

CATHY McMORRIS RODGERS, WASHINGTON  
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ONE HUNDRED EIGHTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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July 18, 2024

The Honorable Lina M. Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Chair Khan:

We write to follow up on discussion of *Loper Bright Enterprises v. Raimondo*, a recent Supreme Court decision that precludes courts from deferring to agency interpretations when the statutes are ambiguous.<sup>1</sup> During the July 9<sup>th</sup> FY2025 budget hearing at the Subcommittee on Innovation, Data and Commerce of the Committee on Energy and Commerce, you stated the following in response to questioning:

"A core pillar of my approach to the FTC is making sure that we are being faithful to the text of the laws that Congress has written and making sure that we are honoring all of the provisions and not, you know, as unelected bureaucrats, by de facto nullifying authorities or tools that Congress has given us."

To remind you, 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.<sup>2</sup> 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

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

<sup>2</sup> *Id.*

rules, imposing vast costs and paperwork burdens, than either of its most recent predecessors.<sup>3</sup> It is troubling that as the head of an independent agency, you have blindly followed President Biden in this pursuit. Many of these rules—such as those promulgated to impose President Biden’s labor, economic, competition, and consumer protection agenda—have been based on overreaching interpretations of statutes enacted by Congress years ago, before the issues now regulated were even imagined.

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.”<sup>4</sup> 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 Committees of jurisdiction authorizing and overseeing the Federal Trade Commission [hereinafter “Commission”], 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:<sup>5</sup>

1. Please provide the following regarding Commission legislative rules proposed or promulgated since January 20, 2021, identifying in each relevant listing the rule or rulemaking and Commission statutory interpretation concerned:
  - a. A list of all pending judicial challenges to final Commission rules that may be impacted by the Court’s *Loper Bright* decision.
  - b. A list of all final Commission 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 Commission 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 Commission 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 Commission adjudications that may be impacted by the Court’s *Loper Bright* decision.
  - b. A list of all final Commission adjudications not yet challenged in court that may be impacted by the Court’s *Loper Bright* decision if they are so challenged.

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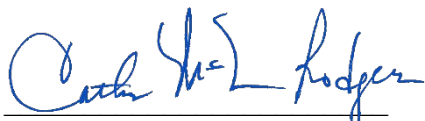
<sup>3</sup> See, e.g., *Burdensome Regulations: Examining the Biden Administration’s Failure to Consider Small Businesses: Hearing Before the H. Comm. on Small Business*, 118<sup>th</sup> Cong. (May 22, 2024) (statement of Dan Goldbeck, Director of Regulatory Policy, American Action Forum), available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

<sup>4</sup> 603 U.S. at \_\_\_ (slip op. at 7-8) (quoting *Marbury v. Madison*, 1 Cranch 137, 177 (1803)).

<sup>5</sup> 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.), the Magnuson-Moss Act (15 U.S.C. § 2301 et seq.), and other statutory authority utilized by the Agency that provides for an alternative rulemaking process.

- c. A list of all pending Commission adjudications in which the agency is relying on an 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 Commission in court since January 20, 2021, identifying in each relevant listing the Commission statutory interpretation sought to be enforced:
  - a. A list of all pending enforcement actions in which the Commission is relying on a Commission interpretation of statutory authority that might have depended upon *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 a Commission interpretation of statutory authority as a basis for its judgment against another party.
4. Please provide a list of all proposed or final Commission guidance documents or other documents of the Commission containing interpretive rules issued since January 20, 2021, identifying in each the statutory authority the rule interprets and the Commission 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 your agency has been a party that were not ultimately overturned by a higher court in which the court relied upon *Chevron* to yield to the Commission's interpretation of a statute. Please identify in each listing the statutory authority the Commission interpreted and the statutory interpretation upheld.

Sincerely,



Cathy McMorris Rodgers  
Chair  
Committee on Energy and Commerce



James Comer  
Chairman  
Committee on Oversight and Accountability