and that is what Juneteenth means. We look back to go forward.

Happy Juneteenth to all of the constituents in my district and throughout America.

SEPARATION OF POWERS

(Mr. ROSE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROSE. Madam Speaker, the Constitution is clear. The people's elected Representatives, Congress, have the power to legislate, and the courts have judicial authority.

Unfortunately, in recent years, those powers have been diluted by overreaching and unelected administrative branch bureaucrats that believe they are the sole arbiters when it comes to administering policies, not the American people through their Representatives.

Regardless of which political party is in office, both Republicans and Democrats alike should be concerned about willfully giving away their constituents' voices when deciding pressing matters.

The Separation of Powers Restoration Act, which I am proud to support, would restore a separate but equal government our Founding Fathers intended and give back to the people, the American people and their Representatives the capacity to make policy. This is as common sense as it gets and should draw wide bipartisan support.

Madam Speaker, I urge all Members to join me in voting ''yes'' on H.R. 288.

CONDOLENCES ON THE PASSING OF DAVID M. BARTLEY

(Mr. NEAL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. NEAL. Madam Speaker, I wish to call attention to the passing of the former speaker of the Massachusetts House of Representatives, David Bartley.

Speaker Bartley was one of the most talented and gifted legislators I have known. His legislative prowess brought about Chapter 766, so that the mentally and physically challenged might be guaranteed a sound public education. His measured approach to public life meant that he led through developing consensus and forging historic legislation.

Speaker Bartley went on to serve as president of Holyoke Community College, where he brought the college to new heights of widely acknowledged academic achievement. He was also a very successful secretary of administration and finance who oversaw the State's finances.

Born to a very modest background, Dave Bartley brought acclaim to the city of Holyoke that he loved, and it returned its highest regards to him.

Well-read and well-rounded, Speaker Bartley was a Renaissance man and a really good guy. To his wife, Bette, and children, Myles, Susan, and David, our best during this difficult time.

The United States of America thanks Speaker Bartley.

CONGRATULATING EILEEN BRADNER ON HER RETIREMENT

(Mr. CRAWFORD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CRAWFORD. Madam Speaker, I rise today to recognize a leader in the American steel industry. Eileen Bradner, the senior director and counsel at Nucor, has worked for one of my district's most prominent employers since 2009. Her hard work advocating for the steel industry here in Washington helped grow jobs in Arkansas' First District and at Nucor facilities across the United States.

Before leading Nucor's Washington office, Eileen represented American manufacturers on international trade policy, litigation, and legislative matters for 21 years. Her legislative work included 8 years with Senator John Glenn, where she worked on foreign trade and antidumping policies.

Eileen dedicated her career to protecting American jobs and manufacturing, representing small and large companies alike. I am proud to call Eileen a friend. She will be dearly missed as she embarks on a well-earned retirement.

CONGRATULATING MY DISTRICT'S YOUNG LEADERS AS THEY GRADUATE

(Ms. DEAN of Pennsylvania asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. DEAN of Pennsylvania. Madam Speaker, each year I am lucky to work with smart, dedicated students in my district through our student advisory panel. I am amazed and motivated by their passion, civic engagement, and thoughtfulness. They give me hope.

Throughout this month, our communities smile, as some of these young leaders graduate from high school.

To celebrate this milestone, I congratulate each of my graduates by name:

Will Bond, Sreekara Dandibhotla, Emma Eby, Mark Ellison, Michael Gribbin, Frances Holcomb, Chloe Jeon, Elisabeth Kokorin, Phoebe Lee, Aditi Mangal, Noah Pletcher, Jayleen Santana, Caden Schaeffer, Charlie Sywulak-Herry, and Gabriella Thomas.

In addition, our task force would not be possible without the care and organization of teachers Alan Malachowski and Jenn Statler of the Pennsylvania State Education Association. I thank them both.

I wish each of our students the brightest future. I thank them for being leaders in our community, and I know they will continue to be leaders wherever life takes them.

MOMENT OF SILENCE HONORING TREATHA BROWN-FOSTER

(Mr. ESTES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ESTES. Madam Speaker, today I honor a longtime friend and Kansan with a true servant's heart, Treatha Brown-Foster.

One minute is not nearly enough time to adequately share all the impressive contributions Treatha has made to Wichita and Kansas. She was a member of the Library Board, District 1 Advisory Board, Boys and Girls Club Parent Advisory Board, and the Kansas African American Museum Board, just to name a few. She was instrumental in advancing both the Kansas and Sedgwick County Black Republican Councils, serving in various leadership roles, including chair.

While her contributions to society are many, her real legacy is the joy she brought to all who were around her. Kansans who met Treatha will remember her animated smile, infectious laugh, and warm hugs that were a prerequisite to starting any conversation with her.

She loved everyone, and everyone loved her, as made evident by the numerous community leaders and elected officials who sought her friendship and counsel regardless of political differences.

Madam Speaker, I ask for a moment of silence to honor this beloved Kansan and my friend, Treatha Brown-Foster.

□ 0915

SEPARATION OF POWERS RESTORATION ACT OF 2023

Mr. FITZGERALD. Madam Speaker, pursuant to House Resolution 495, I call up the bill (H.R. 288) to amend title 5, United States Code, to clarify the nature of judicial review of agency interpretations of statutory and regulatory provisions, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 495, in lieu of the amendment in the nature of a substitute recommended by the Committee on the Judiciary printed in the bill, an amendment in the nature of a substitute consisting of the text of Rules Committee Print 118–7 is adopted, and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 288

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Separation of Powers Restoration Act of 2023'' or ''SOPRA''.

