

AFL-CIO

LEGISLATIVE ALERT

June 6, 2023

On behalf of the AFL-CIO, I urge you to oppose H.R. 288, Separation of Powers Restoration Act, which is scheduled for floor action this week. The Separation of Powers Restoration Act is an attempt to radically alter the fundamental way that federal statutes are administered and regulations are reviewed, placing the power in the hands of the judicial branch instead of the subject matter experts in government agencies, thereby threatening the health and safety of workers and the public.

The Separation of Powers Restoration Act attempts to abolish the well-established legal principle known as *Chevron* deference. In the 1984 case *Chevron v. Natural Resources Defense Council*, the Supreme Court held that when a law is ambiguous about a specific question, the courts should defer to the expert agency that Congress entrusted with enforcement of the statute, as long as the agency's construction of the law is reasonable. In lieu of *Chevron* deference, this Act would require courts to decide all relevant questions of law *de novo*, including all questions concerning the interpretation of statutes and even the agency's own rules. This would overturn a four-decade old precedent supported by conservative and liberal justices.

The impact of the Separation of Powers Restoration Act would be an enormous shift of power to unelected judges. It would allow courts to dismiss the expertise within agencies that have been given authority to ensure public health, safety and financial security as well as many other critical jobs. The Act would open up the regulatory process to even more delay and litigation.

The regulatory process already results in excessive delays in the issuance of crucial worker and public protections. For example, the 2010 Occupational Safety and Health Administration's (OSHA's) construction safety standard on cranes and derricks took 10 years to finalize, even though this rule had unanimous support from industry and labor. Additionally, neither judges nor Congress are experts on cranes and derricks, but OSHA is and is entitled to deference for that reason.

The Separation of Powers Restoration Act is an unprecedented attempt to eliminate judicial deference that has existed for nearly 40 years and threatens the government's ability to protect working people from harm. The AFL-CIO urges you to oppose this dangerous bill.

Sincerely,



William Samuel
Director, Government Affairs