



AMERICAN COMMITMENT

Dear Members of Congress,

On behalf of our organizations and the millions of Americans we represent, we are writing to express our strong support for H.R. 4768 and S. 2724, the Separation of Powers Restoration Act (SOPRA). This law would give courts the clarity they need to interpret powers ambiguously delegated to administrative agencies.



Congress has, from time to time, been unclear as to the extent of powers it delegates to agencies. Consequently, the courts have adopted two doctrines, known as Chevron and Auer after the cases *Chevron USA Inc. v. NRDC* and *Auer v. Robins*, which grant great deference to agency interpretations of the ambiguities. Chevron represents a general presumption that courts should defer to agency interpretation of statutes, while Auer requires that courts defer to agency interpretations of their own regulations.



In *Marbury v. Madison*, Chief Justice John Marshall wrote, "It is emphatically the province and duty of the Judicial Department to say what the law is." In *Chevron v. NRDC*, Justice John Paul Stevens said it was the province of executive branch agencies to say what the law is.



While these doctrines reflect a concern for a lack of expertise in the courts, their effect can be to give bureaucrats the power to make new law. For instance, in *Babbitt v. Sweet Home Chapters of Communities for a Great Oregon*, the Supreme Court used Chevron to defer to the Secretary of the Interior when he redefined long-accepted meanings of "taking" wildlife to include unintentional harm to an endangered species, greatly expanding the Secretary's power and control over Americans.



Auer provides a perverse incentive for an agency to issue deliberately vague regulations that it can reinterpret as it chooses, avoiding the notice-and-comment requirements of the Administrative Procedure Act for a change in regulation. A recent court decision may even allow the agency effectively to rewrite the statute by reinterpreting a vague term in a regulation that also appears in the statute.



In our view, this combination of delegation and deference represents an unjust expansion of administrative power at the expense of the legislative and judicial powers, contrary to the ideals of the American founding.



SOPRA would amend the Administrative Procedure Act to require courts to conduct a *de novo* (from scratch) review of all relevant questions of law and regulation when they are called into question. This represents a vital step in restoring the courts to their proper role as arbiters of statutory interpretation.



Before Chevron, courts relied on agency expertise to guide their decision making, but they did not cede their fundamental responsibility to interpret the meaning of statutes to agencies. SOPRA would restore that discretion.

Millions of Americans are suffering under the weight of burdensome regulation, and often find themselves unable to challenge effectively unjust rules as a result of these judicial doctrines. SOPRA is one of the ways in which we can lift this oppressive burden from their backs.

Thank you for your consideration,

- Competitive Enterprise Institute
- American Commitment
- American Energy Alliance
- Americans for Prosperity
- Americans for Competitive Enterprise
- Americans for Tax Reform
- Campaign for Liberty
- Frontiers of Freedom
- Heritage Action for America
- Institute for Liberty
- Less Government
- National Center for Public Policy Research
- National Taxpayers Union
- 60 Plus Association
- Taxpayers Protection Alliance