SEC. 2. JUDICIAL REVIEW OF STATUTORY AND REGULATORY INTERPRETATIONS.

Section 706 of title 5, United States Code, is amended—

(1) by striking ''To the extent necessary'' and inserting ''(a) To the extent necessary'';

(2) by striking ''decide all relevant questions of law, interpret constitutional and statutory provisions, and'';

(3) by inserting after ''of the terms of an agency action'' the following ''and decide de novo all relevant questions of law, including the interpretation of constitutional and statutory provisions, and rules made by agencies. Notwithstanding any other provision of law, this subsection shall apply in any action for judicial review of agency action authorized under any provision of law. No law may exempt any such civil action from the application of this section except by specific reference to this section''; and

(4) by striking ''The reviewing court shall—'' and inserting the following:

''(b) The reviewing court shall—''.

The SPEAKER pro tempore. The bill, as amended, shall be debatable for 1 hour equally divided and controlled by the chair and ranking minority member of the Committee on the Judiciary or their respective designees.

After 1 hour of debate on the bill, as amended, it shall be in order to consider the further amendment printed in part B of House Report 118–108, if offered by the Member designated in the report, which shall be considered read, shall be separately debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, and shall not be subject to a demand for a division of the question.

The gentleman from Wisconsin (Mr. FITZGERALD) and the gentleman from New York (Mr. NADLER), each will control 30 minutes.

The Chair recognizes the gentleman from Wisconsin.

GENERAL LEAVE

Mr. FITZGERALD. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to insert extraneous material on H.R. 288.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. FITZGERALD. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise in strong support of H.R. 288, Separation of Powers Restoration Act or SOPRA. The Constitution separates the powers of the Federal Government into a system of checks and balances.

Article I, Section 1 grants Congress all legislative power, while executive power is granted to the President, and judicial power is vested in the courts, as we all know.

However, since 1984 when the Supreme Court ruled that courts must defer to an agency's interpretation of an ambiguous statute rather than what Congress intended, the executive branch has begun usurping the legislative branch to issue regulations with the force of law.

This consolidation of power departs from the constitutional principles and harms our own liberties. It is certainly not what our Founders intended. Yet, this 1984 ruling, known as Chevron, has paved the way for unelected bureaucrats to issue sweeping rules with no consequences.

Just in 2021, for example, executive branch agencies issued more than 3,200 rules that imposed vaccine mandates on workers. They were also involved in overturning the Keystone pipeline, and required a $15 minimum wage for Federal contractors, and allowed the IRS to spy on Americans' bank accounts.

Meanwhile, that same year, only 143 bills passed by Congress were signed into law. This means executive branch agencies impose more than 20 times as many mandates as actual legislators. These regulations are not without cost. According to the American Action Forum, Federal agencies collectively finalized $200 billion in regulatory costs in 2021, equivalent to more than $600 per U.S. household.

In 2022, we saw an additional $117 billion in regulatory costs added to the bottom line. Taken with rules from previous administrations and according to the Competitive Enterprise Institute, the total annual costs of regulation is almost $2 trillion, or about 8 percent of the U.S. GDP.

If it were a country, for comparison, U.S. regulation would be the world's 8th largest economy, only behind France.

If Members of this Chamber impose that kind of cost on taxpayers—well, we know what would happen—we would all be voted out of office.

Yet, the Biden administration continues to issue binding rules and courts continue to apply the Chevron doctrine when determining its statutory authority. It is no surprise to see that the President will probably oppose this legislation and promise to veto it. Just 5 months into 2023, and we have already seen his administration circumvent Congress to make changes to non-competes, require climate disclosures by Department of Defense contractors, and ban the use of pistol braces nationwide.

An unchecked administrative state is dangerous to the American people. That is why it is imperative that Congress regain its legislative power by passing H.R. 288.

The Separation of Powers Restoration Act would displace Chevron and other precedents that require courts to defer to agency positions. It ensures that courts independently consider what Congress has said through its statutes rather than putting a thumb on the scale in favor of the Federal agencies.

By forcing courts to apply de novo review, the standard would reclaim the courts' constitutional role as the branch that interprets the law, and Congress' role will once again be underscored as the branch that writes them.

Agencies are not supposed to make laws, and it is past time to bring the power of legislating back to the branch our Founders intended.

Madam Speaker, I thank Chairman JORDAN for his leadership on the issue, and I urge my colleagues to support the bill.

Madam Speaker, I reserve the balance of my time.

Mr. NADLER. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, the so-called Separation of Powers Restoration Act would completely upend the administrative process by eliminating judicial deference to agencies and by requiring Federal courts to review all agency rulemakings and interpretations of statutes on a de novo basis.

More than 30 years ago, the Supreme Court held in Chevron USA v. Natural Resources Defense Council, that courts must give ''considerable weight'' to an agency's construction of a statute it administers. This makes sense, because while Congress sets broad policies, we delegate authority to executive agencies because we do not have the expertise to craft technical regulations ourselves, and we rely on these agencies to carry out the policies we enact.

Under the Chevron doctrine, courts respect the careful process undertaken by the dedicated professionals at our Federal agencies, many of whom who have decades of experience and vast technical expertise.

Courts give deference to an agency's interpretation of its statutory authority if the interpretation is determined to be reasonable. The Chevron doctrine has been the ruling precedent for judicial review of agency decisions for decades. But this legislation would do away with this longstanding precedent—a move that would throw uncertainty into the entire rulemaking process.

