

**Congress of the United States**  
**Washington, DC 20515**

July 9, 2024

The Honorable Antony Blinken  
Secretary of State  
United States Department of State  
2201 C Street N.W.  
Washington, DC 20520

Dear Mr. Secretary:

We are writing to call to your attention *Loper Bright Enterprises v. Raimondo*, a recent Supreme Court decision that precludes courts from deferring to agency interpretations of the statutes they administer.<sup>1</sup> In its decision, the Court overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), which had required courts to defer to agency interpretations of ambiguous statutes. By requiring such deference, the Court in *Chevron* upset the founders' careful separation of powers, permitting courts to abdicate the judicial role granted exclusively to them through Article III of the Constitution, and enabling the Executive to usurp the legislative authority granted exclusively to Congress through Article I. Unsurprisingly, *Chevron* unleashed decades of successively broader, more costly, and more invasive assertions of agency power over citizens' lives, liberty, and property, as agencies adopted expansive interpretations of assertedly ambiguous statutes, demanding that courts defer to them.

President Biden and this administration have premised sweeping and intrusive agency dictates on such questionable assertions of agency authority, promulgating far more major rules, and imposing far more costs and paperwork burdens, than either of its recent predecessor administrations.<sup>2</sup> Many of these rules—such as those promulgated to impose President Biden's climate, energy and Environment, Social and Governance (ESG) agendas—have been based on aggressive interpretations of statutes enacted by Congress many years ago, long before such agendas were even imagined.

The expansive administrative state encouraged by *Chevron* deference has deformed our system of government, overburdening our citizenry and threatening to overwhelm the founders' system of checks and balances. Thankfully, the Court in *Loper Bright* has now corrected its *Chevron* error, reaffirming that “[i]t is emphatically the province and duty of the judicial department to say what the law is.” 603 U.S. at \_\_\_ (slip op. at 7-8) (quoting *Marbury v. Madison*, 1 Cranch 137, 177 (1803)). This long-needed reversal should help stem the tide of federal agency overreach. Given

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<sup>1</sup> *Loper Bright Enterprises v. Raimondo*, 603 U.S. \_\_\_ (2024).

<sup>2</sup> See, e.g., *Burdensome Regulations: Examining the Biden Administration's Failure to Consider Small Businesses: Hearing Before the H. Comm. on Small Business*, 118<sup>th</sup> 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/>

this administration's track record, however, we want to underscore the implications of *Loper Bright* and remind you of the limitations it has set on your authority.

As Chairmen of committees of oversight jurisdiction for your agency, we intend to exercise our investigative and legislative powers not only to reassert our Article I responsibilities, but also to ensure that the administration respects the limits placed on its authority by the Court's *Loper Bright* decision. To assist in this effort, we ask that you provide the following no later than July 31, 2024:

1. Please provide the following concerning agency legislative rules proposed or promulgated since January 20, 2021, identifying in each relevant listing the rule or rulemaking and agency 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 been eligible for *Chevron* deference prior to the Court's decision in *Loper Bright*.
2. Please provide the following concerning agency adjudications initiated or completed since January 20, 2021, identifying in each relevant listing the adjudication and agency 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 been eligible for *Chevron* deference prior to the Court's decision in *Loper Bright*.
3. Please provide the following concerning any enforcement actions brought by the agency in court since January 20, 2021, identifying in each relevant listing the agency statutory interpretation sought to be enforced:
  - a. A list of all pending enforcement actions in which the agency is relying on an agency interpretation of statutory authority that might have been eligible for *Chevron* deference prior to the Court's decision in *Loper Bright*.

- 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 the following concerning agency interpretive rules proposed or issued since January 20, 2021, identifying in each relevant listing the statutory authority the rule interprets, and the agency statutory interpretation set forth in the rule:
  - a. A list of all proposed or final agency guidance documents or other documents or statements of the agency containing interpretive rules likely to lead to—
    - i. an annual effect on the economy of \$100,000,000 or more;
    - ii. a major increase in costs or prices for consumers, individual industries, Federal, State, local, or Tribal government agencies, or geographic regions; or
    - iii. 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 the following concerning judicial decisions in cases to which your agency has been a party since the Supreme Court issued its *Chevron* decision in 1984, identifying in each relevant listing the statutory authority the agency interpreted and the agency statutory interpretation that was upheld:
  - a. A list of all judicial decisions not ultimately overturned by a higher court in which the court deferred under *Chevron* to the agency's interpretation of a statute.

We appreciate your prompt attention to these important matters and look forward to your response.

Sincerely,



MICHAEL T. McCAUL  
Chairman  
Committee on Foreign Affairs



JAMES COMER  
Chairman  
Committee on Oversight and Accountability