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Be Careful What You Wish For:
Amending the Administrative Procedure Act

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Abstract by Raymond R. Janairo

Legislative attempts at amending the Administrative Procedure Act (APA) date back to the 1950s, less than a decade after Congress passed it. The American Bar Association (ABA) first proposed a comprehensive Code of Administrative Procedure to replace the APA. After this unsuccessful attempt, the ABA focused on making specific amendments to the Act. Congress also ventured to amend the APA, especially during what the author calls the "regulatory reform" efforts of the 1980s and 1990s. During this time, the APA survived proposed amendments requiring cost-benefit and cost-effective analyses.

The author argues that the APA is doing fine. Its flexibility and ambiguity has allowed administrative law to transition from a licensing and adjudication era to an era where informal rulemaking dominates the administrative landscape. The APA's drafters recognized that there were no "across-the-board solutions to defects in agency procedure because each agency was different." These characteristics preclude the imposition of prescriptive requirements upon administrative agencies. Moreover, the author contends that the APA's provisions permitted courts to continue to develop administrative law. "Judicial elaboration and interpretation [of the APA] have worked fairly well, and there seems no reason to abandon it." The author goes on to claim that judicial interpretation is preferable to legislative amendment because it is more flexible and responsive to unknown factors. The piece concludes with the author's warning to carefully consider whether amendments to the Act are warranted given its performance since it was enacted.