

June 2009

NomineeAlert



this issue:

Christopher Schroeder, Nominee
for Assistant Attorney General for
the Office of Legal Policy

Schroeder's Background

Professor, Duke University School
of Law

Of Counsel, O'Melveny & Myers,
L.L.P.

Impeachment Trial Counsel, Sen.
Joe Biden

Deputy Assistant Attorney and
Special Counsel, Office of Legal
Counsel, U.S. Department of
Justice

Chief Counsel, Senate Judiciary
Committee

Partner, Armour, Schroeder, St.
John & Wilcox

Director, Energy and Environment
Project, Earl Warren Legal
Institute, University of California,
Berkeley

EDUCATION

B.A., Princeton University

M.Div., Yale University

J.D., University of California,

Berkeley (Boalt Hall)

Who is Christopher Schroeder? Saving you from yourself...

On June 4, 2009, President Obama nominated Christopher H. Schroeder to be the Assistant Attorney General for the Office of Legal Policy.

Schroeder's general philosophy regarding regulation seems to be a desire to regulate the risk out of everything while simultaneously punishing those who engage in risky behavior even if no harm actually occurs from that behavior.

The Office of Legal Policy at the Justice Department handles the

Department's significant policy initiatives and other special projects while working with the Office of Legislative Affairs to get its agenda through Congress.

Schroeder is another of Obama's nominees who has a "regulate first, ask questions later"

approach to governing. One of the tools typically used by administrative agencies in promulgating regulations is to examine the

costs of the regulation versus its benefits.

Schroeder is opposed to performing this type of analysis in the rulemaking process but instead advocates that if such analysis is necessary it can be accomplished after the regulation is finalized.

On this point Schroeder has stated, "Studying the cost and benefits before a regulation is promulgated slows the rulemaking process to produce

information that is not useful to the agency's mandate. Assuming that it is useful to study the efficiency of regulations, this delay can be avoided by undertaking retrospective cost-benefit studies." Fn.1

"Schroeder's advocacy of a regulate first, research later philosophy in governing is deeply troubling. Americans need and deserve leaders who do the opposite, leaders who think first and then act, not the reverse."

***-Bill Wilson, President,
Americans for Limited
Government***

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Sources for further reading:

Fn.1. Sidney A. Shapiro, and Christopher H. Schroeder, *Beyond Cost-Benefit Analysis: A Pragmatic Reorientation*, HARVARD ENVIRONMENTAL LAW REVIEW, Vol. 31, 2008; Wake Forest Univ. Legal Studies Paper No. 1087796. Available online at SSRN: <http://ssrn.com/abstract=1087796>. (Accessed June 8, 2009.)

Fn.2. Christopher Schroeder, *CPR Perspective, The Precautionary Principle*, undated. Center for Progressive Reform. Available online at: <http://www.cprblog.org/perspprecaution.cfm>. (Accessed June 8, 2009.)

Fn.3. Michele Morrone's book review of *A New Progressive Agenda for Public Health and the Environment*, Christopher H. Schroeder and Rene Steinzor (eds.) Durham, NC: Carolina Academic Press, 2005, Vol. 15, No. 5, May 2005, LAW AND POLITICS BOOK REVIEW, Law and Courts Section, American Political Science Foundation, 2005. Available online at: <http://www.bsos.umd.edu/gvpt/lpbr/subpages/reviews/schroeder-steinzor505.htm>. (Accessed June 8, 2009.)

Fn.4. Interview of Schroeder by Patrick Adams, *Homeland Insecurities*, Vol. 88, No. 5, July –August 2002, DUKE MAGAZINE. Available online at: <http://dukemagazine.duke.edu/dukemag/issues/070802/depqa.html>. (Accessed June 8, 2009.)

Fn.5. Brian Friel, Gray Areas, GovernmentExecutive.com, January 29, 2007. Available online at: <http://www.govexec.com/dailyfed/0107/012907ol.htm>. (Accessed June 8, 2009.)

Walter Dellinger and Christopher Schroeder, *The Purse Isn't Congress' Only Weapon*, THE NEW YORK TIMES, March 14, 2007, at A23. Available online at: <http://www.nytimes.com/2007/03/14/opinion/14dellinger.html?> (Accessed June 8, 2009.)

What you really need to know about Christopher H. Schroeder

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Schroeder wants to reduce the influence of cost-benefit analysis in the regulatory process by including the analysis from other branches of academia other than just economics. He views cost-benefit analysis as an obstacle to regulation and wants to reset the balance between left-wing advocacy groups and regulated entities. He thinks that regulated entities should have to prove that they won't harm others, rather than require victims to prove that regulated entities did harm them. He also wants to advance the agenda of animal rights activists as well as environmentalists and others. He thinks that cost-benefit analysis should only be used to reduce the severity of regulations if it was written into law by Congress.

Schroeder would like to punish people for risky behavior without waiting for the risky behavior to actually cause harm. He wants to employ the precautionary principle and regulate before there is certainty that there is a problem. "There is a general sense that recognition of the precautionary principle will mean more regulation and tighter controls." Fn.2.

Other Views Held by Schroeder:

- He believes that voluntary environmental programs are harmful. Fn.3.
- He believes in forcing expensive technology on industries for environmental controls with little regard to cost. *Id.*
- He believes that conservatives in general, conservative judges, and regulated industries are enemies of the environment and public health. *Id.*
- He doesn't believe that overregulation is a problem. *See Fn. 1.*
- He thinks that terrorists should have access to our courts. Fn.4.
- He believes that Congress can regulate war. Fn.5.

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