

Dear President Biden:

The undersigned organizations, who represent millions of businesses operating in every state and community across the country write on behalf of those businesses and the millions of Americans they employ in all sectors of the U.S.

Considering the Supreme Court's recent decision in *Loper Bright Enterprises et al. v. Raimondo*¹ we ask your Administration to pause all current rulemakings and refrain from allowing any new rules to take effect until there is a thorough legal review of the agency's constitutional and statutory authority to regulate in the way it proposes.

The Court's decision dramatically alters the legal landscape within which federal agencies operate. Prior to *Loper Bright* federal agencies enjoyed tremendous judicial deference in what, how, and who they regulated when their actions were challenged as illegal and outside the scope of their constitutional or statutory authority. However, the Court's opinion in *Loper Bright* affirmatively overrules what has come to be known as *Chevron* deference by finding such deference contrary to the instructions for courts reviewing the legality of agency actions as set forth in the Administrative Procedure Act (APA). In particular, § 706 of the APA provides that courts reviewing a federal agency action "shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action."² As Justice Roberts states in the majority opinion for the Court, "[t]he APA thus codifies for agency cases the unremarkable, yet elemental proposition reflected by judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment."³ Section 706, the Court holds "makes clear that agency interpretation of statutes – like agency interpretations of the Constitution are not entitled to deference."⁴

Loper Bright explicitly impacts all current and future rules being pursued by your Administration. As of July 1, 2024, there are over one-thousand major rules in various stages of review at the federal agencies you oversee. One-hundred and forty-five of those rules would have an impact on the economy of more than \$200 million. All these regulations and any future regulations should be reevaluated in light of *Loper Bright* before they are promulgated. Indeed, since the case was decided the Supreme Court has remanded [nine as of 7/2 – final orders of term scheduled to issue 7/3] cases challenging federal regulations back to the lower courts for further consideration in light of *Loper Bright*.

The undersigned groups respectfully request that you immediately direct all federal agencies to review any regulations that are currently under review -- including any final rules which have been published but have not yet become effective -- to ensure that the proposed regulatory

¹ 603 U.S. ____ (2024)

² 5 U.S.C. §706.

³ *Loper* at 14.

⁴ *Id.* at 3.

action is clearly authorized by Congress under the U.S. Constitution and the statute(s) it seeks to implement.

Thank you for your consideration.