

Two for One Executive Order Addressing Regulations: Three States File Judicial Challenge



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

04/09/2019

The states of Minnesota, Oregon, and California (collectively “States”) filed a Complaint for Declaratory and Injunctive Relief (“Complaint”) in the United States District Court for the District of Columbia against President Trump and various agency heads challenging:

1. Executive Order 13771 – Reducing Regulation and Controlling Regulatory Costs (“Order”) See 82 Fed. Reg. 9,339)
2. Office of Management and Budget’s interim guidance to assist agencies in implementing the Order
3. Final Guidance to assist agencies in implementing the Order

The Order was issued on January 30, 2017, and generally requires agencies to repeal at least two existing regulations for every new regulation issued.

Agencies are required to offset the cost of any new regulation by repealing at last two existing regulations that impose equal or greater cost. The States allege that agencies are prohibited from considering public benefits of either the new or existing regulations in their analysis. Further, they allege that the Order imposes an annual, agency-specific “incremental cost” cap. This cap is stated to limit the cumulative cost of any agency’s regulatory portfolio.

The States argue that the Order and Guidance:

- Exceed the President’s constitutional authority
- Violate the separation of powers doctrine
- Violate the President’s duty under the “Take Care” clause
- Are generally *ultra vires*

Additional arguments are focused on alleged violations by individual agencies that are named in the Complaint.

A copy of the 43-page Complaint can be found [here](#).