

REFLECTIONS ON REGULATORY REFORM IN NEW JERSEY

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New Jersey Assembly, Commerce and Economic Development Committee

October 21, 2020

Chair Johnson, Vice Chair Karabinchak, and members of the committee:

My name is James Broughel, and I am a senior research fellow at the Mercatus Center at George Mason University. I am also an adjunct professor of law at George Mason University. My research focuses on regulatory procedures, cost-benefit analysis, and economic growth. Thank you for the opportunity to submit testimony today on regulatory reform in New Jersey.

Achieving meaningful reductions in the regulatory burden is hard. That is a lesson from a 2018 report I wrote about New Jersey's regulatory reform program during the administration of Governor Chris Christie.¹ New Jersey's past experiences with regulatory reform can provide valuable insights for future reform efforts, such as those being considered before this committee today.

Governor Christie launched New Jersey's red tape cutting program in 2010, and it continued over the course of his two terms in office. New Jersey's efforts brought mixed results:

- *The overall regulation burden probably didn't decrease.* The program appears to have failed at lowering the overall burden of regulation in the state. One reason for this was almost certainly the lack of any clear metric to track program progress.
- *Fewer new regulations resulted.* While regulation levels in New Jersey may not have fallen, the rate at which they were growing seems to have slowed. This could be a sign of higher standards being imposed for new regulations. However, the slowdown appears to have begun even before the red tape reform program was established.
- *Some old regulations were scrapped.* The program managed to eliminate some of the state's regulatory clutter. These are regulations that are deemed obsolete, overly costly, or otherwise unnecessary.

1. James Broughel, "Cutting Red Tape in the Garden State: New Jersey's Regulatory Reform Program under Governor Chris Christie" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, May 2018).

Despite its mixed results, the New Jersey program included a number of positive elements and best practices:

- It was transparent in that it produced detailed reports describing achievements.
- It was willing to make recommendations that would require statutory changes (some of which were passed into law).
- The Red Tape Review Group and subsequent Red Tape Review Commission, which were appointed to oversee and report on the progress of the reforms, were both bipartisan.

Successful and sustainable efforts to reduce regulatory burdens should include concrete goals and measures. One approach is to track the overall level of regulation, using simple metrics like counts of requirements or restrictions, and to establish explicit reduction targets accompanied by hard deadlines for when those targets must be met. Constraints on regulators, such as mandates to eliminate a certain number of requirements for every new one introduced, will also help to ensure that periodic review becomes engrained in the culture of state regulatory agencies. Such changes will make it more likely that regulatory reviews are substantive and not merely symbolic.

Attached you will find a copy of my report on New Jersey's regulatory reforms. Please feel free to contact me with any questions.

ATTACHMENT

James Broughel, "Cutting Red Tape in the Garden State: New Jersey's Regulatory Reform Program under Governor Chris Christie" (Mercatus Working Paper)

Cutting Red Tape in the Garden State

New Jersey's Regulatory Reform Program under
Governor Chris Christie

James Broughel

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James Broughel. "Cutting Red Tape in the Garden State: New Jersey's Regulatory Reform Program under Governor Chris Christie." Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2018.

Abstract

In recent years, numerous states have experimented with red tape reduction efforts with a goal of reducing unnecessary regulatory burdens. Few studies have evaluated the effectiveness of such reforms, however. This paper examines the New Jersey red tape reduction effort, which was implemented under the leadership of Governor Chris Christie, starting in 2010 and ongoing throughout his two terms in office. The reform effort appears to have failed with respect to lowering the overall level of state regulation, though there is evidence that the effort slowed the growth of regulation. Despite this shortcoming, a number of regulations were eliminated as part of the effort, and this paper identifies some best practices, including how regular reporting on the program's progress provided transparency and appeared to spur legislative action. The paper concludes with a discussion of ways to improve the effectiveness of future state-level reforms aimed at reducing red tape.

JEL codes: K2, D61

Keywords: New Jersey, regulation, red tape, benefit-cost analysis

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Cutting Red Tape in the Garden State:

New Jersey's Regulatory Reform Program under Governor Chris Christie

James Broughel

I. Introduction

In January 2010, New Jersey began a regulatory effort centered on cutting red tape in the Garden State. “Red tape” throughout this paper refers to regulations on the books that are outdated, duplicative, unnecessary, excessively costly, or otherwise problematic. As such, red tape reduction efforts aim to review old regulations and modify or eliminate those rules deemed to be wasteful or in need of updating. The New Jersey reform program was initiated by Governor Chris Christie via a series of executive orders upon taking office.¹ These orders, among other things, froze all regulations in process, ordered a review of these proposed rules as well as operative executive orders from previous governors, established “commonsense principles” for state regulations, and created a Red Tape Review Group (RTRG) to oversee, and report on, the progress of the reform program. A subsequent executive order created the Red Tape Review Commission (RTRC) to replace the RTRG and ordered a more complete review of active regulations on the books in New Jersey.²

An analysis of this regulatory program is likely to be timely given that similar red tape cutting efforts have sprung up in other states in the years since New Jersey's effort began.³ Most of these reforms share some common elements with New Jersey's program, such as a “regulatory freeze” or moratorium, or a review of pending and existing rules on the books. By reviewing new

¹ See Governor Chris Christie, New Jersey Exec. Orders 1, 2, and 3 (January 20, 2010).

² Kim Guadagno, New Jersey Exec. Order 41 (September 23, 2010).

³ Arizona, Colorado, Illinois, Kentucky, Maryland, Massachusetts, Missouri, and Nebraska are some notable examples.

data on New Jersey rulemaking activity provided by the state Office of Administrative Law (OAL), this paper aims to determine whether the New Jersey red tape cutting effort succeeded in what was presumably its architects' chief aim—to reduce the overall burden of regulation in the state. This paper finds limited evidence that the reform accomplished this goal, as the overall level of state regulation does not appear to have declined, though the rate at which regulation levels were increasing may have slowed. This slowdown also appears to have reduced the number of regulations repealed, however, suggesting a decline in regulatory activity generally throughout the Christie administration's tenure.

Despite some shortcomings, several best practices have been identified. The New Jersey program was notable for its transparency: the RTRG and RTRC both produced detailed reports, describing the effort's achievements and making recommendations for further action. The RTRG and RTRC showed a willingness to recommend changes beyond the statutory authority of regulators. These recommendations appear to have spurred legislative changes to the public commenting process and to New Jersey's sunset period for rules, among other things. The bipartisan nature of the RTRG and RTRC may partly explain why recommendations were followed.

