



H.R. 4768 – Separation of Powers Restoration Act (SOPRA) (Rep. Ratcliffe, R-TX)

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FLOOR SCHEDULE:

Expected to be considered on July 11, 2016 under a structured [rule](#).

TOPLINE SUMMARY:

[H.R. 4768](#) would reign in the Executive Branch by scaling back *Chevron* deference, and therefore deference to federal agencies, by requiring de novo review of agency actions for all relevant questions of law, including Constitutional and statutory interpretation. It would place judicial review back in the hands of the Judiciary, and make clear the lines between judicial interpretation of law and executive enforcement of the law.

COST:

The Congressional Budget Office (CBO) is unable to produce a cost [estimate](#) for this legislation.

CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No. The bill would reduce the ability of executive agencies to broadly interpret statutes outside of their Congressional intent.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

The [Chevron doctrine](#) is used by the Judicial Branch in matters concerning statutory interpretation, requiring courts to defer to the interpretations of the federal agencies tasked with enforcing the statutes, so long as the interpretations are reasonable. *Chevron* applies if Congress has given interpretive authority to the agency as it pertains to the statute in question, and given the authority, typically when the agency issues a formal ruling on the interpretation. When *Chevron* applies, the court looks to the reasonableness of the interpretation and whether the statute in question unambiguously addresses the issue at hand; that is, whether Congress has “directly spoken to the precise question at issue,” with clear intent and in an unambiguous fashion. If the statute is unambiguously addressed, Congressional intent stands. If the statute is found to be ambiguous, the court examines whether the agency’s interpretation of the statute is based on a permissible interpretation of the statute that is not “arbitrary, capricious, or manifestly contrary to the statute.” This “permissible” standard is a relatively low standard, meaning the party opposing the agency action typically has a largely uphill battle to climb, and generally loses these challenges.

Critics of *Chevron* assert that the doctrine is frequently used as a tool to defer to executive branch interpretations when judicial authority is more appropriate. According to the [Committee Report](#), the

Chevron doctrine has vastly increased the power of federal administrative agencies, with many believing that the doctrine is inconsistent with the basis for judicial review founded within *Marbury v. Madison* and inconsistent with the Framers' intent for the separation of powers.

Many find the *Chevron* doctrine to provide far too much leeway to administrative agencies, giving them broad scope in interpreting Congressional action. Moreover, agency interpretation of their own regulations they themselves promulgated has also come under fire for having many of the same separation of powers issues, and for allowing agencies to purposefully issue vague rulings to maximize their power.

H.R. 4768 would alter the scope of judicial review of agency actions to allow courts reviewing those actions to decide *de novo* (without reference to previous legal conclusions or assumptions) any relevant questions of law, including those pertaining to the interpretation of constitutional and statutory provisions and rules.

AMENDMENTS:

1. [Rep. Conyers](#) (D-MI) – This amendment would provide an exemption for rules issued by the Environmental Protection Agency that pertain to the regulation of lead or copper in drinking water.
2. [Rep. Jackson Lee](#) (D-TX) – This amendment would provide an exemption for rules pertaining to matters of national security that are issued by the Department of Homeland Security.
3. [Rep. Meeks](#) (D-TX) – This amendment would exempt from the bill, any rule issued by the Department of Housing and Urban Development.
4. [Rep. Johnson](#) (D-GA) – This amendment would provide an exemption for rules issued pursuant to an express grant of authority from Congress.
5. [Rep. Cicilline](#) (D-RI) – This amendment would retain judicial deference to agency expertise during the review of rules pertaining to consumer safety by the Commissioner of the Food and Drug Administration.

COMMITTEE ACTION:

H.R. 4768 was introduced on March 16, 2016 and was referred to the House Committee on the Judiciary, where it was reported amended by voice vote on June 8, 2016.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not available.

CONSTITUTIONAL AUTHORITY:

According to the sponsor, Congress has the power to enact this legislation pursuant to the following: Article III, Section 1, Sentence 1, and Section 2, Clauses 1 and 4, of the Constitution, in that the legislation defines or affects judicial powers and cases that are subject to legislation by Congress; Article I, Section 1, Clause 1 of the United States Constitution, in that the legislation concerns the exercise of legislative powers generally granted to Congress by that section, including the exercise of those powers when delegated by Congress to the Executive; and, Article I, Section 8, clause 18 of the United States Constitution, in that the legislation exercises legislative power granted to Congress by that clause "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."