

Restoring Congressional Authority Act

The balance of power between the three branches of government has steadily been eroded by the judiciary and tilted in its favor, culminating most recently in the Supreme Court case *Loper Bright Enterprises v. Raimondo*, which overruled the Chevron deference precedent first established in 1984. The *Loper Bright* case undermines Congressional intent and the authority of the Executive branch to implement laws passed by Congress and signed by the president. In its decision, the Court also argues that it is the role of the courts – and only the courts – to answer policy questions during the implementation of federal laws. This could not be further from the truth, or the intent of the founding fathers.

The *Restoring Congressional Authority Act* restores the power of Congress – as the legislating body – to answer those questions and requires the courts to respect agency expertise in its implementation of federal laws, as well as respect Congressional intent in the pursuit of those laws. It also provides a necessary check on the judiciary’s power by giving Congress a clear and easy pathway to contradict judicial rulings that clearly undermine Congressional law and intent.

While Congress can make use of the Congressional Review Act to overturn agency rulemaking that does not track with Congressional intent, there is no mechanism for Congress to quickly overturn statutory court decisions that misinterpret Congressional intent. Given the increasing role of the courts in litigating whether an agency’s interpretation falls in line with Congressional intent, elected officials who are accountable to the public should play a role during the process.

As Justice Elena Kagan wrote in her dissent in *Loper Bright*, “In one fell swoop, the majority today gives itself exclusive power over every open issue—no matter how expertise-driven or policy-laden—involving the meaning of regulatory law.” The *Restoring Congressional Authority Act* gives Congress the opportunity to provide a much-needed counterweight.

Bill Summary:

The *Restoring Congressional Authority Act* will codify the Chevron deference doctrine and restore the ability of expert federal agencies to implement laws passed by Congress without fear of unreasonable judicial interference. The bill also provides a new authority to fast-track Congressional disapproval of a judicial determination overturning agency rulemaking.

Specifically, the *Restoring Congressional Authority Act*:

- Amends Section 706 of the Administrative Procedure Act to codify judicial deference to federal agencies as they implement federal laws.
- Requires courts to consider Congressional intent when reviewing the reasonableness of an agency’s interpretation of a statutory provision and defines how Congressional intent will be expressed.
- Provides an identical timeframe as the Congressional Review Act for a new fast-track mechanism for Congress to overturn decisions by appellate courts to invalidate an agency rule based on a determination that the agency’s interpretation of the statutory provision was not reasonable.