This paper proceeds as follows. Section II describes the specifics of New Jersey's regulatory reform program and summarizes information pulled from progress reports published by the RTRG and RTRC. Section III reviews new data from the OAL in New Jersey and provides an assessment as to whether the reform program succeeded in lowering overall regulatory burdens. Section IV discusses lessons from the New Jersey experience that might help other states as they engage in similar red tape cutting efforts. Section V concludes.

II. Background on Regulatory Reform in New Jersey

A. Executive Orders

One of Governor Chris Christie's first actions upon taking office in 2010 was to kick off a red tape reduction effort. On his second day in office, Governor Christie signed three executive orders aimed at regulatory relief. Executive Order 1 (EO 1) instituted a 90-day freeze on all regulations that had been proposed but were yet to be finalized, and ordered proposed regulations that had not yet been published in the New Jersey Register to be withdrawn.⁴ Presumably the purpose of the freeze was to limit any continuing influence of the outgoing Corzine administration, a Democratic administration, since Governor Christie was a Republican. Such freezes are a common feature of incoming US presidential administrations,⁵ as they are a way for new administrations to gain control over the executive branch, although moratoria are also sometimes employed in the middle of an administration's term,⁶ suggesting they are also used to reduce regulatory output for other reasons.

In addition to implementing a moratorium, EO 1 called for a review of approximately 154 regulations that were in limbo as a result of the freeze, and it tasked the new RTRG (created under Executive Order 3) with reviewing frozen rules and making recommendations for rules deemed "unworkable, overly-proscriptive or ill-advised." Heads of agencies were required, within 10 days, to determine whether frozen regulations should proceed or be rolled back.

Executive Order 2 (EO 2) established "Common Sense Principles" for New Jersey regulations. These principles require agencies to (1) employ advance notices of rules, which are a

⁴ Some exceptions were made, such as for regulations vital for public safety, security, or health.

⁵ A 2012 report from the Congressional Research Service notes how in the early days of the Reagan, Clinton, George W. Bush, and Obama administrations, memos were sent to heads of agencies directing them to refrain from rulemaking activity for a period of time and in some cases to withdraw regulations that had not yet been published in the Federal Register. See Maeve P. Carey, *Midnight Rulemaking*, Congressional Research Service, July 18, 2012.

⁶ For example, Governor Pete Ricketts of Nebraska issued a six-month moratorium on new rules two and a half years after taking office. See Nebraska Exec. Order No. 17-04 (July 6, 2017).

form of public notification before an agency formally proposes a regulation; (2) adopt “time of decision” policies, whereby the procedures governing applications of various sorts, such as permits, cannot be changed after an application has been submitted; (3) craft formal policies for the use of waivers that allow citizens to avoid strict compliance with regulations; (4) employ benefit-cost analysis in rulemaking; (5) avoid imposing standards that exceed federal requirements except when it is required by state statute or achieves a necessary policy goal; and (6) strive for a regulatory process that values performance-based outcomes.

With these principles in mind, EO 2 ordered state agencies to identify within 90 days rules and processes that “impede responsible economic development.” Their reviews would be conducted in conjunction with the RTRG. Within 180 days, agencies would have to “amend or rescind rules or processes that are unnecessary, ineffective, contradictory, redundant, inefficient, needlessly burdensome, that unnecessarily impede economic growth, or that have had unintended negative consequences.”⁷

This language in EO 2 describing problematic regulations is very similar to language that has appeared as part of regulatory reform efforts in other places and levels of government. Such language is a core feature of programs aimed at reducing red tape. For example, several presidential executive orders required similar reviews of regulations and included similar language related to problematic rules. Two of the more notable reviews in modern times were ordered by Democratic administrations.⁸ Executive orders issued by state governors in recent years have also included similar language but generally (though not universally) have been

⁷ Governor Chris Christie, New Jersey Exec. Order 2 (January 20, 2010) (henceforth referred to as “EO 2”).

⁸ See Improving Government Regulations, Exec. Order No. 12044, 43 Fed. Reg. 9773 (March 24, 1978) and Improving Regulation and Regulatory Review, Exec. Order No. 13563, 76 Fed. Reg. 3821–23 (January 18, 2011).

ordered by Republicans.⁹ Interestingly, the Christie reform program is also similar to an earlier effort in New Jersey instituted in 1993 by Democratic governor James Florio, which involved the creation of a regulatory advisory panel that oversaw a review of state regulatory processes.¹⁰

Governor Christie’s Executive Order 3 (EO 3) officially created the RTRG and also outlined the purpose and structure of the group. The RTRG was to be chaired by the lieutenant governor and consist of the chief counsel to the governor, heads of two state regulatory agencies (the Department of Environment and the Department of Community Affairs), and the leaders of the majority and minority parties in the state legislature or their designees (thereby making the group bipartisan).

The RTRG was tasked with reviewing pending and proposed regulations, as well as operative executive orders from previous governors, “in order to assess their effects on New Jersey’s economy and to determine whether their burdens on business and workers outweigh their intended benefits.”¹¹ The order’s language on costs and benefits further reinforces the principles related to benefit-cost analysis emphasized in EO 2. The RTRG was also responsible for providing a written report to the governor within 90 days, with recommendations for those provisions deemed to be unduly burdensome.

On September 23, 2010, Executive Order 41 was signed by then acting governor Kim Guadagno (Governor Christie’s lieutenant governor and chair of the RTRG).¹² EO 41 created a

⁹ See Governor Douglas Ducey, Arizona Exec. Order No. 2016-03 (December 31, 2016); Exec. Order No. 2017-02 (January 23, 2017); Governor Lawrence Hogan, Maryland Exec. Order No. 01.01.2015.20 (July 9, 2015); Governor John H.ickenlooper (a Democrat), Regulatory Efficiency Reviews, Colorado Exec. Order No. D2012-002 (January 19, 2012); Governor Charles D. Baker, To Reduce Unnecessary Regulatory Burden, Massachusetts Exec. Order No. 562 (March 31, 2015); Governor Bruce Rauner, Executive Order Establishing the Illinois Competitiveness Council, Illinois Exec. Order No. 2016-13 (October 17, 2016); Governor Pete Ricketts, Regulatory Reform, Nebraska Exec. Order No. 17-04 (July 6, 2017); and Governor Eric Greitens, Missouri Exec. Order No. 17-03 (January 10, 2017) and Exec. Order No. 17-11 (April 11, 2017).

¹⁰ See Governor James J. Florio, New Jersey Exec. Order No. 97 (1993).

¹¹ Governor Chris Christie, New Jersey Exec. Order 3 (January 20, 2010) (henceforth referred to as “EO 3”).