It would also empower judges to completely override the determination of agency experts, substituting their own judgment regardless of their comparative lack of technical knowledge and understanding of the underlying subject matter for the carefully crafted and scientifically based decisions made by agencies.

It is the height of hypocrisy for the party that rails against what it calls judicial activism to support legislation that is the very embodiment of the judicial activism.

This legislation would also make the Federal rulemaking process even more time consuming and costly than it already is, forcing agencies to adopt even more detailed factual records and explanations in order to withstand judicial scrutiny, which would further delay the finalization of critical life-saving regulations.

These are regulations that protect the quality of the air we breathe, the water we drink, the food we consume, and the safety of the products we use. But this legislation is just the latest step in the Republican's decades-long assault on the regulatory process, trying to add hurdle after hurdle on the

ability to issue regulations that protect public health and safety, regulations whose benefits consistently outweigh their cost, often by many multiples.

Slowing down the rulemaking process for these vital health and safety protections would put the lives of Americans at greater risk. By eliminating judicial deference to agencies, this bill would empower the courts to make public policy from the bench, ignoring the careful consideration and technical expertise of executive agencies.

Madam Speaker, I include in the RECORD two letters: The first from the Coalition for Sensible Safeguards, which includes more than 160 diverse labor, consumer, public health, food safety, financial reform, faith, environmental, and scientific integrity groups; and another letter from the Earthjustice organization.

COALITION FOR
SENSIBLE SAFEGUARDS,
June 5, 2023.

DEAR REPRESENTATIVE: The Coalition for Sensible Safeguards (CSS), which includes more than 160 diverse labor, consumer, public health, food safety, financial reform, faith, environmental, and scientific integrity groups representing millions of Americans, strongly opposes the Separation of Powers Restoration Act, H.R. 288.

Congress should be looking for ways to strengthen our country's regulatory system by identifying gaps and instituting new safeguards for the public. Unfortunately, this legislation does the opposite by placing even more obstacles before agencies as they work to provide new public health, safety, and financial security protections for the public.

The legislation will make our system of regulatory safeguards weaker by enabling judicial policymaking at the expense of agency expertise and congressional authority, thereby resulting in unpredictable outcomes and regulatory uncertainty for all stakeholders. If passed, H.R. 288 would prevent many critical updates to public protections, especially those that ensure clean air and water, safe food and consumer products, safe workplaces, and a stable, prosperous economy.

This problematic legislation attempts to reverse a fundamental and well-settled legal principle that has long effectively guided our regulatory system and provided a vital check on judicial overreach. It strives to abolish judicial deference to agencies' statutory interpretations in rulemaking by requiring a court to decide all relevant questions of law de nova, including all questions concerning the interpretation of constitutional, statutory, and regulatory provisions of final agency actions. Such deference was established as bedrock administrative law by the Supreme Court in the 1984 case Chevron v. Natural Resources Defense Council and came to be referred to as Chevron deference. Chevron deference has been upheld by hundreds of federal courts since and has been endorsed by both conservative and liberal Supreme Court justices and federal court judges.

In practice, abolishing Chevron deference will make the current problems in our country's regulatory process much worse in several ways. H.R. 288 will lead to even more regulatory burdens and delays, particularly for those ''economically significant'' or ''major'' new rules that provide the greatest benefits to the public's health, safety, and financial security.

There is substantial academic literature and expert consensus that intrusive judicial scrutiny of agency rulemaking is one of the main drivers of regulatory paralysis. Thus, increasing litigation risk for agency rules, which is exactly what this bill would accomplish by spawning hundreds of new lawsuits per year, will mean many more missed congressional deadlines and a regulatory process that fails to efficiently and effectively protect the public as Congress requires. This further ''chilling'' of rulemaking will certainly benefit special interests who will further pressure regulators to carve out loopholes, weaken safety standards, or otherwise obstruct new rulemakings with the greatly enhanced threat of a lawsuit waiting in the wings.

Of even greater concern, eliminating judicial deference to agency rulemaking would empower reviewing courts to substitute their policy preferences for those of the agency. One of the primary policy rationales for Chevron deference is that agencies have considerable and superior expertise in the regulatory sectors they oversee as compared to generalist judges with far less expertise. Thus, H.R. 288 aims to make it easier for the courts to overturn an agency's highly technical, resource-intensive, and science-based rulemaking without the expertise needed to make such determinations.

Further, abolishing Chevron review would actually undermine congressional authority, an irony given the name of the bill. De novo review of the scope and nature of congressional grants of authority to agencies invites courts to create law, ignore congressional intent, or both. In particular, it defeats a deliberate choice by Congress to confer on agencies the authority to resolve complex policy questions based on their expertise and the public input they receive during the rulemaking process.

Perhaps the most telling critique of attempts to replace Chevron deference with de novo review comes from former Justice Antonin Scalia, a vocal supporter of Chevron deference during his career and an indication of just how broad the support is for maintaining such deference. Writing for the majority in City of Arlington v. F.C.C., Justice Scalia argued that requiring that ''every agency rule must be subjected to a de novo judicial determination'' without any standards to guide this review would result in an ''open-ended hunt for congressional intent,'' rendering ''the binding effect of agency rules unpredictable and destroy the whole stabilizing purpose of Chevron. The excessive agency power that the dissent fears would be replaced by chaos.'' [City of Arlington, Tex. v. F.C.C., 133 S. Ct. 1863, 1874 (2013).]

