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ONE HUNDRED EIGHTEENTH CONGRESS
Congress of the United States
House of Representatives
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July 18, 2024

The Honorable Gina Raimondo
Secretary
Department of Commerce
1401 Constitution Avenue, N.W.
Washington, DC 20230

Dear Secretary Raimondo,

We write to call to your attention *Loper Bright Enterprises v. Raimondo*, a recent Supreme Court decision that precludes courts from deferring to agency interpretations when the statutes are ambiguous.¹ In its decision, the Court explicitly overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), which required deference to agency interpretations of ambiguous statutes.² By allowing such deference, the Court in *Chevron* enabled the “Administrative State” to usurp the legislative authority that the Constitution grants exclusively to Congress in Article I. The *Chevron* decision led to broader, more costly and more invasive agency regulation of Americans’ lives, liberty, and property.

Perhaps no administration has gone as far as President Biden’s in issuing sweeping Executive edicts based on questionable assertions of agency authority. The Biden administration has promulgated far more major rules, imposing vast costs and paperwork burdens, than either its most recent predecessors.³ Many of these rules—such as those promulgated to impose President Biden’s centralized industrial planning agenda—have been based on overreaching interpretations of statutes enacted by Congress years ago, before the issues now regulated were even imagined.

¹ *Loper Bright Enterprises v. Raimondo*, 603 U.S. ____ (2024).

² *Id.*

³ See, e.g., *Burdensome Regulations: Examining the Biden Administration’s Failure to Consider Small Businesses: Hearing Before the H. Comm. on Small Business*, 118th Cong. (May 22, 2024) (statement of Dan Goldbeck, Director of Regulatory Policy, American Action Forum), available at <https://www.americanactionforum.org/testimony/burdensome-regulations-examining-the-biden-administrations-failure-to-consider-small-businesses/>.

The expansive *Chevron* deference has undermined our system of government, creating an unaccountable Administrative State. Thankfully, the Court has now corrected this pattern, reaffirming that “[i]t is emphatically the province and duty of the judicial department to say what the law is.”⁴ Given the Biden administration’s record of agency overreach, we are compelled to underscore the implications of *Loper Bright* and remind you of the limitations it has set on your authority.

As a committees of jurisdiction authorizing and overseeing the Department of Commerce, we assure you we will exercise our Article I legislative authority to draft clear statutes that we expect you to follow. Pursuant to Rules X and XI of the U.S. House of Representatives, the Committees will ensure that the Biden administration respects the limits placed on its regulatory authority by the Court’s *Loper Bright* decision. Accordingly, to assist in this effort, please answer the following no later than July 31, 2024:⁵

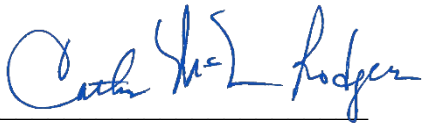
1. Please provide the following regarding agency legislative rules proposed or promulgated since January 20, 2021, identifying in each relevant listing the rule or rulemaking and statutory interpretation concerned:
 - a. A list of all pending judicial challenges to final agency rules that may be impacted by the Court’s *Loper Bright* decision.
 - b. A list of all final agency rules not yet challenged in court that may be impacted by the Court’s *Loper Bright* decision if they are so challenged.
 - c. A list of all pending agency rulemakings in which the agency is relying on an agency interpretation of statutory authority that might have depended upon *Chevron* deference prior to the Court’s decision in *Loper Bright*.
2. Please provide the following regarding agency adjudications initiated or completed since January 20, 2021, identifying in each relevant listing the adjudication and statutory interpretation concerned:
 - a. A list of all pending judicial challenges to final agency adjudications that may be impacted by the Court’s *Loper Bright* decision.
 - b. A list of all final agency adjudications not yet challenged in court that may be impacted by the Court’s *Loper Bright* decision if they are so challenged.
 - c. A list of all pending agency adjudications in which the agency is relying on an agency interpretation of statutory authority that might have depended upon *Chevron* deference prior to the Court’s decision in *Loper Bright*.
3. Please provide the following regarding enforcement actions brought by the agency in court since January 20, 2021, identifying in each relevant listing the Department statutory interpretation sought to be enforced:
 - a. A list of all pending enforcement actions in which the Department is relying on an agency interpretation of statutory authority that might have depended upon *Chevron* deference prior to the Court’s decision in *Loper Bright*.

⁴ 603 U.S. at ___ (slip op. at 7-8) (quoting *Marbury v. Madison*, 1 Cranch 137, 177 (1803)).

⁵ In your responses, please include all information related to rulemakings under the Administrative Procedure Act (5 U.S.C. ch. 5, subch. I § 500 et seq.), and other statutory authority utilized by the Agency that provides for an alternative rulemaking process.

- b. A list of all concluded enforcement actions in which the court deferred under *Chevron* to an agency interpretation of statutory authority as a basis for its judgment against a non-agency party.
4. Please provide a list of all proposed or final agency guidance documents or other documents of the agency containing interpretive rules issued since January 20, 2021, identifying in each the statutory authority the rule interprets and the agency statutory interpretation set forth in the rule for rules likely to lead to:
 - a. An annual effect on the economy of \$100,000,000 or more;
 - b. A major increase in costs or prices for consumers, individual industries, Federal, State, local, or Tribal government agencies, or geographic regions; or
 - c. Significant adverse effects on competition, employment, investment, productivity, innovation, public health and safety, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.
5. Please provide a list of all judicial decisions in cases to which the Department has been a party that were not ultimately overturned by a higher court in which the court relied upon *Chevron* to yield to the agency's interpretation of a statute. Please identify in each listing the statutory authority the agency interpreted, and the agency statutory interpretation upheld.

Sincerely,



Cathy McMorris Rodgers
Chair
Committee on Energy and Commerce



James Comer
Chairman
Committee on Oversight and Accountability