

Andrew P. Morriss, Roger E. Meiners & Andrew Dorchak

*Between a Hard Rock and a Hard Place: Politics, Midnight Regulations and Mining*

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Abstract by Brooksley Crisman

The article cites the regulatory history of hard rock mining as a case study of the politicization of environmental regulation. It argues that the increasing occurrence of “midnight regulations” represents a threat to the rule of law and to individuals’ rights. Based on a study of 3809 regulations, the authors present conclusions as to how the regulatory process can be restructured to curb the problems that accompany midnight regulations.

The authors argue that midnight regulations pose a serious threat for three reasons. First, such regulations undercut political accountability for regulatory policy carried out by congressional oversight and regulatory agencies. Second, incoming administrations are forced to expend valuable political capital and attention on the previous administration’s last minute regulations. Third, it undermines the rule of law by creating an incentive for agencies to intentionally overreach in order to bring embarrassment to new the incoming administration. The authors argue that eliminating midnight regulations will improve the regulatory process.