H.R. 288 aims to achieve an unprecedented and dangerous move away from traditional judicial deference towards a system of enhanced powers for Big Business lobbyists and weakened protections for consumers and working families. We strongly urge opposition to the Separation of Powers Restoration Act, H.R. 288.

Sincerely,
COALITION FOR SENSIBLE SAFEGUARDS.

EARTHJUSTICE,
June 6, 2023.

Re Opposition to H.R. 288, the so-called ''Separation of Powers Restoration Act of 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 uncertainly 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 harm's 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.

Mr. NADLER. Madam Speaker, I urge my colleagues to oppose this dangerously flawed legislation, and I reserve the balance of my time.

Mr. FITZGERALD. Madam Speaker, I include in the RECORD a cost estimate for H.R. 288, prepared by the Congressional Budget Office.

H.R. 288, SEPARATION OF POWERS RESTORATION ACT OF 2023, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON THE JUDICIARY ON MAY 10, 2023

	By fiscal year, millions of dollars—		
	2023	2023–2028	2023–2033
Direct Spending (Outlays)	[a]	[a]	[a]
Revenues	[a]	[a]	[a]
Increase or Decrease (-) in the Deficit	[a]	[a]	[a]
Spending Subject to Appropriation (Outlays)	[a]	[a]	[a]

[a] CBO has no basis to estimate the budgetary effects of enacting H.R. 288.

Increases net direct spending in any of the four consecutive 10-year periods beginning in 2034? [a]

Increases on-budget in any of the four consecutive 10-year periods beginning in 2034? [a]

Statutory pay-as-you-go procedures apply? Yes.

Mandate Effects:

Contains intergovernmental mandate? No.

Contains private-sector mandate? No.

H.R. 288 would authorize federal courts that review agency actions to decide all relevant questions of law, including the interpretation of constitutional and statutory provisions and rules, without deferring to previous legal determinations by the agency.

Under the bill, federal courts could overturn some agency decisions that they would have upheld under current law. Some of those decisions could affect federal spending by overturning regulations that affect direct spending, revenues, and spending subject to appropriation. However, CBO has no basis for estimating either the likelihood that such actions would be overturned or what the effects on spending might be.

The CBO staff contact for this estimate is Jon Sperl. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

Mr. FITZGERALD. Madam Speaker, I yield 3 minutes to the gentleman from California (Mr. MCCLINTOCK).

Mr. MCCLINTOCK. Madam Speaker, the central architecture of the Constitution is the separation of powers. It is really just mother's rules, writ large.

One slice of pie; two hungry brothers. How does mother slice the pie so both brothers are happy? Pretty simple. One slices; the other chooses. The powers given to one brother cannot be abused because of the powers given to the other.

That is the brilliance of our Constitution. One brother makes law but cannot enforce it; the other brother enforces law but cannot make it.

Article I is the first and longest article in the Constitution. It begins with the words: ''All legislative powers herein granted are vested in a Congress of the United States.''

When a law was to be made, the Founders wanted a great big rowdy food fight. They wanted every voice expressed through their Representatives. They wanted the decision held up to every light. They created two Houses with decidedly different perspectives so that the Congress would even argue with itself. They wanted it hard to make laws so the Nation wouldn't be smothered by them, and they wanted those who make those laws directly answerable to the people.

But once made, they didn't want laws to be carried out by hundreds of squabbling prima donnas. That's why we have Article II: ''The executive powers shall be vested in a President of the United States.'' One official, independent of the Congress but also accountable to the people, was to carry out those laws; not make them, but to take care that they are ''faithfully executed.''

Then in Article III, mother, the Supreme Court, independent of both brothers, is there to resolve disputes.

How different it is today. Today, executive agencies which are not elected and often act independently of the elected President, make ten times the laws that Congress makes. They then enforce the laws that they have made, and if they accuse you of violating them, you have to prove your innocence in an administrative court run by the same agency that made the law, accused you of breaking it, and which keeps the fines that it takes from you.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. FITZGERALD. Madam Speaker, I yield an additional 1 minute to the gentleman from California.

Mr. MCCLINTOCK. Madam Speaker, while the courts give intentional scrutiny to the laws made by Congress, under the doctrine of Chevron deference, they have to give wide latitude to the acts of agencies that lack any checks and balances.

Madison warned that when all of the powers of government are in the same hands, you have tyranny. Just ask anyone who has been hauled before this Kafkaesque process.

This bill starts to return the law to its constitutional moorings by repealing this despotic doctrine and placing the acts of unelected administrative state under the same constitutional scrutiny as those of the elected Congress.

Mr. NADLER. Madam Speaker, I yield such time as she may consume to the distinguished gentlewoman from Pennsylvania (Ms. DEAN).

Ms. DEAN of Pennsylvania. Madam Speaker, I rise today in opposition to H.R. 288, the Separation of Powers Restoration Act, SOPRA.

If passed, Federal agencies would have a harder time protecting Americans from threats to our health, safety, and our well-being at a time when we need our agencies with their expertise and resources to be their most effective.

In just one of the most egregious examples, this bill would make it easier for weapons to fall into the hands of the wrong people, endangering countless American lives.

For example, it would make it harder for the Attorney General to implement regulations to improve our National Instant Criminal Background Check System.

Madam Speaker, I will offer a motion to recommit this bill to our committee, the Committee on the Judiciary, and to amend this bill to ensure that the AG's rules and regulations around the background check system remains unaffected.