¹² Kim Guadagno, New Jersey Exec. Order No. 41 (September 23, 2010).

new Red Tape Reduction *Commission*, which replaced the RTRG. The RTRC consisted of the lieutenant governor or her designee, four members from the legislature (not more than two from the same party), and up to four “public members” with experience in the regulatory process. EO 41 would expire after three years, meaning the RTRC would expire along with it; however, the commission was subsequently reauthorized multiple times.

Whereas the primary mission of the RTRG was to review pending regulations frozen by EO 1, as well as executive orders signed by previous governors, the RTRC was tasked with overseeing a review of all existing administrative rules in New Jersey to assess impacts on “job creation, economic growth, and investment in New Jersey.” As part of this process, the commission would solicit comments from the public, conduct at least three public hearings, and issue reports to the governor, which would include recommendations for rules that were burdensome to the state’s economy and, importantly, recommendations for improvements to New Jersey’s regulatory processes.

Executive Order 155 subsequently reauthorized the RTRC through December 2015, and Executive Order 198 extended the life of the RTRC again, this time through December 2017, which coincided with the near-end of Governor Christie’s second term in office. The RTRC expired on this date since Phil Murphy, Governor Christie’s successor, chose not to revive the commission after it sunset.¹³

¹³ This raises an interesting tradeoff. Commissions designed to identify and eliminate regulatory burdens sometimes have sunset dates attached to them, presumably so that bureaucracy does not grow with the creation of yet another commission, which would counteract the intention of red tape cutting efforts. However, if a red tape cutting body is not made permanent and therefore does not continue beyond the administration that created it, then a culture of retrospective review is unlikely to take hold in the government, and subsequent reviews and commissions are likely to be necessary.

B. Reports to the Governor

The reporting requirements in Executive Orders 3 and 41 turned out to be especially important, because these reports offer a glimpse as to what the New Jersey regulatory program accomplished. That said, the findings in these reports should also be viewed with caution since they were not written by an objective source. Given that the RTRC and RTRG were led by a political authority who was part of the Christie administration, the lieutenant governor, we should expect the reports to emphasize successes and accomplishments and downplay any problems or failures that might have occurred. Nonetheless, information is available from these reports that otherwise would not have been publicly available or compiled across the various agencies engaged in the reviews. This makes the reports useful, even if not totally objective.

Three major reports were issued in total throughout Governor Christie's two terms in office, and additional information appeared on a website for the program.¹⁴ The reports consisted of input gathered through communications with the public, especially at public meetings; examples of rules that were modified, repealed, or passed as part of the red tape reduction effort; legislative actions related to regulatory reform; and recommendations for additional regulatory or legislative changes.

The first report, issued within 90 days of the signing of Executive Orders 1, 2, and 3, was published on April 19, 2010.¹⁵ Among other things, the report provided general recommendations that state agencies adopt a more customer-service-based approach with the public, and that the state should strive to achieve a better balance between protecting the public and nurturing free enterprise. The report also endorsed the creation of a more permanent version

¹⁴ New Jersey Department of State, "Red Tape Review Commission," accessed January 1, 2018, http://www.nj.gov/state/dos_red_tape.html. This website was taken down after Governor Christie left office.

¹⁵ Red Tape Review Group, *Red Tape Review Group Findings and Recommendations*, April 19, 2010 (henceforth referred to as "2010 RTRG report").

of the group going forward and included some specific legislative, regulatory, and policy proposals.

The report outlined how the RTRG held three public meetings (which included oral or written statements from more than 100 witnesses), as well as convened a number of smaller input sessions and discussion groups. The report included many examples of “archaic and anachronistic rules” and “rules that offend common sense.” Examples of problematic rules included a rule prohibiting milk producers from offering coupons and a rule requiring that restaurants with liquor licenses be treated equivalently to government Alcohol Beverage Control stores with respect to wine tastings.¹⁶ The report also told the story of a salon and party store that was fined by the state cosmetology board for allowing high school–aged girls to pin partygoers’ hair, when only stylists or hairstyling students with certain permits and minimum levels of experience were legally allowed to engage in such activities.¹⁷

In total, the RTRG reviewed roughly 800 pages of proposed regulations. The report noted that a preliminary review before Governor Christie took office identified 156 proposed rules that could be frozen by EO 1¹⁸ and another 67 proposed rules that staff deemed should be allowed to proceed.¹⁹ Ultimately, however, 128 proposed rules would be frozen under EO 1.²⁰ These rules would be the primary object of the RTRG’s review, in addition to operative executive orders signed by previous governors.

The report recommended the repeal of 83 executive orders from previous administrations, some of which created councils or commissions that were no longer active.²¹ Tellingly, just 16

¹⁶ 2010 RTRG report, 36, 38.

¹⁷ 2010 RTRG report, 39.

¹⁸ This is two more than mentioned in EO 1.

¹⁹ 2010 RTRG report, 11.

²⁰ The final number allowed to proceed would be 70. See 2010 RTRG report, 4.

²¹ The orders can be found in appendix I of the 2010 RTRG report.

proposed rules were withdrawn to be either modified or fully rescinded by the end of the 90-day review period.²² About 21 rules were identified from the Departments of Treasury and Environmental Protection to be *candidates* for repeal or revision.²³

With respect to procedural recommendations, the RTRG received many complaints that agencies would rarely make changes in response to the public commenting process, which the RTRG determined was likely due to a requirement, under the state Administrative Procedure Act, that substantive changes to rules would trigger a completely new rulemaking. Thus, the report recommended that agencies be provided the flexibility to amend rules in response to comments without giving agencies blanket authority to issue regulations that dramatically differed between the proposed and final stages. The report noted that other states had adopted the “logical outgrowth” legal test to determine whether proposed and final regulations differed substantively. New Jersey could follow a similar approach.

The report also recommended that sunsets for rules, which are automatic expiration dates that apply to regulations in New Jersey, be extended from five to seven years for rules with no changes, so long as a few basic requirements were met. This way, well-established rules would not have to go through the entire rulemaking process as frequently, generating certainty for the public. The report noted that, according to the OAL, about 35 percent of all rulemakings in New Jersey are readoptions.²⁴

A second report, this time from the RTRC, was published in February 2012.²⁵ The report included many examples of legislative and regulatory changes that were claimed to be accomplishments of the red tape cutting effort. In general, the report reads like a list of success

²² 2010 RTRG report, 4. A list of the withdrawn proposals can be found in appendix G of the report.

²³ 2010 RTRG report, appendix H.

²⁴ 2010 RTRG report, 62.

