

Congressionally Reviewed: A New Pattern in CRA Vetoes

In brief...

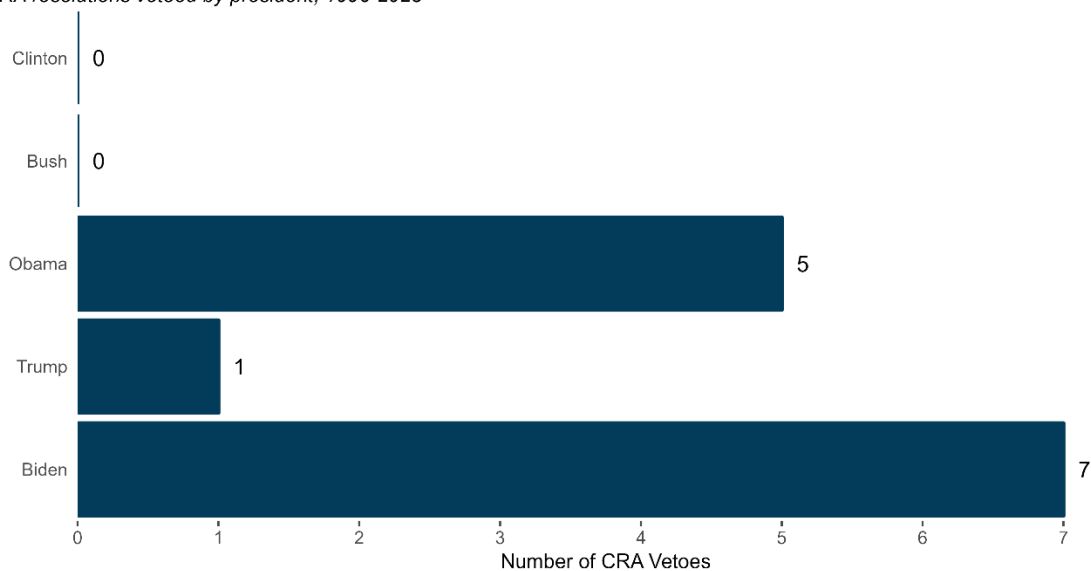
The Congressional Review Act gives Congress the ability to overturn federal regulations. Only ten months into the current session of Congress, Congress has passed seven CRA resolutions targeting Biden administration rules. This piece investigates why that could be happening, despite Democratic control of the Senate.

By: Sarah Hay | October 4, 2023

Last week, President Joe Biden [vetoed two resolutions of disapproval](#), introduced in Congress under the Congressional Review Act (CRA), that would have repealed two endangered species regulations. The [CRA](#) provides Congress with an expedited mechanism to overturn rules issued by federal agencies by introducing “resolutions of disapproval.” With these two vetoes, President Biden has now vetoed seven CRA resolutions of disapproval—more than all other presidents, combined.

President Biden has vetoed more Congressional Review Act (CRA) resolutions than other presidents

CRA resolutions vetoed by president, 1996-2023



This piece explores one potential theory about how structural and political conditions in Congress have created an environment where CRA resolutions can pass, despite Democrats' control of the Senate.

Previous Vetoes

At first glance, it seems counterintuitive that Biden would have vetoed more CRA resolutions than Presidents Barack Obama or Donald Trump. Obama's five CRA vetoes all occurred during the last two years of his presidency, when both houses of [Congress](#) were controlled by Republicans. It makes sense that a Republican-led Congress would pass multiple resolutions of disapproval to attempt to overturn regulations promulgated by a Democratic executive. These attempts serve both a policy purpose, as an attempt by Congress at regulatory oversight, and a political purpose, as a [position-taking measure](#) for legislators.

Trump's single CRA veto came in a setting more like Biden's than Obama's. During the last two years of the Trump administration, he faced a [divided Congress](#). The House was controlled by the opposing party, and the Senate was controlled by the President's party, albeit narrowly. Congress only sent Trump one resolution of disapproval that session. That [particular resolution](#) on a Department of Education rule had a substantial amount of cross-party support in the [Senate](#), with 10 Republican senators from the majority joining the Democrats in the minority to vote for the bill.