The system is used nationally for determining someone's ability to possess a firearm. Its effectiveness is crucial to the safety and security of our communities, communities that are already struggling and reeling with far too many guns in the wrong hands.

While Republicans and Democrats are debating on how to address the gun violence epidemic in this country, 97 percent of Americans have made up their mind. They are angry, and they know we need effective background check systems.

As part of the Bipartisan Safer Communities Act, a bill that was signed into law just 1 year ago, we enhanced our background check system. We cannot afford to go backwards in any way, and this bill would do just that.

Ignoring the fact that in this country we suffer the scourge of 48,000 people a year dying of gun violence, more than 60 percent of those deaths are suicide; 8 children a day die in this country of gun violence.

□ 0930

I can't believe I must say this. Gun violence has become the leading cause of death for America's children. Shame on us.

Keeping firearms out of the hands of dangerous people is good for American communities, will save lives, will save our children's lives. We have to save more people.

SOPRA, this bill, is a dangerous bill. Thus, I hope my colleagues will join me in voting for the motion to recommit.

Madam Speaker, I ask unanimous consent to insert the text of this amendment into the RECORD immediately prior to the vote on the motion to recommit.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Pennsylvania?

There was no objection.

Mr. FITZGERALD. Madam Speaker, I yield myself such time as I may consume.

Once again, I remind everyone that SOPRA is not deregulatory. That has not been the goal at all. The goal is to forward this discussion between what should be legislative powers and the administration so that, in the future, it also sets a ground floor for many of the statutes. Congress remains free to regulate in a very detailed way and so do the administrative agencies.

I have heard this before. We heard it in committee, that somehow we were setting up or juxtaposing these two different goals, and it just isn't true.

I think that the other thing we would see is that you would find that legislators would do a much better job of drafting bills in the first place. I mean, shame on us if we leave a piece of legislation so vague that it opens the door for an administrative agency to somehow go in and interpret.

There are many times when the scope of the legislation is the first thing that should be determined before you even sit down and actually write the bill.

So, I know it is a criticism that has existed, but I don't think it is valid.

Madam Speaker, I reserve the balance of my time.

Mr. NADLER. Madam Speaker, I reserve the balance of my time.

Mr. FITZGERALD. Madam Speaker, I yield myself such time as I may consume.

The other thing I will mention came up in our discussions during the committee. When you find yourself in a situation—we just had this discussion in relationship to the REINS Act—where the administrative powers continue to kind of escalate and bloom out from that original piece of legislation, what you will find is, later on, that has to be revisited because oftentimes it is done hastily, doesn't make sense, is arbitrary in nature. It is very difficult for legislators to even read through those powers that have been granted and try to make sense of that. It is another thing that came up in committee that I think is valid.

Madam Speaker, I reserve the balance of my time.

Mr. NADLER. Madam Speaker, I continue to reserve the balance of my time.

Mr. FITZGERALD. Madam Speaker, I yield myself such time as I may consume.

The other thing I will relay is that SOPRA does not turn judges into legislators. SOPRA helps to restore the court's constitutional role as the branch that construes the law.

Specifically, SOPRA requires that courts apply de novo review to all relevant questions of law when reviewing agency action. This means that the courts, not agencies, will interpret what a law means.

In other words, SOPRA enhances, not violates, the separation of powers under our Constitution. Within that discussion, the interpretation of the law is also something that I think would, once again, focus where we are.

Madam Speaker, I reserve the balance of my time.

Mr. NADLER. Madam Speaker, I continue to reserve the balance of my time.

Mr. FITZGERALD. Madam Speaker, I yield 5 minutes to the gentlewoman from Wyoming (Ms. HAGEMAN).

Ms. HAGEMAN. Madam Speaker, over the last few decades, and as accelerated during the Obama and Biden administrations, our constitutional separation of powers has been undermined by Congress' overdelegation of legislative powers to regulatory agencies in the executive branch.

H.R. 288, the Separation of Powers Restoration Act, or SOPRA, would begin to rectify this imbalance.

SOPRA requires nothing more than for courts to apply de novo review to all questions of law, including agencies' interpretation of statutes and rules. That is what courts are supposed to do under the Constitution. They are supposed to interpret the law.

SOPRA would override the ill-advised Supreme Court precedents like Chevron USA v. Natural Resources Defense Council that require courts to defer to agencies' interpretation of statutes and rules so long as they are reasonable but even if they are wrong, even if they are incorrect.

It would end this improper judicial deference that gives agencies greater leeway to pass rules carrying the force of law and which puts a thumb on the scale in favor of the administrative state and against the American people.

By doing so, SOPRA would help restore the constitutional separation of powers, reclaiming the courts' role as the branch that interprets the law and Congress' role as the branch that makes the law.

If we were to look at this issue as if it were a dartboard, courts should be aiming for the bull's-eye of what a particular statute means and enforcing the legislative intent.

Deference doctrines, however, allow courts to defer to an agency's interpretation of a statute or regulation if they are anywhere on the dartboard. This is improper, unconstitutional, and needs to change.

Agencies often try to avoid consultation and collaboration with the very people who are the experts, the people who must live, work, and often suffer under the rules and regulations that they mandate. It is a case of an all-knowing bureaucracy in Washington thinking that they know better than the people in the real world, the businessowners, the farmers, the ranchers, the construction workers.