²⁵ Red Tape Review Commission, *Red Tape Review Commission Findings and Recommendations*, February 2012 (henceforth referred to as “2012 RTRC report”).

stories—it lists two dozen red tape–related laws that were enacted in 2011 alone,²⁶ as well as numerous regulatory changes involving “outdated, overreaching, and common sense defying regulations.”²⁷ An example includes a regulation that prohibited farm vehicles of certain sizes from operating on Sundays and holidays and a rule requiring tow trucks to transfer school buses to locations for inspection and repair, even if those buses could be driven safely when no passengers were aboard.

The most noteworthy successes were the passage of several bills in 2011 that appear to be direct responses to recommendations in the 2010 report. Specifically, the sunset period in New Jersey was extended from five to seven years, and agencies would be allowed to make substantial changes to regulations between the proposal and adoption stages without having to begin the rulemaking process anew. There is significant evidence that these legislative changes were a direct result of the group’s and commission’s work, as the legislative sponsors of the bills were also members of the RTRC.²⁸

The 2012 report included further recommendations that were fairly specific, such as recommending that laws and licensing rules be amended that govern vehicle window tinting. An outdated law was identified that prevented people with a venereal disease from engaging in certain occupations and restricted their movement unless they secured a permit. Finally, the report recommended an examination of occupational licensing requirements in New Jersey and a closer examination of Certificate of Public Convenience and Necessity laws, such as exist for buses.

²⁶ 2012 RTRC report, 22–26.

²⁷ 2012 RTRC report, 15–16.

²⁸ 2012 RTRC report, 22–23.

In April 2014, the last major report was issued by the RTRC.²⁹ Most notably, the RTRC claimed that it, in conjunction with the executive and legislative branches, had “brought a systemic cultural change to Trenton.” The report, like its predecessors, included examples of successes related to reducing regulatory burdens. A number of laws related to regulatory reform that passed in 2012 are mentioned, including making changes to limited liability laws in New Jersey, loosening restrictions on microbreweries, and removing licensing requirements for some bingo game parlors. The report also highlighted a law abolishing around 110 inactive or obsolete entities in government and a law related to licensing reciprocity across states.

Some basic statistics about regulatory reform are also provided in the 2014 report. Since the signing of EOs 1, 2, and 3 and the creation of the RTRG and RTRC, various departments had abolished six chapters of the state administrative code, amended 99 regulations, and repealed 31 regulations in total.³⁰ Additionally, the *New Jersey Register*, a publication of bureaucratic activity in New Jersey state government, totaled 3,086 pages in 2010, which was roughly two-thirds of the size in 2009 (4,846 pages) and less than half of the 2008 value (7,020 pages), suggesting a significant decline in regulatory output.³¹

III. Empirical Analysis of Rulemaking in New Jersey

A. Measures of Regulation

The key test of any regulatory effort aimed at reducing red tape is whether that reform actually succeeds in lowering overall regulatory burdens. In order to assess this, however, one needs an objective measure of regulation. The number of pages in the *New Jersey Register* is one such

²⁹ Red Tape Review Commission, *Red Tape Review Commission Findings and Recommendations*, April 30, 2014 (henceforth referred to as “2014 RTRC report”).

³⁰ 2014 RTRC report, 1.

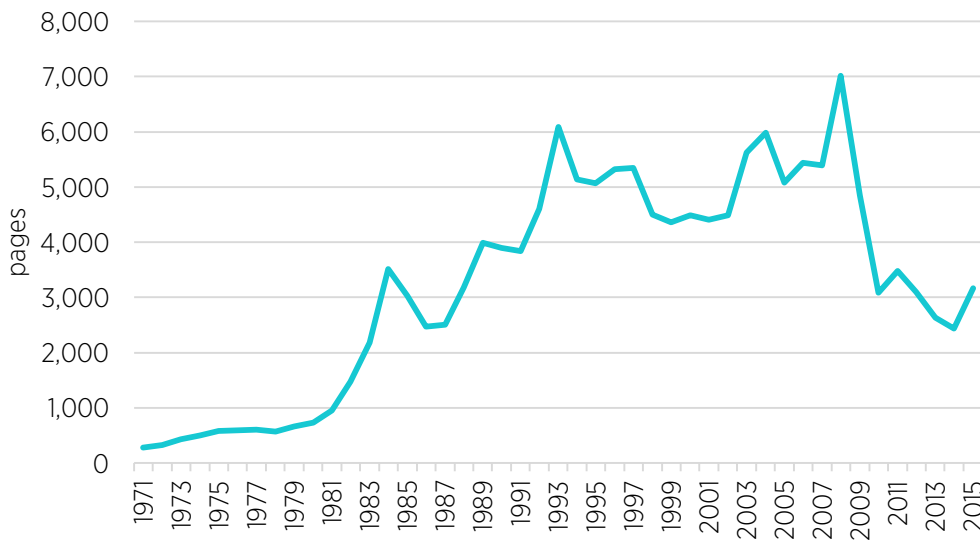
³¹ 2014 RTRC report, 3.

measure, as the 2014 RTRC report makes evident. Notices appearing in the *Register* include rulemaking activity (both proposed and final adopted rules) as well as other agency actions, such as notifications about public hearings. The *Register*, then, is a reasonable, although imperfect, measure of new regulatory activity each year. It is imperfect because not every page has the same impact, not all pages are even regulatory in nature, and some pages may eliminate regulations while others add new rules. Nonetheless, the page counts do say something about how much activity occurs at state agencies from year to year.³²

Data on the annual page count in the *New Jersey Register* are available from the state OAL. According to a t-test comparing means across the two sample periods, there was a statistically significant decline in the annual page count of the *New Jersey Register* in 2010 through 2015 when compared to the previous 20 years. The average number of pages from 1990 to 2009 was 5,046. That number fell to 2,982 from 2010 to 2015. As such, it does indeed appear, as the 2014 RTRC report suggests, that regulatory activity generally declined during the Christie administration, at least relative to the decades of the 1990s and 2000s. This decline is evident in figure 1.

³² A similar measure of regulation would be to count pages in the *New Jersey Administrative Code* (NJAC). As part of the 2010 RTRG report, the New Jersey OAL calculated that, as of November 16, 2009, there were 25,746 pages of administrative rule text pages in the NJAC. Unfortunately, data are unavailable from another moment in time with which to compare this figure.

Figure 1. Annual Number of Pages in the *New Jersey Register*, 1971–2015



Source: Data from the New Jersey Office of Administrative Law.

However, it is worth noting that the level of regulatory activity in New Jersey increased dramatically in the 1980s. The average number of pages in the *New Jersey Register* was just 504 from 1971 to 1979. The average jumped to 2,404 from 1980 to 1989. Thus, the lower levels of regulatory activity seen during the Christie administration are still not as low as what the state experienced in the 1970s but are on par with levels seen in the 1980s.

