

## HOUSE ADMINISTRATION EXAMINES CONGRESS POST-CHEVRON DEFERENCE

### EXECUTIVE SUMMARY

On July 23, the House Committee on Administration held a [hearing](#) to examine the future of congressional policymaking and other legislative activity following the Supreme Court’s recent ruling in *Loper Bright Enterprises v. Raimondo*, which overturned a previous Court decision compelling courts to defer to federal agencies for their reasonable interpretations of ambiguous statutory text — commonly referred to as “*Chevron* deference.” Given that the *Loper Bright* ruling will have sweeping implications for future rulemaking processes, members of the Committee questioned witnesses on possible solutions to expand Congress’ regulatory authority and involvement in crafting legislation in the post-Chevron era.

As expected, Democrats and Republicans strongly disagreed about the impact of *Loper Bright*. While GOP lawmakers on the panel felt the *Loper Bright* decision will re-establish Congress as the primary authority on crafting laws, Democrats countered that it will instead unintentionally decrease the power of the Legislative Branch by empowering courts at the expense of Congress. Aside from the flashes of partisan dialogue, witnesses fielded questions from lawmakers on both sides of the aisle as to whether Congress should take action in the aftermath of *Loper Bright* by: (1) establishing a dedicated regulatory authority function within Congress that would involve hiring additional staff with the necessary subject-matter expertise; and/or (2) enhancing bill drafting techniques to ensure clarity in statutory texts.

### OPENING STATEMENTS

**Chair Bryan Steil (R-WI)** ([statement](#)) agreed with the Court’s ruling in *Loper Bright* and asserted that Congress should have increased legislative power moving forward. The Chair argued that regulatory agencies have “overstepped” their authorities, and as such, outlined how Congress would engage in the rulemaking process and thus restoring more authority to the Legislative Branch.

**Ranking Member Joe Morelle (D-NY)** contended that reversal of *Chevron* and the subsequent shifting of the interpretation of statutes to the courts would decrease the power of the legislative branch — not increase it. He also asserted that decreased regulatory authority could negatively impact health care and various infrastructure, as the expertise from federal agencies would be absent from statutory interpretations.

## WITNESS TESTIMONY

**Mr. Paul Ray**, ([testimony](#)), of the Heritage Foundation, concurred with the Court's decision in *Loper Bright*, and he asserted that Congress will now be able to engage in the regulatory process as intended by the Constitution.

**Mr. Satya Thallan**, ([testimony](#)), of the Americans for Responsible Innovation, stated that the *Loper Bright* decision merely transferred certain legislative authorities to Congress. Congress would be capable of undertaking its increased authorities through the hiring of additional staff and a dedicated regulatory oversight function with regulatory experts, he emphasized.

**Dr. Kevin Kosar**, ([testimony](#)), of the American Enterprise Institute, contended that *Loper Bright* did not eliminate the regulatory authority of federal agencies and explained that Congress currently lacks proper oversight authority of these agencies. Dr. Kosar echoed Mr. Thallan that creating a regulatory oversight function within Congress would allow the Legislative Branch to better engage in the rulemaking process.

**Mr. Wayne Crews**, ([testimony](#)), of the Competitive Enterprise Institute, agreed with the *Loper Bright* decision and outlined several suggestions for Congress to following the ruling that were included in a 2023 [report](#) from the Government Accountability Office (GAO). These options include: (1) creating a new regulatory entity, such as a version of the Congressional Office of Regulatory Analysis that has previously been proposed by GAO; (2) revising existing regulatory review processes; or (3) altering Congressional oversight functions.

**Mr. Josh Chafetz**, ([testimony](#)), of Georgetown University, expressed his concerns for the future of the regulatory process following the ruling, explaining that it is likely lead to increased ideological decision by courts and politically charged rulemaking by agencies. Mr. Chafetz outlined several options for Congress' response to the ruling, including: (1) drafting legislation to reinstitute the Chevron deference or ensuring that bills are drafted with language that vests discretion to federal agencies, which would be consistent with the *Loper Bright* decision; or (2) build an institutional infrastructure that mirrors those of federal agencies, which includes hiring additional professional staff.