SOPRA also would help to promote the electoral accountability of policymakers by ensuring that it is Congress' policies, and not those of unelected bureaucrats, that govern the American people.

Over the last couple of days, we have had the opportunity to talk about the REINS Act, and today, we are here talking about SOPRA, restoring constitutional order, applying Article I, Section 1 of the Constitution, where Congress makes the laws and the executive branch is merely there to carry them out.

As I indicated yesterday when talking about the REINS Act, I cannot understand why anyone in the legislative body would want to defer to unelected bureaucrats to make the decisions that impact the citizens of this country.

This body, Congress, was created to legislate. We need to jealously guard our power, our authority, and, ultimately, our accountability to the American public.

Again, I cannot understand why anyone who was elected would argue that we should allow agencies and folks sitting here in Washington, D.C., to make decisions that affect literally millions of people across this country without any accountability whatsoever.

I want to retake our authority to legislate. I want to make sure that this body carries out its responsibilities and duties. For that reason, I urge my colleagues to vote in favor of SOPRA.

Mr. NADLER. Madam Speaker, I yield myself the balance of my time.

This legislation would allow judges to undermine and second-guess the carefully crafted and scientifically based regulations issued by our expert administrative agencies. It would upset decades of Supreme Court precedent just to further the extreme antiregulatory agenda of the Republican majority, which puts the health and safety of all Americans at risk.

Madam Speaker, I urge my colleagues to oppose this dangerous legislation, and I yield back the balance of my time.

Mr. FITZGERALD. Madam Speaker, I yield myself the balance of my time.

Once again, I will say that by forcing the courts to apply the de novo review, this standard would reclaim the court's constitutional role as the branch that interprets the laws and Congress' role as the branch that writes them.

Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate on the bill has expired.

AMENDMENT NO. 1 OFFERED BY MS. HAGEMAN

The SPEAKER pro tempore. It is now in order to consider amendment No. 1 printed in part B of House Report 118–108.

Ms. HAGEMAN. Madam Speaker, I have an amendment at the desk.

The SPEAKER pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 1, beginning on line 16, strike ''and rules made by agencies'' and insert ''rules made by agencies, and interpretative rules, general statements of policy, and all other agency guidance documents''.

The SPEAKER pro tempore. Pursuant to House Resolution 495, the gentlewoman from Wyoming (Ms. HAGEMAN) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Wyoming.

Ms. HAGEMAN. Madam Speaker, the Separation of Powers Restoration Act, or SOPRA, is great legislation that I fully support.

My amendment is simple and seeks to clarify that de novo judicial review applies to agency guidance as well as to agency rules and congressional statutes.

Specifically, my amendment explicitly states that interpretive rules, general statements of policy, and all other agency guidance are subject to de novo judicial review.

Unlike rules, guidance is undefined in the APA's definition section. Agency guidance consists of interpretive rules that explain how agencies interpret the statutes and rules that they administer and general statements of policy that prospectively advise how agencies may choose to exercise their authority.

Guidance is not subject to the APA's notice and comment requirements and, at least not officially, does not have the force of law or at least shouldn't have the force of law.

Yet, we have seen a growing trend of administrative agencies attempting to use guidance to have the force of law while at the same time avoiding even the APA process.

For example, in my private capacity before being elected to Congress, I was part of an effort to push back on the Department of Agriculture's attempt to mandate RFID ear tags on the cattle and bison of our Nation's ranchers. The agency tried to force this on the agriculture community through a two-page guidance document that was posted to the USDA website.

This circumventing of the congressional legislative and agency rulemaking process would have cost our cattle producers $2 billion to comply with this guidance, all without a single comment or public hearing.

Further concerning is that guidance is often not judicially reviewable because agencies then claim that it is not final agency action. Even when it is reviewed, the government then asks for deference to the agencies by the courts.

While the language in SOPRA is implicit that the requirement for de novo judicial review of all relevant questions of law applies to agency guidance, my amendment would make it explicit.

In closing, my amendment would clarify that agency guidance, which agencies routinely abuse, is subject to de novo judicial review under this bill.

Madam Speaker, I reserve the balance of my time.

Mr. NADLER. Madam Speaker, I claim the time in opposition.

The SPEAKER pro tempore. The gentleman from New York is recognized for 5 minutes.

Mr. NADLER. Madam Speaker, as agency heads have stated time and time again, guidance documents, general statements of policy, and other agency guidance do not have the force and effect of law, and the agencies do not take enforcement actions based on supervisory guidance.

This amendment would unnecessarily require judicial review, de novo or otherwise, of guidance documents that have not been interpreted by courts to be given the force of law.

Before I discuss how guidance documents and rules differ, let's take a minute to consider the pure breadth of materials this amendment would cover: interagency statements, bulletins, policy statements, questions and answers, frequently asked questions, statements of policy, and advisories.

Rules and guidance from agencies are not only given different weight in court, but they also are developed through entirely different processes. Rules are made under the Administrative Procedures Act and, thus, follow a structured process for soliciting public comments, the review of those comments, and the release of any final rule. Agency guidance documents, by contrast, are not made under the APA process. Guidance documents are not subject to public review and comment. When you consider the range of materials that falls under the category ''guidance,'' this, naturally, makes sense.

□ 0945

A frequently asked questions page on an agency website cannot and should not be placed in the same category as rules that undergo months and years of review and development. Not only is it wrong as a matter of law to conflate these two classes of documents, but it would also signal to the judiciary that Congress sees them on equal footing; that is, rules and guidance on equal footing, which would muddy the judicial review of agency action.