One partial explanation for these trends may be the sunset provision in New Jersey. As already discussed, the sunset period was extended from five to seven years by a law enacted in 2011. This policy change may have had an effect on *New Jersey Register* pages. If 35 percent of rules are readoptions, then extending the sunset period should reduce the flow of regulatory activity, resulting in fewer *Register* pages. Assuming most readoptions do not add much to overall burdens, this trend could result in a decline in *Register* pages with no corresponding reduction in real regulatory burdens.

Notably, the rise in regulatory activity that occurred around 1980 also coincides with the introduction of New Jersey's sunset provision. Sunsets were initially instituted under an executive order in 1978, the main elements of which were eventually codified into legislation.³³ If the sunset provision contributes significantly to *Register* pages, the introduction of the sunset provision could explain some of the increase in *New Jersey Register* output that occurred in the early 1980s, though it probably does not explain the whole increase.³⁴ Additionally, the sunset provision itself could have been a response to concern about increasing regulatory activity that was caused by other factors.

B. New Office of Administrative Law Data

This author was able to collect novel data from the New Jersey OAL that provide a deeper look into rulemaking activity trends over time. The OAL tracks rule proposals and adoptions from year to year, which allows for a count of actual regulations. Figures 2 and 3 show the total number of rules adopted and proposed from 1996 through 2015.

Rule proposals are regulations agencies offer before the rules go through the notice-and-comment or public hearing processes. Adoptions are akin to final rules at the federal level. They are the final incarnation of rules that emerge out of the proposal stage after going through the administrative procedure process. Figures 2 and 3 break down rules according to whether they are new, readoptions of old rules (some of which may be in response to the state's sunset

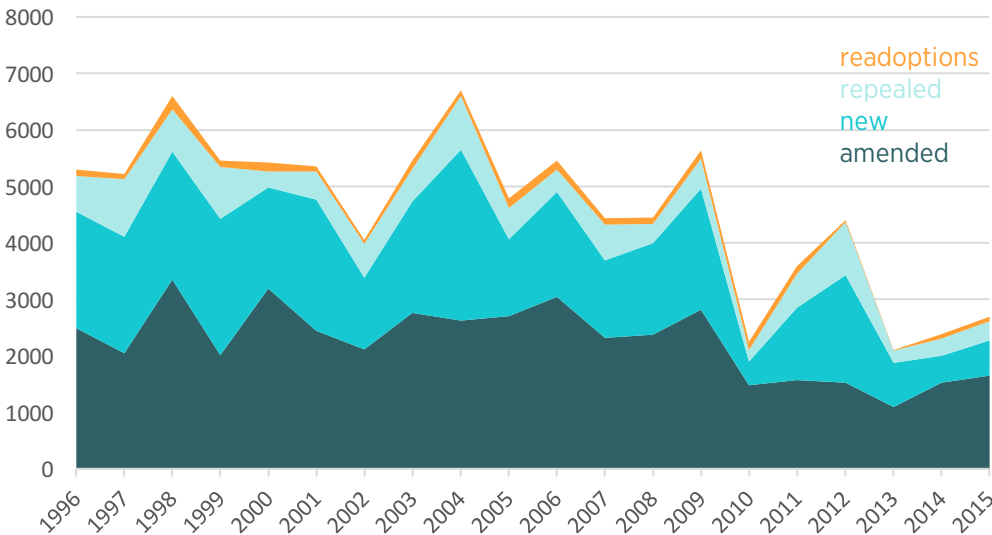
³³ See Governor Byrne, New Jersey Exec. Order 66 (1978). The sunset provision was codified into law in 2001. See N.J.S.A. § 52:14B-5.1.

³⁴ Throughout the 1980s, 1990s, and early aughts, a number of regulatory process changes were instituted in New Jersey. Some related to analytic or reporting requirements imposed on agencies. These could also explain some of the increase in *New Jersey Register* pages. See, for example, Debra Borie-Holtz and Stuart Shapiro, "In the Regulatory Weeds of the Garden State: Lessons from New Jersey's Administrative Process" (working paper, Institute for Policy Integrity, New York, 2009); and Shapiro and Borie-Holtz, *The Politics of Regulatory Reform* (New York and London: Routledge, 2013).

requirement), amendments to old rules (which may also include some sunseting rules), or rule repeals.

As is evident from similarities between the two figures, the number of proposals and adoptions track each other closely over time. As was mentioned earlier, according to the OAL, roughly 35 percent of rulemakings in New Jersey are readoptions. Figures 2 and 3 seem to conflict with this, since only a small fraction of rules are technically deemed “readoptions.” The reason for the difference is that many amended rules are also readoptions, but with changes. Thus, the 35 percent figure includes some of these amended rules.³⁵ This provides some evidence that renewing regulations under the sunset law is not just a rubber stamp. The vast majority of renewed regulations appear to be amended in some way as opposed to just renewed without changes, suggesting there is some substantive review that goes on before rules are renewed.

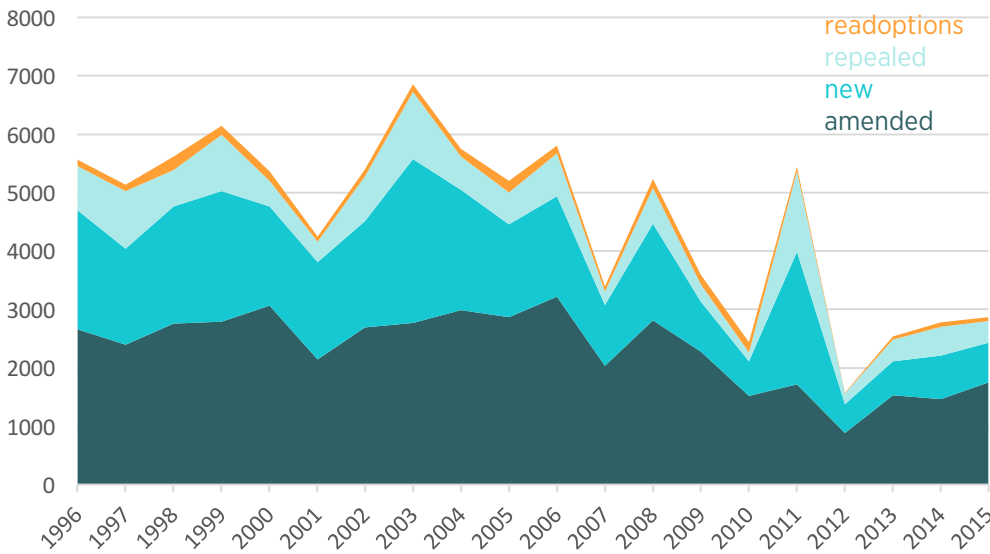
Figure 2. New Jersey Rule Adoptions, 1996–2015



Source: Data from the New Jersey Office of Administrative Law.