## DISCUSSION AND QUESTIONS

- In response to Chair Steil, each of the witnesses asserted that Congress is not currently equipped to review administrative rules in the post-*Chevron* era. The witnesses, echoing one another, then suggested that Congress should hire additional staff with the proper subject matter expertise, as well as work with the Office of Management and Budget (OMB) or GAO to develop additional solutions.
- Chair Steil asked about possible longer-term solutions for Congress to establish increased regulatory authority, and Mr. Thallan emphasized the importance of developing a dedicated congressional regulatory function. Mr. Chafetz noted his skepticism with the ability of such

an institution and instead suggested that individual committees should expand their regulatory oversight over the legislative areas and federal agencies over which they have jurisdiction.

- Ranking Member Morelle probed Mr. Chafetz as to how the *Loper Bright* decision has shifted legislative power to the Judiciary Branch instead of Congress. Mr. Chafetz explained that, pursuant to “*Chevron* deference,” policymakers crafted bills that gave agencies more leeway in determining how to interpret and implement certain regulations. Mr. Chafetz emphasized that, without *Chevron*, Congress will no longer have the ability to delegate these interpretive freedoms, and courts will instead have increased power in statutory interpretation.
- **Rep. Barry Loudermilk (R-GA)** inquired about potential congressional oversight measures to ensure that federal agencies adhere to the legislative intent of statutes, and Mr. Ray answered that there should be increased specificity and a detailing of intended outcomes in statutory text.
- In response to a question from Rep. Loudermilk, Mr. Ray acknowledged that increasing the number of staff with regulatory expertise would not allow Congress to properly address the complexity of future policymaking efforts. Legislators could instead focus more on oversight of major rules, he suggested.
- Rep. Loudermilk wondered whether there were existing systems in place that would allow Congress to properly expand its regulatory authority. While Mr. Ray said that there are some existing systems that could be utilized, there would likely need to be a brand-new approach to help Congress expand its regulatory authorities.
- **Rep. Terri Sewell (D-AL)** asked Mr. Chafetz how the *Loper Bright* decision would lead to increased litigation. Mr. Chafetz explained that while the decision likely would not change the number of cases, the outcome of future cases could be influenced by the ideology of the judge. Mr. Chafetz added that while the *Loper Bright* decision will not call into question current agency interpretations, previous cases brought against agencies could be challenged again.
- Referring to Mr. Chafetz’ testimony that Congress would not be able to replace the personnel levels of federal agencies, Rep. Sewell wondered how the lack of sufficient staffing would impact Congress’ policymaking abilities. Mr. Chafetz maintained that future policy and regulatory efforts will be less robust in nature and less adaptable.
- Chair Steil asked how Congress should address major final rules if the economic impact is not realized until several years after the rulemaking is final. Mr. Ray answered that retrospective review of federal agencies could be enhanced and expanded by Congress.
- Ranking Member Morelle wondered how the *Loper Bright* decision could impact federal agencies’ ability to respond to advances in technology in a timely manner, such as with the emergence of artificial intelligence (AI). The decision will greatly limit agencies’ ability to adapt their interpretations of statute as technology and science advances, Mr. Chafetz argued.
- If a more permanent regulatory function in Congress is not established, Dr. Kosar told Rep. **Summer Lee (D-PA)** that lawmakers should rely more on existing legislative staff and subject matter experts when drafting bills.
- In response to **Rep Anthony D’Esposito (R-NY)**, Mr. Thallan responded that lawmakers should comment in the notice and comment period of rulemaking to express their discontent with certain rules. To this end, Rep. D’Esposito referred to a GAO [report](#) and wondered

whether establishing an Office of Legal Counsel would be helpful to lawmakers in commenting on rules. Dr. Kosar responded that he was “unsure” whether such an office would carry the substantive knowledge necessary to respond to agency rulemakings.