I imagine the amendment sponsor did not intend for her amendment to accidentally expand what kinds of instruction from agencies should be given the force of law by expanding the Separation of Powers Restoration Act in this fashion, but in any case, that is what this amendment would do.

If agency guidance were treated the same as a rule, as wrong as that might be, agencies would be chilled and warned against providing much-needed information to the individuals and businesses who seek more feedback on an agency's point of view. They would be very hesitant to answer questions on question lines.

Finally, as I noted in response to a similar amendment to the REINS Act yesterday, by requiring agency guidance documents to receive the same review as rules, this amendment would create confusion among businesses subject to oversight from our executive branch agencies as to how much weight they should give agency guidance.

Expanding this bill to also require any guidance the agency gives to businesses about how the rules will be enforced is a drastic expansion of the Separation of Powers Restoration Act and would ensure that agencies provide less guidance for businesses, thus creating more uncertainty for businesses.

This amendment is an overstep that would further stifle the work of our agencies. I, therefore, oppose this amendment and urge my colleagues to do the same.

Madam Speaker, I reserve the balance of my time.

Ms. HAGEMAN. Madam Speaker, the irony of what my colleague on the other side is saying is that the only time that the courts would be addressing guidance is when the agencies are attempting to enforce it against someone outside of the agency.

Again, an example might be the EPA attempting to enforce their guidance against an irrigator in Wyoming because he moved an irrigation ditch and they have concluded that such irrigation ditch, through their guidance, is actually a navigable water of the United States.

Now, fortunately, recently, the Supreme Court of the United States slapped that down and has indicated that the EPA is no longer going to be able to abuse its power and try to control irrigation land and other resources by claiming that mud puddles and such are navigable waters of the United States, but that is just an example.

The only time that the courts are going to be looking at guidance is if the agencies are attempting to enforce it. Further, while my colleague on the other side would argue that these are just frequently answered questions and internal documents, the fact is that this is the way that agencies are circumventing the APA, circumventing the law, and attempting to enforce unofficial documents against the citizens of the United States of America.

I would also point out that yesterday we did pass a similar amendment to the REINS Act and what this does is it makes SOPRA and REINS consistent in terms of covering guidance documents as well as official rules.

Madam Speaker, I reserve the balance of my time.

Mr. NADLER. Madam Speaker, judging from what the gentlewoman just said, the gentlewoman does not understand the process at all.

Courts do not enforce guidance, so we are not prohibiting them here from doing what they do not do to start with. Courts do not enforce guidance. Guidance simply tells people how the courts will enforce the rules promulgated by the agencies.

So to say that you can't have guidance is to say that people must act in ignorance and bet their businesses on what the agency will do without knowing it because the agency can't tell them. That is absurd.

Madam Speaker, I reserve the balance of my time.

Ms. HAGEMAN. Madam Speaker, I find it so ironic, having been a practicing attorney for 34 years and fighting over these exact battles in court, that I am having someone who hasn't practiced for decades tell me that I am ignorant.

The agencies are the ones that attempt to enforce guidance, and I have defended lawsuits along that very line.

Therefore, while someone who may have sat in this room for years believes that he has the ability to judge what people in the real world deal with, the fact is that agencies do attempt to enforce guidance against citizens of this country.

The only thing that this amendment does is to say when that happens, the courts are to apply de novo review to the interpretation of what that guidance means. Nothing more and nothing less.

Again, this is a very simple amendment that says to the extent that guidance documents are before the court for interpretation, the courts must apply de novo review rather than defer to the agency interpretation of that guidance. It is very simple, and it is

something that is appropriate and ensures that we are following our constitutional separation of powers.

Madam Speaker, I yield back the balance of my time.

Mr. NADLER. Madam Speaker, the gentlewoman is accurate as to what SOPRA would do, and for all the reasons I stated before, it is a terrible bill, as terrible as REINS is. I am not going to repeat those arguments.

As to this amendment, I don't have to have practiced law recently. I know how to read a bill. There are lawyers on my staff who know how to read a bill and we know, as I said before, that courts don't enforce guidance. There is no such thing.

Guidance issued by agencies tells the courts how to interpret the rules promulgated by those agencies. That is a simple fact. It is not debatable.

Similarly, to have an amendment that says there shall be no guidance is to have an amendment that says businesses should operate in the dark and bet their businesses on what an agency might do. That is ridiculous and harmful to business, and I urge my colleagues to oppose this amendment as I urge them to oppose the bill.

Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Pursuant to the rule, the previous question is ordered on the bill, as amended and on the amendment offered by the gentlewoman from Wyoming (Ms. HAGEMAN).

The question is on the amendment by the gentlewoman from Wyoming.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT

Ms. DEAN of Pennsylvania. Madam Speaker, I have a motion to recommit at the desk.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Ms. Dean of Pennsylvania moves to recommit the bill H.R. 288 to the Committee on the Judiciary.

The material previously referred to by Ms. DEAN of Pennsylvania is as follows:

Ms. Dean of Pennsylvania moves to recommit H.R. 288 to the Committee on the Judiciary with instructions to report the same back to the House forthwith with the following amendment:

Page 1, line 9, insert after ''extent necessary'' the following: '', and except as otherwise provided in this section''.

Add at the end the following:

SEC. 3. EXCEPTED RULES REGARDING THE PREVENTION OF FIREARMS TRANSFERS TO CRIMINALS AND SUSPECTED TERRORISTS.

