



The Honorable Jim Jordan
Chairman
House Judiciary Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Jamie Raskin
Ranking Member
House Judiciary Committee
U.S. House of Representatives
Washington, DC 20515

March 5, 2025

Dear Chairman Jordan and Ranking Member Raskin:

The Coalition for Sensible Safeguards (CSS), which includes more than 200 diverse labor, consumer, public health, food safety, financial reform, faith, environmental, and scientific integrity groups representing millions of Americans, strongly opposes the Separation of Powers Restoration Act, H.R. 1605.

Congress should be looking for ways to strengthen our country's regulatory system by identifying gaps and instituting new safeguards for the public. Unfortunately, this legislation does the opposite by placing even more obstacles before agencies as they work to provide new public health, safety, and financial security protections for the public.

The legislation purports¹ to codify one of the most harmful and damaging recent Supreme Court decisions, which will dramatically weaken our system of regulatory safeguards by enabling judicial policymaking at the expense of agency expertise and congressional authority, thereby resulting in unpredictable outcomes and regulatory uncertainty for all stakeholders. The intent of H.R. 1605 is clear: to make it easier for corporations to bring challenges in court to block many critical updates to public protections, especially those that ensure clean air and water, safe food and consumer products, safe workplaces, and a stable, prosperous economy.

¹ H.R. 1605 directs judges to use the “de novo” judicial review standard when reviewing challenges to agency actions under the Administrative Procedure Act. This does not align, and potentially conflicts, with the Supreme Court’s holding in *Loper Bright* that directs judges to determine the “best interpretation of the law” when reviewing agency actions. Our belief is that the Supreme Court’s holding still affords agencies some deference with respect to their statutory interpretation, albeit less than *Chevron* deference, while “de novo” review grants the agency no deference whatsoever.

In *Loper Bright*, decided last term, the Supreme Court overruled one of the most cited legal precedents over the last 40 years, known as *Chevron* deference. Such deference was established as bedrock administrative law by the Supreme Court in the 1984 case *Chevron v. Natural Resources Defense Council*. In that case, the Court held that when government agencies interpret statutory authority that is ambiguous, courts must defer to the agency's interpretation as long as that interpretation is reasonable. This was based on the common-sense legal principle that when Congress passes laws, agencies must implement them through regulations. Congress is delegating authority to agency experts, not judges, to make legal and policy decisions when implementing the law.

For example, when Congress passes a law to protect consumers from unsafe products, it usually does not include the precise way to make the particular product safe. It leaves that for agency experts to determine. The same is true for laws that Congress passed to protect workers, the environment, and other important topics. *Chevron* deference respected Congress' decision to delegate certain decisions to subject-matter experts.

This problematic legislation strives to abolish judicial deference to agencies' statutory interpretations in rulemaking by requiring a court to decide all relevant questions of law *de novo*, including all questions concerning the interpretation of constitutional, statutory, and regulatory provisions of final agency actions. In practice, abolishing *all* deference to expert agencies and codifying *de novo* review will make the current problems in our country's regulatory process much worse in several ways. H.R. 1605 will lead to even more regulatory burdens and delays, particularly for those "economically significant" or "major" new rules that provide the greatest benefits to the public's health, safety, and financial security.

There is substantial academic literature and expert consensus that intrusive judicial scrutiny of agency rulemaking is one of the main drivers of regulatory paralysis. Thus, increasing litigation risk for agency rules, which is exactly what this bill would accomplish by potentially spawning hundreds of new lawsuits per year, will mean many more missed congressional deadlines and a regulatory process that fails to efficiently and effectively protect the public as Congress requires. This further "chilling" of rulemaking will certainly benefit special interests who will continue to pressure regulators to carve out loopholes, weaken safety standards, or otherwise obstruct new rulemakings with the greatly enhanced threat of a lawsuit waiting in the wings.

In practical terms, eliminating judicial deference to agency statutory interpretations in rulemaking after *Loper Bright* will empower reviewing unelected judges to substitute their policy preferences for those of the politically accountable and expert agency. One of the primary policy rationales for deference is that agencies have considerable and superior expertise in the regulatory sectors they oversee as compared to generalist judges with far less expertise. Thus, requiring *de novo* review makes it easier for the courts to overturn an agency's highly technical,

resource-intensive, and science-based rulemaking without the expertise needed to make such determinations.

The bottom line is that in deciding to reverse the long-standing precedent of *Chevron* deference, the Supreme Court once again sided with big corporations trying to get rid of strong public protections at the expense of the American people. Workers, consumers, the environment, and the public's health and safety will be the big losers while corporations and the right-wing legal movement are the big winners.

H.R. 1605 would make all of the harms from the Supreme Court's deeply flawed decision much worse by codifying *de novo* review into law and thus making the damage from the decision permanent. In order to reverse the Supreme Court's decision and prevent further fallout from it, CSS strongly urges the Committee to consider legislative solutions such as the previously introduced "Stop Corporate Capture Act," which would codify *Chevron* deference into law and which CSS strongly supports.

In addition, CSS strongly encourages members of the Committee to conduct robust oversight of the Trump Administration's numerous and flagrant violations of the separations of powers. For example, the Administration has willfully defied and refused to comply with laws passed by Congress by freezing funds appropriated by Congress, firing civil servants including heads of agencies that Congress specifically designated as independent of Presidential control, attempting to stop work at government agencies that only Congress has the authority to shut down, and failing to follow court orders to cease such actions when courts have found them unlawful. H.R. 1605 will do nothing to "restore" separation of powers, but it will distract the committee's attention and time away from the real and present threat to our constitutional separation of powers.

The American public expects government agencies to do the jobs Congress gave them of protecting consumers, workers, the environment, civil rights, and the public's health and safety. By codifying *de novo* review, H.R. 1605 undermines separation of powers by making it harder for agencies to do their job protecting the public. **We strongly urge opposition to the Separation of Powers Restoration Act, H.R. 1605.**

Sincerely,

Coalition for Sensible Safeguards

Cc: Members of House Judiciary Committee