



Are mass comment campaigns an abuse of the rulemaking process?

By Steven J. Balla, Opinion Contributor — 11/02/19 02:00 PM EDT

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On Oct. 24, the United States Senate Permanent Subcommittee on Investigations issued a [bipartisan report](#) highlighting a variety of abuses of online platforms through which the public comments on proposed agency regulations. These abuses include mass comment campaigns, comments submitted under false identities, and profane and threatening language. Although identity theft, profanity, and threats directed at agency officials and others classify as abusive

behavior, recent research I have conducted with colleagues suggests that mass comment campaigns are not as harmful as feared by Senate investigators.

Mass comment campaigns are collections of identical and near-duplicate comments sponsored by organizations and submitted by group members and supporters. Earlier in October, for example, the Michael J. Fox Foundation for Parkinson's Research submitted more than 100,000 signatures calling on the Environmental Protection Agency to ban a chemical associated with increased risk of Parkinson's disease. Such mass comment campaigns are typically short in length, state directional preferences in support of or in opposition to proposed rules, and provide little in the way of substantive arguments or evidence.

Our research suggests that mass comment campaigns, although lacking in substantive detail, do not constitute abuses of the rulemaking process. As a result, efforts to limit the coordinated submission of large numbers of identical and near-duplicate comments should not be a top priority for lawmakers. Congress should focus on the more immediate dangers presented by fake comments and profane and threatening language.

Our research focuses on the occurrence of mass comment campaigns at the EPA over a recent five-year period. During this period, the agency received dozens of mass comment campaigns consisting of at least 100,000 comments, with two campaigns totaling in excess of a half-million submissions. The agency identifies and posts mass comment campaigns to regulations.gov, the federal government's primary online platform for the rulemaking process. The agency informs the public about the organization that sponsored the mass comment campaign, as well as the number of comments contained in the campaign. It also posts an illustrative example of the comments submitted by group members and supporters.

At this moment, the EPA is the only agency in the federal government that documents mass comment campaigns on regulations.gov in this manner. We encourage other agencies to adopt this approach to cataloging mass comment campaigns, as sharing such information would make clear just how common campaigns are in the rulemaking process in general.

Our research demonstrates that the EPA acknowledges the vast majority of mass comment campaigns when it promulgates final rules. In this regard, mass comment campaigns are handled in a procedurally identical manner as substantive comments submitted by organizations. In other words, we do not find evidence that the agency is overwhelmed and unable to readily process and respond to mass comment campaigns.

We also examine the changes the EPA makes across proposed and final rules, and the association between these changes and requests made in comments of various types. Our analysis shows that requests made in mass comment campaigns are less likely to correlate with changes in the content of rules than appeals made in substantive organization comments. This pattern confirms that the agency continues to emphasize legal, economic, scientific, and technical information in the rulemaking process, irrespective of the fact that it regularly receives mass expressions of directional preferences.

In the end, our research demonstrates that it is possible for agencies to identify and handle mass comment campaigns in a routine manner reflective of the preference-oriented, non-substantive nature of campaigns. We encourage Congress not to place limitations on mass comment campaigns, which are normatively valid expressions of free speech and, practically speaking, do not inhibit agencies from receiving and incorporating substantive information into rulemaking decisions. Rather, we recommend that agencies post mass comment campaigns to regulations.gov and other rulemaking platforms in a manner similar to the EPA, thereby making it straightforward for the public to separate campaigns from substantive comments submitted in response to proposed rules. Although fake comments and the submission of profane and threatening language constitute abuses of the rulemaking process, mass comment campaigns are not as problematic as portrayed by Senate investigators.

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