



Re: Opposition to H.R. 288, the so-called “Separation of Powers Restoration Act of 2023”

June 6th, 2023

Dear Representative:

On behalf of Earthjustice, I respectfully urge you to oppose “H.R. 288 Separation of Power Restoration Act of 2023” on the floor this week for vote. Chevron deference is a longstanding and well-founded framework for judicial review that acknowledges a regulatory process grounded in extensive administrative records, and long processes of public input and expert evaluations. The framework is carried out by officials appointed and confirmed by elected officials working under an elected president.

H.R. 288 in an effort to check the executive branch of power instead creates an unchecked judiciary branch and an unbalanced division of power. The judiciary would be given the power to nullify agencies reasonable regulations based on preference of a particular outcome or interpretation of a regulation. Agency decisions are currently based on extensive expert evaluations of complex natures. Without the reliance on the administrative record and process, judges’ decisions will be based on limited information gleaned from the small sampling of litigants before them.

The Separation of Powers Restoration Act interferes in the stabilized standards used for judicial review of agency interpretation of administrative law. The act essentially transfers implementation power delegated to the executive branch to judges. Congress has the power to set forth strong laws that set forth boundaries around agency implementation. Agencies are prevented from making interpretations that are void of the required connection to the intent and statutory purpose.

Courts continuously set aside arbitrary and capricious or an abuse of discretion for a wide variety or reasons including the absence of a reasonable relationship to statutory purposes or requirements. Agencies must defend their actions and offer explanations that provide clear links to the statutory purposes based on unflawed reasoning. The fundamental nature of arbitrary and capricious threshold is created to protect the individual’s rights by ensuring that no ones liberty is constrained without plausible justification. Government officials are thus only able to operate within the confines of the law.

H.R. 288 is likely to create a system in which agencies act to protect their interpretations by drafting unclear regulations. The regulations will have vague language with fewer details to prevent de novo reviews. Furthermore geographic differences in regulatory uncertainty will increase. The Chevron test creates a stabilized system in which federal statutes are all given the same interpretational deference in circuit courts where judges are in conflict on regulatory interpretation.

This bill is another anti-regulatory attempt to attack federal regulation by harming the legal infrastructure. Most erroneously, H.R. 288 would put the general public in harms way, resulting

in impaired safeguards for civil rights, consumer rights, health, the environment, safety, financial markets, and all concerns of federal regulatory statutes.

Accordingly, **I urge you to vote no on H.R. 288,**

Thank you for your consideration.

Sincerely,

Brielle L. Green
Senior Legislative Counsel
Earthjustice