July 12, 2024

The Honorable Joseph R. Biden
President
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

Dear President Biden:

The undersigned organizations write on behalf of millions of American businesses and their employees in all sectors of the U.S. economy.

Considering the Supreme Court's recent decision in *Loper Bright Enterprises et al. v. Raimondo*[1] we ask your Administration to pause all current rulemakings and stop new rules from taking effect until there is a thorough legal review of each agency's constitutional and statutory authority to regulate in the way it proposes.

The Court's decision dramatically alters the legal landscape within which federal agencies operate. Prior to *Loper Bright* federal agencies enjoyed tremendous judicial deference in what, how, and who they regulated when their actions were challenged as illegal and outside the scope of their constitutional or statutory authority. However, the Court's opinion in *Loper Bright* affirmatively overrules what has come to be known as *Chevron* deference by finding such deference contrary to the instructions for courts reviewing the legality of agency actions as set forth in the Administrative Procedure Act (APA). In particular, § 706 of the APA provides that courts reviewing a federal agency action "shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action."[2] As Chief Justice Roberts states in the majority opinion for the Court, "[t]he APA thus codifies for agency cases the unremarkable, yet elemental proposition reflected by judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment."[3] Section 706, the Court holds "makes clear that agency interpretation of statutes – like agency interpretations of the Constitution are not entitled to deference."[4]

Loper Bright explicitly impacts all current and future rules being pursued by your Administration. As of July 1, 2024, there are over 1,000 major rules in various stages of review at the federal agencies you oversee. At least 145 of those rules would have an impact on the economy of more than $200 million. Before promulgation, all these regulations must be reevaluated in light of *Loper Bright*. Indeed, since the decision, the Supreme Court has

[1] 603 U.S. ___ (2024)
[2] 5 U.S.C. §706.
[3] *Loper* at 14.
[4] Id. at 3.

remanded [**nine** as of 7/2 – final orders of term scheduled to issue 7/3] cases challenging federal regulations back to the lower courts for further consideration because of *Loper Bright*.

The undersigned groups respectfully request that you immediately direct all federal agencies to review any regulations that are currently under consideration -- including any final rules that have been published but have not yet become effective -- to ensure that the proposed regulatory action is clearly authorized by Congress under the U.S. Constitution and the statute(s) it seeks to implement.

Thank you for your consideration.

Sincerely,

AICC, The Independent Packaging Association
American Chemistry Council
American Foundry Society
American Hort
American Supply Association
Associated Equipment Distributors
Associated General Contractors of America
Association for Hose and Accessories Distribution
Ceramic Tile Distributors Association
Convenience Distribution Association
Family Business Coalition
Foodservice Equipment Distributors Association
Global Cold Chain Alliance
Heating, Air-conditioning, & Refrigeration Distributors International
Industrial Fasteners Institute
Independent Electrical Contractors
International Foodservice Distributors Association
International Franchise Association
International Sign Association
Metals Service Center Institute
MHEDA - Material Handling Equipment Distributors Association
National Association of Electrical Distributors
National Association of Wholesaler-Distributors
National Council of Agricultural Employers
National Electrical Manufacturers Representatives Association
National Fastener Distributors Association
National Federation of Independent Business
National Grocers Association
National Lumber & Building Material Dealers Association

National Marine Distributors Association
National Onion Association
National Ready Mixed Concrete Association
National Roofing Contractors Association
National Stone, Sand and Gravel Association
Outdoor Power Equipment and Engine Service Association
Reserve Organization of America (ROA)
S Corporation Association
Small Business & Entrepreneurship Council
Small Business Legislative Council
The Transportation Alliance
Workplace Solutions Association
World Millwork Alliance