³⁵ This was confirmed via personal communication with a state employee at the OAL.

Figure 3. New Jersey Rule Proposals, 1996–2015



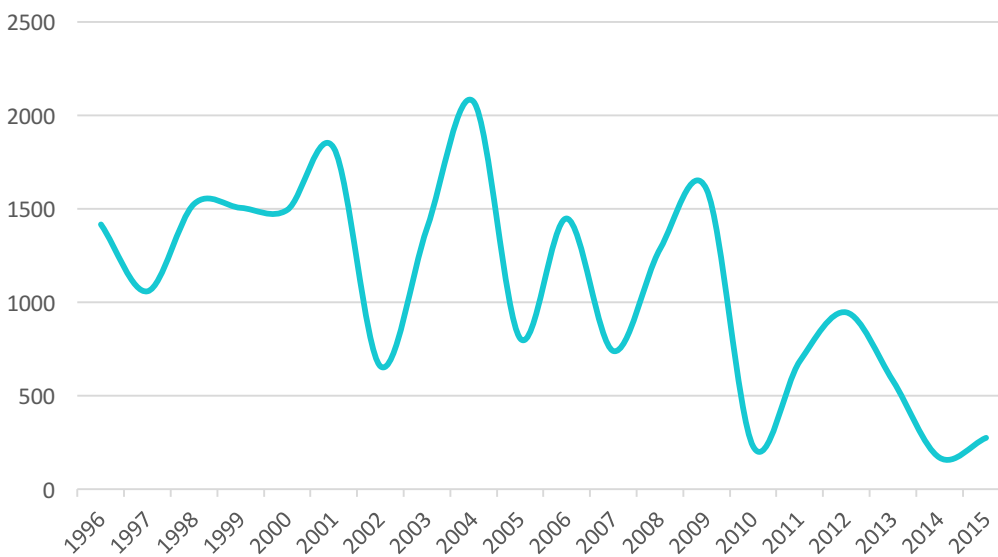
Source: Data from the New Jersey Office of Administrative Law.

The average number of total adopted rule actions fell from 5,311 in the 1996–2009 period to 2,903 in the 2010–2015 period. The difference in means is statistically significant, based on a t-test. This appears to further validate the claim that there was a significant decline in rulemaking activity under the tenure of Governor Christie. A follow-up question, then, is whether this decline in new rulemaking activity actually led to reductions in the overall level of regulation. One way to assess whether the level of regulation fell is to assess whether the net number of adopted rules (new rules minus repealed rules) was negative, which would mean more rules were removed than were added in a particular year. While this measure is imperfect (a single new rule might have a higher impact than multiple repeals of trivial rules, for example), it is nonetheless informative.

Figure 4 presents this information for 1996 to 2015. In no year during this time period was the net number of adopted rules negative, meaning in each year more rules were added to the

books than were repealed. A significant decline is seen during the Christie years, however, based on a t-test. From 1996 to 2009, the average number of net rules added was 1,346. From 2010 to 2015, that number fell to 480. Interestingly, even the number of rules repealed fell from an average of 621 in the 1996–2009 period to 435 in the 2010–2015 period. This decline is not statistically significant, though the magnitude of the decline, 30 percent, is quite large.

Figure 4. Net Rules Adopted in New Jersey (New Minus Repeals), 1996–2015



Source: Data from the New Jersey Office of Administrative Law.

All together, this information suggests an overall decline in rulemaking activity generally under the Christie administration. This decline does not appear to have reduced the cumulative stock of regulation, at least according to the limited data presented here. However, it does appear that there was a slowdown in the growth of regulation levels. It is also unclear whether the slowdown resulted from the red tape reduction effort, or perhaps whether it would have occurred without the creation of the RTRG or RTRC. The cause of the reduction in regulatory activity

may simply have been a Republican governor in office who prioritized deregulation. Several studies have identified that the political party in control of the legislature is an important determinant of rulemaking output.³⁶ The same may be true for governors. Thus, it may be that a slowdown in regulatory activity would have occurred irrespective of the executive orders signed by Governor Christie and his lieutenant governor or the creation of the RTRG and RTRC, simply because the governor’s political appointees at state regulatory agencies would have ensured a slowdown in rulemaking activity, owing to their policy priorities or ideological predispositions.

C. Counting Filings as Opposed to Rules

The data in figures 2–4 count multiple rule changes as occurring within a single *New Jersey Register* notice. For example, a single notice from the Board of Public Utilities in 2003 includes 18 “new” adoptions and one “repeal.”³⁷ For this reason, these data differ slightly from rule counts found in other reports and studies.³⁸ In order to produce counts that are better for making apples-to-apples comparisons with other studies, the data from figures 2 and 3 are collapsed to convert them to individual agency filings of adopted and proposed rules. This creates a total estimate of filings per year, which can be sorted by adoptions and proposals, but which aggregates the number of new, amended, repealed, or readopted actions contained within each notice.³⁹ These numbers are presented for the years 1996 to 2015 in table 1 and in figure 5.

³⁶ See Stuart Shapiro and Debra Borie-Holtz, “Exploring the Relationship between Regulatory Reform in the States and State Regulatory Output,” *Case Western Law Review* 64, no. 4: 1791–1827 (2014); and Shapiro and Borie-Holtz, *The Politics of Regulatory Reform*.

³⁷ 34 N.J.R. 2271(b).

³⁸ For example, there are large differences between the rule totals presented in figures 2 and 3 and the 2010 RTRG report. There are also differences between these data and regulation counts in the work of Stuart Shapiro and Debra Borie-Holtz, whose numbers more closely match the data from the RTRG report. See Shapiro and Borie-Holtz, “Lessons from New Jersey,” *Regulation* 34, no. 1 (Spring 2011).