Since the swearing in of the [118th Congress](#) in January, Biden has also faced a House controlled by the opposing party, and a Senate narrowly controlled by his own party. Why, then, has Biden received seven resolutions of disapproval in just the first ten months of this Congress? Two factors could be at play: the procedural provisions of the CRA that give resolutions of disapproval a "fast track" to a floor vote in the Senate, combined with the Democrats' narrow majority that hinges on a handful of red-state Democrats facing reelection next fall.

The CRA "Fast Track" Provisions and the Senate

The CRA establishes procedural mechanisms in the Senate that remove common roadblocks from a resolution's [path to a floor vote](#). For resolutions introduced in the Senate, any senator can move to consider the resolution on the floor. Debate is limited to ten hours or less, amendments cannot be attached to resolutions of disapproval, cloture is unnecessary, and only a simple majority, rather than a supermajority, is required to pass these resolutions. Resolutions that come to the Senate from the House of Representatives move directly to the Senate Calendar of Business, bypassing any sort of committee consideration in the Senate.

The CRA's provision requiring only a simple majority to pass resolutions of disapproval is likely one of the keys to why the 118th Congress has passed seven CRA resolutions in just ten months. Senate Democrats have just a narrow 51-49 majority in this Congress. Being in the minority, most other bills introduced and supported by Republicans would be—and almost always are—dead on arrival in the Senate. In the current Senate, the minority party would need to win over 11 votes from the majority to meet the typical 60-vote threshold for a Senate bill. However, the simple majority provision in the CRA

means that only one or two members of the majority would need to join the minority to meet the 51-vote threshold for CRA resolutions.

In the 118th Congress in particular, there are a handful of Democratic senators who represent more conservative states. These senators hold more moderate policy positions, which reflect the views of their constituents but diverge from the Biden administration's policy positions. When faced with resolutions to disapprove Biden administration regulations, it only takes one or two moderate Democratic senators who oppose the regulation for the resolution to pass. In this Congress, moderates have joined the minority seven times to demonstrate their opposition to the Biden administration's policies. (See Appendix 1 for details on the seven CRA resolutions Biden has vetoed during this Congress.)

Beyond Congress

Just passing Congress does not mean that these resolutions will successfully overturn a regulation. Like any bill, CRA resolutions must be signed by the president to take effect. Presidents rarely sign resolutions that disapprove regulations issued by their own executive branch, which the president presumably supported in the first place. Despite seven resolutions passing this Congress, all of them were vetoed. What does it mean for the CRA as an oversight tool that the president will almost certainly veto any resolutions beyond the "lookback period?"

Appendix 1: Biden-Vetoed Resolutions of Disapproval and the Majority-Aligned Senators that Voted for Them

Resolution of Disapproval	Rule Targeted	Cross-party Yea Votes	Vote outcome
House Joint Resolution 27	Revised Waters of the United States	Joe Manchin (D-WV) Jacky Rosen (D-NV) Kyrsten Sinema (I-AZ) Jon Tester (D-MT)	53 Yea - 43 Nay
House Joint Resolution 30	Prudence and Loyalty in Selecting Plan Investments	Joe Manchin Jon Tester	50 - 46
House Joint Resolution 39	Suspension of Duties Regarding Certain Imported Solar Cells	Tammy Baldwin (D-WI) Sherrod Brown (D-OH) Bob Casey (D-PA) John Fetterman (D-PA) Joe Manchin Debbie Stabenow (D-MI) Jon Tester	56 – 41*
House Joint Resolution 45	Waivers and Modifications of Federal Student Loans	Joe Manchin Kyrsten Sinema Jon Tester	52 - 46
Senate Joint Resolution 11	Control of Air Pollution from New Motor Vehicles	Joe Manchin	50 - 49
Senate Joint Resolution 24	Endangered Species Act: Northern Long-Eared Bat	Amy Klobuchar (D-MN) Joe Manchin	51 - 49
Senate Joint Resolution 9	Endangered Species Act: Lesser Prairie Chicken	Joe Manchin	50 - 48

Source: Compiled from Senate.gov.

* *Rand Paul (R-KY) voted Nay on this bill, joining Democrats. In the 118th Congress, this is the only instance of a Republican voting against a Republican-introduced resolution of disapproval.*