

A Third – and Better – Way: The Case for Industry Self-Regulation

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The debate over regulation in the U.S. is a perennial one. On one side, advocates for deregulation argue that reducing government intervention will foster innovation and economic

growth. Conversely, many believe that government regulation is necessary to protect consumers and ensure fair competition. But as our economy grows more complex, I argue the debate should be more nuanced, recognizing that the most effective regulatory frameworks may not be the ones imposed by government.

There are two recent developments – one occurring last summer and the other forthcoming – that make a nuanced debate over regulation more necessary and timelier than ever. First, in a landmark June 28, 2024 decision in *Loper Bright Enterprises v. Raimondo*, the U.S. Supreme Court fundamentally reshaped the landscape of regulatory governance. While there have been numerous and varied interpretations of *Loper*, no one argues against its basic tenet, which is to decrease the scope of agency authority.

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At BBB National Programs, we watch judicial and political developments closely because we advocate for a third way to approach vexing public policy issues: independent industry self-regulation. We believe in the power of businesses to regulate themselves through credible, third-party mechanisms. This model enables industries to establish meaningful guidelines, enforce those guidelines through independent bodies, and hold themselves accountable to high standards, all while avoiding the inefficiencies and delays too often associated with traditional regulatory approaches.

Our view is that independent industry self-regulation when done correctly is a win-win, for businesses and consumers. We are hopeful that this one-two combination of *Loper* and Trump might spur industries to develop and implement their own standards and practices, guided by market forces and internal governance structures.

No one understands the nuances of an industry better than those who labor in it every day. When businesses collaborate to set standards and create guidelines for their sector, the result is often more nuanced and responsive to the rapidly

changing market conditions than government regulations can be. At BBB National Programs, we help businesses navigate complex challenges by creating self-regulatory frameworks that are both effective and flexible, able to evolve with the reality of the times.

Our basic premise is that when consumers feel that a company is playing by the rules, they are more likely to trust that company and, by extension, the industry. Self-regulation helps foster that trust. By adhering to guidelines created by industry experts and enforced by independent third parties, businesses can demonstrate to consumers that they take their commitments seriously. This is critical in a period where transparency and ethical behavior are more important than ever.

Even advocates for government regulation admit that the development and implementation of regulations often come with delays, complexity, and inefficiencies. By contrast, industry self-regulation can be nimble, addressing emerging issues before they become full-fledged problems. When challenges arise, industries can quickly adapt their guidelines, ensuring that businesses stay ahead of the curve. With third-party oversight, consumers can be assured that enforcement is rigorous.

Of course, even when regulations are developed in a relatively smooth process, that still does not mean they will be successful. Too often, one-size-fits-all regulation does not work because it ignores the unique needs and dynamics of

specific industries. Industry self-regulation allows for tailored solutions that leverage the expertise of companies within an industry. The resultant voluntary guidelines “with teeth” are likely to be relevant and impactful.

Self-regulation is not a replacement for government oversight, but rather a complement to it. Government agencies should retain the ability to step in when needed, but where industries are able to regulate themselves effectively, they should be given the flexibility to do so. Industry self-regulation has the potential to create better, faster, and more transparent outcomes than traditional regulation. And in an era where trust is in short supply, that is exactly what consumers and businesses need most.

By empowering industries to police themselves, we can create a more efficient, responsible, and consumer-friendly marketplace. Laws – and resultant government regulation – must continue to be the floor on which businesses operate. But industry self-regulation can raise the ceiling, encouraging better business behavior and enhancing consumer trust.

In the wake of the *Loper* decision – and in anticipation of the Trump inauguration – the time is now for a third and better way: independent industry self-regulation.

Mr. Reicin is President and CEO of BBB National Programs