Section 706 of title 5, United States Code, as amended by this Act, is further amended by adding at the end the following:

''(c) In the case of a rule made by the Attorney General pertaining to the implementation of the national instant criminal background check system, including rules pertaining to the denial of firearms transfers to international or domestic terrorist suspects, the reviewing court 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.''.

The SPEAKER pro tempore. Pursuant to clause 2(b) of rule XIX, the previous question is ordered on the motion to recommit.

The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Ms. DEAN of Pennsylvania. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question are postponed.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess for a period of less than 15 minutes.

Accordingly (at 9 o'clock and 54 minutes a.m.), the House stood in recess.

□ 1001

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. CAREY) at 10 o'clock and 1 minute a.m.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Proceedings will resume on questions previously postponed.

Votes will be taken in the following order:

The motion to recommit on H.R. 288; and

Passage of H.R. 288, if ordered.

The first electronic vote will be conducted as a 15-minute vote. Pursuant to clause 9 of rule XX, the remaining electronic vote will be conducted as a 5-minute vote.

SEPARATION OF POWERS RESTORATION ACT OF 2023

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the unfinished business is the vote on the motion to recommit on the bill (H.R. 288) to amend title 5, United States Code, to clarify the nature of judicial review of agency interpretations of statutory and regulatory provisions, offered by the gentlewoman from Pennsylvania (Ms. DEAN), on which the yeas and nays were ordered.

The Clerk will redesignate the motion.

The Clerk redesignated the motion.

The SPEAKER pro tempore. The question is on the motion to recommit.

The vote was taken by electronic device, and there were—yeas 210, nays 220, not voting 3, as follows:

[Roll No. 270]

YEAS—210

Adams	Golden (ME)	Panetta
Aguilar	Goldman (NY)	Pappas
Allred	Gomez	Pascrell
Auchincloss	Gonzalez, Vicente	Payne
Balint	Gottheimer	Pelosi
Barragán	Green, Al (TX)	Peltola
Beatty	Grijalva	Perez
Bera	Harder (CA)	Peters
Beyer	Higgins (NY)	Pettersen
Bishop (GA)	Himes	Phillips
Blumenauer	Horsford	Pingree
Blunt Rochester	Houlahan	Pocan
Bonamici	Hoyer	Porter
Bowman	Hoyle (OR)	Pressley
Boyle (PA)	Huffman	Quigley
Brown	Ivey	Ramirez
Brownley	Jackson (IL)	Raskin
Budzinski	Jackson (NC)	Ross
Bush	Jackson Lee	Ruiz
Caraveo	Jacobs	Ruppersberger
Carbajal	Jayapal	Ryan
Cárdenas	Jeffries	Salinas
Carson	Johnson (GA)	Sánchez
Carter (LA)	Kamlager-Dove	Sarbanes
Cartwright	Kaptur	Scanlon
Casar	Keating	Schakowsky
Case	Kelly (IL)	Schiff
Casten	Khanna	Schneider
Castor (FL)	Kildee	Scholten
Castro (TX)	Kilmer	Schrier
Cherfilus-McCormick	Kim (NJ)	Scott (VA)
Chu	Krishnamoorthi	Scott, David
Clark (MA)	Kuster	Sewell
Clarke (NY)	Landsman	Sherman
Cleaver	Larsen (WA)	Sherrill
Clyburn	Larson (CT)	Slotkin
Cohen	Lee (CA)	Smith (WA)
Connolly	Lee (NV)	Sorensen
Correa	Lee (PA)	Soto
Costa	Leger Fernandez	Spanberger
Courtney	Levin	Stansbury
Craig	Lieu	Stanton
Crockett	Lofgren	Stevens
Crow	Magaziner	Strickland
Cuellar	Manning	Swalwell
Davids (KS)	Matsui	Sykes
Davis (IL)	McBath	Takano
Davis (NC)	McClellan	Thanedar
Dean (PA)	McCollum	Thompson (CA)
DeGette	McGarvey	Thompson (MS)
DeLauro	McGovern	Titus
DelBene	Meeks	Tlaib
Deluzio	Menendez	Tokuda
DeSaulnier	Meng	Tonko
Dingell	Mfume	Torres (CA)
Doggett	Moore (WI)	Torres (NY)
Escobar	Morelle	Trahan
Eshoo	Moskowitz	Trone
Espaillat	Moulton	Underwood
Evans	Mrvan	Vargas
Fletcher	Mullin	Vasquez
Foster	Nadler	Veasey
Foushee	Napolitano	Velázquez
Frankel, Lois	Neal	Wasserman Schultz
Frost	Neguse	Waters
Gallego	Nickel	Watson Coleman
Garamendi	Norcross	Wexton
García (IL)	Ocasio-Cortez	Wild
Garcia (TX)	Omar	Williams (GA)
Garcia, Robert	Pallone	Wilson (FL)

NAYS—220

Aderholt	Bice	Carey
Alford	Biggs	Carl
Allen	Bilirakis	Carter (GA)
Amodei	Bishop (NC)	Carter (TX)
Armstrong	Boebert	Chavez-DeRemer
Arrington	Bost	Ciscomani
Babin	Brecheen	Cline
Bacon	Buchanan	Cloud
Baird	Buck	Clyde
Balderson	Bucshon	Cole
Banks	Burchett	Collins
Barr	Burgess	Comer
Bean (FL)	Burlison	Crane
Bentz	Calvert	Crawford
Bergman	Cammack	Crenshaw