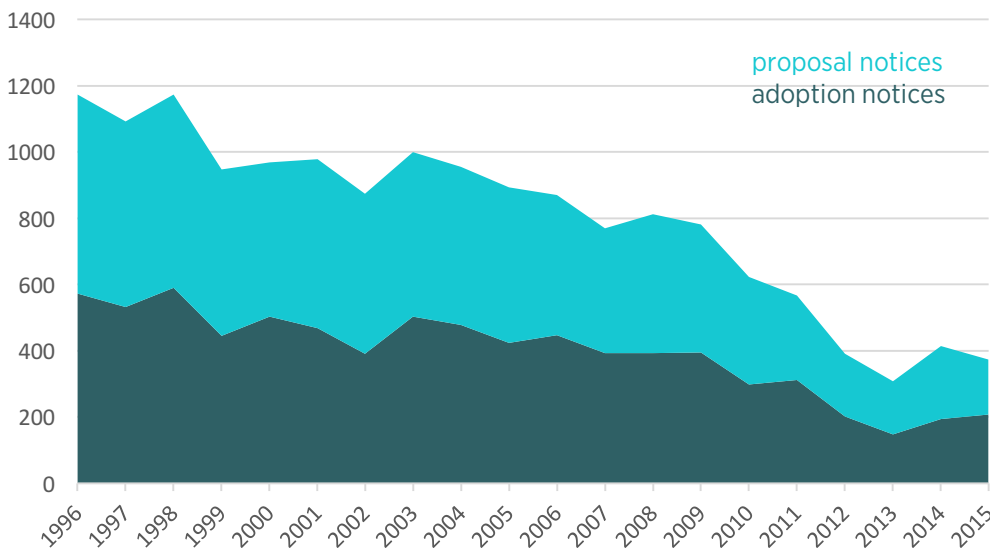
³⁹ Note that a small number of these filings were withdrawn prior to actual publication in the *New Jersey Register*.

Table 1. Agency Rule Filings by Year, Adoptions and Proposals

Year	Adoptions	Proposals
1996	572	602
1997	531	561
1998	590	583
1999	444	503
2000	502	466
2001	468	511
2002	391	482
2003	502	498
2004	478	476
2005	424	469
2006	446	423
2007	392	378
2008	392	419
2009	394	387
2010	297	326
2011	312	254
2012	202	189
2013	147	160
2014	193	221
2015	207	167

Source: Author's calculations based on data from the New Jersey Office of Administrative Law.

Figure 5. Agency Rule Filings Year, Adoptions and Proposals



Source: Author's calculations based on data from the New Jersey Office of Administrative Law.

The estimates presented here track extremely closely to numbers in the 2010 RTRG report.⁴⁰ Notable in table 1 and figure 5 is the long-term decline in rulemaking activity. This decline is not nearly as evident in the count of *New Jersey Register* pages seen in figure 1, which suggests that the length of notices may be increasing over time or that additional information unrelated to regulations is being published increasingly with time. While the general trend seen in figure 5 appears to have begun before the Christie administration, there was nonetheless a decline during his tenure in office. The average number of proposal filings fell from 483 during the 1996–2009 period to 220 from 2010 to 2015. The corresponding averages for adoptions during these periods are 466 and 226. Both are statistically significant differences based on a t-test.

⁴⁰ One difference relates to an apparent typo in the 2010 RTRG report on page 64. Some withdrawn notices may be counted both in the data presented here as well as in the 2010 RTRG report. Additionally, some differences still remain between these data and the data gathered by Shapiro and Borie-Holtz. The reason for the differences is likely that the data were captured in different ways. While the data in the 2010 RTRG report and used in this study came directly from the OAL, the Shapiro/Borie-Holtz data were gathered by research assistants who read the *New Jersey Register*.

These data provide some of the strongest evidence that the Christie administration's collective efforts to reduce regulation may have been successful. However, some caveats are required. First, as noted earlier, while the total amount of rulemaking activity appears to have slowed, it is likely that this slowdown did not result in a decline in the overall level of regulation. Second, some of the decline may be explained by the extension of the sunset period in 2011 or by other factors, since the slowdown began before the Christie administration took office.⁴¹ Finally, even if the Christie administration is a primary cause, it is not clear whether the red tape reduction effort specifically deserves credit.

IV. Discussion

Some best practices, as well as worst practices, are evident in the New Jersey red tape reduction effort. With respect to best practices, the New Jersey effort did a good job reporting on the program's progress in the form of three detailed reports. Despite some reasons these reports may not be completely objective, without them it would be very difficult to ascertain what was accomplished. These reports are also notable in that some of the RTRG and RTRC recommendations were eventually enacted by the legislature. The fact that the RTRG and RTRC were willing to make recommendations that would require statutory changes may stem from instructions in the governing executive orders asking these groups to consider recommending process changes in addition to recommending rules for modification or repeal. This is clearly a best practice. Additionally, the bipartisan nature of these commissions, and the fact that legislators served on the commissions who could then turn around and sponsor

⁴¹ New Jersey is known for imposing many regulatory process and analytic requirements on regulators. The slowdown discussed here may have roots in regulatory reforms adopted in the 1980s, 1990s, and 2000–2010 period. This could be evidence of the “ossification” that some worry about when imposing new requirements on regulators. Alternatively, the slowdown could be a positive development. If imposing requirements on regulators in New Jersey means they are growing more careful about which rules are put into place, this could mean that the rules being enacted are better designed and more carefully targeted.

legislation, may have contributed to recommendations being taken seriously in the state legislature.⁴²

Some aspects of the red tape cutting effort in New Jersey are more of a mixed bag. For example, while there is nothing problematic about a new administration instituting a regulatory freeze or moratorium upon taking office, there is nothing especially groundbreaking about it either. At the federal level, most new administrations employ these tools to gain some initial control over the administrative state and to ensure that only regulations in line with the new administration's priorities are issued. Such moratoria make sense and are relatively uncontroversial, but administrations should not claim they have reduced regulatory burdens with what are in fact routine actions. Tellingly, only 16 regulations were actually withdrawn as a result of the regulatory freeze under EO 1, suggesting that the freeze did not result in large reductions in regulatory burdens.

Some problematic practices also can be identified in the New Jersey reform program. Most problematic is that there is no evidence that the overall burden of regulation declined in New Jersey as a result of the effort. In fact, repeal activity also declined during the Christie administration relative to the years before the administration took power. This failure should not be entirely surprising. Reviews of regulations on the books have not been very effective when tried in other places and at other times, at least with respect to reducing the overall burden of regulation or institutionalizing a culture of retrospective review of old regulations on the books. For example, efforts at the federal level in the United States have largely been ad hoc exercises,

⁴² One rather disappointing aspect of the reports is that no major reports were issued after 2014, despite Governor Christie serving in office through early 2018. This suggests that the RTRC, and perhaps the red tape cutting program more generally, may have been less active or less of a priority in the latter years of Governor Christie's administration.

failing to institutionalize a culture of recurring review at agencies.⁴³ Meanwhile, the overall level of federal regulation has grown in spite of these efforts. Similarly, policies instituted at the state level have often failed to institutionalize a process of recurring review.⁴⁴ Indeed, New Jersey itself has seen similar efforts before, most notably in the early 1990s. The fact that a similar review was needed nearly two decades later suggests that earlier efforts to institutionalize a culture of recurring retrospective review in New Jersey failed.

