will seek to amend the law to remove unreasonable burdens on mid-size companies."

President Obama's Plan on Regulation

As noted above, the scale of regulation has increased markedly under President Obama. However, efforts have been made to demonstrate that President Obama takes regulatory concerns seriously.

• **Review and Communication.** The White House instituted a government-wide review of regulation about two years ago, which netted regulatory savings of $2 billion. The White House has recently opened a discussion with business owners and entrepreneurs, and has asked them to submit ideas online for reforming or streamlining outdated and burdensome regulations. On his campaign website, it is stated that the President has: "Launched a government-wide review of current regulations, and executive agencies have submitted over 580 proposals for reducing regulatory burdens, a some of which will save small businesses more than $10 billion over the next five years."

• **JOBS Act.** To his credit, President Obama supported the modernizing of outdated Securities and Exchange Commission (SEC) rules as part of the Jumpstart our Businesses Startup (JOBS) Act. The Act now allows for crowdfund investing, and changes other archaic rules that impede capital access for startup and high growth businesses.

• **Patent System Reform.** The President signed patent reform into law in September 2011. As noted on the White House website, "The U.S. Patent and Trademark Office is implementing the legislation in a manner that makes it easier for innovators large and small to bring new goods and services to market more quickly. It will help companies and inventors avoid costly delays and unnecessary litigation, and let them focus instead on innovation and job creation."

In the end, the Obama administration does not have any major, substantive regulatory reform efforts underway, nor does the Obama campaign offer any regulatory reform agenda. In contrast, it appears to be "business as usual" for cranking out additional rules (at EPA and Department of Labor, for example), and implementing provisions of major laws (like Dodd-Frank and Obamacare) that are driving up costs and creating uncertainty across industries and among small businesses.

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