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MARK WALKER, CHAIRMAN
RSC THE REPUBLICAN STUDY COMMITTEE

H. J. Res. 42 - Disapproving the rule submitted by the Department of Labor relating to drug testing of unemployment compensation applicants. (Rep. Brady, R-TX)

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FLOOR SCHEDULE:

H. J. Res. 42 is expected to be considered on February 15, 2017, under a closed rule. The rule also provides for consideration of H.R. 428, the Red River Gradient Boundary Survey Act.

TOPLINE SUMMARY:

H. J. Res. 42 would use the Congressional Review Act to provide for the disapproval of a rule from the Department of Labor that restricts states from requiring drug testing for applicants for Unemployment Insurance benefits that would otherwise be permitted pursuant to the Middle Class Tax Relief and Job Creation Act of 2012.

COST:

A Congressional Budget Office (CBO) estimate is not available.

CONSERVATIVE CONCERNS:

There are no substantive concerns.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

The Middle Class Tax Relief and Job Creation Act of 2012, which was signed into law in February 2012, provided states the option to require drug testing for applicants for Unemployment Insurance benefits if the applicant had been terminated from employment due to drug use or if the only available suitable work for the applicant is in an occupation that regularly conducts drug testing. This provision of the law overturned a previous regulation that banned states from testing applicants.

The Department of Labor issued a rule that limits the ability of states to implement the drug testing provision by very narrowly defining a list of occupations for which drug testing may be required to only those mandated by federal and state laws or those that require the carrying of a firearm. According to the Society for Human Resource Management (SHRM), "more than half of all employers conduct drug tests on all job candidates". The rule was finalized on August 1, 2016, but states such as Texas and Wisconsin that have enacted changes to their state laws to require drug testing for Unemployment Insurance applicants have been unable to enforce them due to the delays in finalizing the regulation and the restrictive final rule.

H. J. Res. 42 would disapprove, and provide for the nullification of the Department of Labor rule.

The Congressional Review Act provides an expedited legislative process for Congress to disapprove of administrative rules through joint disapproval resolutions. Regulations issued by executive branch departments and agencies, as well as issued by independent agencies and commissions, are all subject to CRA disapproval resolutions. In order for a regulation to take effect, the issuing agency must produce a report to Congress. Generally, Congress then has 60 days to pass a resolution of disapproval under the CRA. However, this timeline is shifted in circumstances when rules are submitted to Congress within 60 legislative days of adjournment. In this case, the clock for the 60-day consideration timeline will restart 15 days into the 115th Congress, giving Congress the full window for consideration. While the parliamentarian will determine the exact cut off day after which rules may be subject to the CRA, Congress will be able to consider rules going back to roughly mid-May. Regulations that are successfully disapproved of will then either not go into effect or will be looked at as if they have not gone into effect. The CRA also prevents any new regulation that is substantially similar to a disapproved regulation from being promulgated in the future, absent action from Congress. Rules must be disapproved of on a rule-by-rule basis, and must be disapproved of in their entirety.

Under the CRA process, if a joint resolution is introduced in the Senate within the permitted time period and the resolution is not reported from committee on a timely basis, 30 Senators may petition to bring the resolution to the floor. This resolution would not be subject to the filibuster. When debate commences, the Senate must fully consider the resolution before moving on to any other business, with only 10 hours of debate. Finally, enactment of a joint resolution under the CRA would require a majority vote in each chamber and a presidential signature. Though the CRA has only been used once, in 2000 against Clinton-era ergonomic regulations, conditions today are largely the same as they were that year – with Republicans securing control of the House, Senate, and presidency.

COMMITTEE ACTION:

H. J. Res. 42 was introduced on January 30, 2017, and was referred to the House Committee on Ways and Means. The Committee took no further action on the bill.

In 2013, the Committee on Ways and Means held a hearing on this issue.

ADMINISTRATION POSITION:

According to the Statement of Administration Policy, if H. J. Res. 42 was presented to the President in its current form, "his advisors would recommend that he sign them into law."

CONSTITUTIONAL AUTHORITY:

"Congress has the power to enact this legislation pursuant to the following: Clause 1 of section 8 of article I of the Constitution to ``provide for the common defense and general welfare of the United States.''"

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