Given that the RTRC expired at the end of 2017, it is unlikely that recurring review of regulations will be institutionalized in New Jersey this time either. Rather, as with previous efforts, the Christie red tape cutting program is likely to prove one-time in nature, requiring a future governor to take further action at some point down the road. In light of these facts, there is no evidence of the “systemic culture change” in Trenton the RTRC noted in its 2014 report.

Furthermore, notably absent from the RTRG and RTRC reports is any discussion of how benefit-cost analysis was used to inform reviews, despite this analysis being listed as a guiding principle in Executive Order 2 and benefit-cost balancing being implied in Executive Order 3. Thus, the rules modified or eliminated as part of New Jersey’s review may not have been those that were most burdensome. At the federal level, when required to review old regulations, agencies sometimes take credit for actions they would have undertaken anyway.⁴⁵ This same phenomenon may have been present in New Jersey. Analysis should have been incorporated more into rule reviews to ensure that modifying or eliminating rules was generating meaningful changes that improved state residents’ quality of life.

⁴³ See Cary Coglianese, “Moving Forward with Regulatory Lookback,” *Yale Journal on Regulation* 30 (2013), for discussion of the limits of a review ordered by President Obama in 2011.

⁴⁴ See Stuart Shapiro, Debra Borie-Holtz, and Ian Markey, “Retrospective Review in Four States,” *Regulation* (Spring 2016).

⁴⁵ Randall Lutter, “Regulatory Policy: What Role for Retrospective Analysis and Review,” *Journal of Benefit-Cost Analysis* 4, no. 1 (2013): 17–38.

A lack of a consistent way to measure the regulation level in New Jersey also likely contributed to the failure to reduce aggregate regulatory burdens. More consistent and reliable data should have been captured to help reformers measure their progress and to give the public a way to hold reformers accountable. Having a reliable measure of regulation has been critical in other red tape cutting efforts, most notably in Canada.⁴⁶ Without a way of measuring the cumulative regulatory burden across time, it is hard to gauge the success of red tape cutting efforts.

Counts of individual rules or pages of rules could serve this purpose, or other measures of regulatory burden could be used. Paperwork burden hours is one such measure. This information is typically captured for federal regulations under the Paperwork Reduction Act,⁴⁷ and it is relatively easy to estimate. More sophisticated measures of cost, such as the opportunity cost of regulations, could also be measured,⁴⁸ but this would require the technical capabilities and staff to make such measurements.

Another reason for limited results in New Jersey is likely because the Christie reforms had few “absolute” goals attached to them. Stuart Shapiro and Debra Borie-Holtz note that absolute regulatory reforms are likely to be more effective.⁴⁹ These include reforms with concrete goals and deadlines attached to them. Unfortunately, reforms often get watered down and weakened during legislative logrolling, or politicians, despite their rhetoric, may be more interested in symbolic changes that more or less maintain the status quo and don’t rock the boat too much.

⁴⁶ See, for example, the red tape cutting program in the Canadian province of British Columbia. Laura Jones, “Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?” (Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, 2015).

⁴⁷ 44 U.S.C. §§ 3501–3521.

⁴⁸ This is the preferred measure being used by the Trump administration, as it seeks to eliminate regulatory burdens under Exec. Order No. 13771, 82 Fed. Reg. 9339 (January 30, 2017).

⁴⁹ Shapiro and Borie-Holtz, *The Politics of Regulatory Reform*.

Absolute reforms, such as setting explicit reduction targets accompanied by hard deadlines, or constraints on regulators to eliminate a certain number of requirements for every new one introduced, may be more successful at reducing aggregate regulatory burdens than reforms that lack these elements. In fact, a reduction target tied to a deadline and a one-in, two-out constraint on regulators were both present in a British Columbia regulatory reform in place in the 2000–2010 period, as was a commitment to tracking regulation levels across time.⁵⁰ Notably, none of these factors were present in the New Jersey reform, which could explain why British Columbia experienced significant deregulation while New Jersey did not.

V. Conclusion

In recent years, a number of states have started red tape cutting programs to reduce unnecessary regulatory burdens. While these efforts are all unique in various respects, most share some common characteristics, which lead them to resemble the red tape cutting effort in New Jersey under the Christie administration. Indeed, even New Jersey has undergone similar regulatory review efforts in the past. Recurring features of these efforts include a moratorium on new or pending regulations, the creation of a review body or commission, and a requirement that regulators undertake a review of the existing regulations on the books to identify obsolete, redundant, or unnecessary regulations to modify or eliminate.

Since many of these state efforts share common features, information about the effectiveness of the New Jersey reform is likely to be useful. First, it should provide some insight as to whether such efforts are likely to be successful in their goal of reducing regulatory burdens. Second, best and worst practices from the New Jersey experience could help to improve future red tape cutting reforms.

⁵⁰ Jones, “Cutting Red Tape in Canada.”

The red tape reduction effort in New Jersey is somewhat of a mixed bag, with both positive and negative elements. On one hand, the RTRG and subsequent RTRC should be commended for transparently reporting on their efforts, for making a wide variety of recommendations (some of which were ambitious in that they required statutory changes), for seeing a number of their recommendations implemented, and for eliminating some outdated regulatory clutter. On the other hand, the reform effort appears to have failed to meaningfully reduce regulatory burdens in New Jersey or to institutionalize a culture of retrospective review at state agencies. These failures may have stemmed from a lack of any clear metric to track program progress and a lack of concrete policy goals, as well as the temporary nature of the RTRG and RTRC. The lack of analytic expertise driving the reform, through the use of tools like benefit-cost analysis, is also of concern.

The available data suggest that in general, rulemaking activity in New Jersey may be slowing, but the level of regulation in New Jersey continues to rise, albeit at a slower pace. In the coming years, it is likely that we will continue to see similar red tape cutting efforts in other states. One reason for this is that many states lack a meaningful process for periodic review of regulations on the books. Indeed, even New Jersey is likely to require similar reviews in the future, which is a telltale sign that there has been no systemic culture change in Trenton. Thus, we are likely to continue to see one-off efforts implemented through executive orders to address the growing stock of regulation, when more permanent, institutional reviews are preferable but are also likely to require statutory changes.

To be effective, reviews should have strong, absolute policy goals attached to them, such as hard caps on rulemaking activity, explicit reduction targets tied to strict deadlines, process constraints that incentivize regulators to achieve these goals, and simple metrics to assess

program effectiveness across time. These elements make it more likely that regulatory burdens are successfully reduced, that periodic reviews become ingrained in the culture of state regulatory agencies, and that reviews are substantive rather than merely symbolic. New Jersey has made progress along some dimensions, but a lot of regulatory weeds remain to trim in the Garden State.