

Congress of the United States  
Washington, DC 20515

September 20, 2022

The Honorable Rohit Chopra  
Director  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, D.C. 20552

Director Chopra:

We write to bring to your attention *West Virginia v. EPA*, a recent Supreme Court decision that clarified the limitations of certain agency action.<sup>1</sup> Although Article I, Section 1 of the United States Constitution vests “all legislative powers” in Congress,<sup>2</sup> the Biden administration has largely relied on executive action to advance its radical agenda. For example, in his first year, President Biden issued more executive orders<sup>3</sup> and approved more major rules<sup>4</sup> than any recent president. Such reliance on the administrative state undermines our system of government. Our founders provided Congress with legislative authority to ensure lawmaking is done by elected officials, not unaccountable bureaucrats. Given this administration’s track record, we are compelled to underscore the implications of *West Virginia v. EPA* and to remind you of the limitations on your authority.

In *West Virginia v. EPA*, the Court invoked the “major questions doctrine” to reject an attempt by the EPA to exceed its statutory authority.<sup>5</sup> As the Court explained, “[p]recedent teaches that there are ‘extraordinary cases’ in which the ‘history and breadth of the authority that [the agency] has asserted,’ and the ‘economic and political significance’ of that assertion, provide a ‘reason to hesitate before concluding that Congress’ meant to confer such authority.”<sup>6</sup> Under this doctrine, an agency must point to “clear congressional authorization for the authority it claims.”<sup>7</sup> However, the EPA could not point to such authorization. Rather, the EPA “discover[ed] an unheralded power representing a transformative expansion of its regulatory authority in the vague language of a long-extant, but rarely used, statute designed as a gap filler.”<sup>8</sup> Notably, such discovery “allowed [EPA] to adopt a regulatory program that Congress

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<sup>1</sup> *West Virginia v. Environmental Protection Agency*, 597 U.S. \_\_\_ (2022).

<sup>2</sup> U.S. Const. art. I, § 1.

<sup>3</sup> Federal Register, *Executive Orders* (accessed Aug. 2022), available at <https://www.federalregister.gov/presidential-documents/executive-orders>

<sup>4</sup> Deep Dive, *How Biden Has Made Policy With Short-Term, Costly Rules: Charts*, Bloomberg Law (May 2022), available at <https://news.bloomberglaw.com/environment-and-energy/how-biden-has-made-policy-with-short-term-costly-rules-charts>.

<sup>5</sup> *West Virginia*, 597 U.S. at 5-6.

<sup>6</sup> *Id.* at 4 (citing *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 129, 159-160).

<sup>7</sup> *West Virginia*, 597 at 4.

<sup>8</sup> *Id.* at 5.

had conspicuously declined to enact itself.”<sup>9</sup> As a result, the Court rejected the EPA’s attempt to so plainly exceed its statutory authority.

Unfortunately, EPA’s attempt to invent new authorities is not unusual for the Biden administration. Recently, the Court struck down the Centers for Disease Control and Prevention’s attempt to impose an eviction moratorium<sup>10</sup> and the Occupational Safety and Health Administration’s attempt to impose a vaccine or testing mandate.<sup>11</sup> Thankfully, in *West Virginia v. EPA*, the Court made clear that such reliance on the administrative state will no longer be allowed. To be clear, “the Constitution does not authorize agencies to use pen-and-phone regulations as substitutes for laws passed by the people’s representatives.”<sup>12</sup> In the United States, it is “the peculiar province of the legislature to prescribe general rules for the government of society.”<sup>13</sup>

The clear delegation of authority contemplated by the Court is not limited to just rulemaking but extends to other agency actions. Actions that are intended to avoid transparency and accountability. Since becoming Director of the Consumer Financial Protection Bureau, you have undertaken a number of so-called “initiatives” that circumvent not only Congressional intent, but the Administrative Procedure Act (APA). This list includes:

1. An interpretive rule expanding the authority of States to Enforce the Consumer Financial Protection Act of 2010 beyond what was intended by Congress;
2. An advisory opinion expanding Equal Credit Opportunity (Regulation B); as well as making revocations or unfavorable changes to the terms of existing credit arrangements;
3. An advisory opinion narrowly interpreting the Fair Credit Reporting Act with respect to name-only matching procedures; and
4. An interpretive rule limiting the Fair Credit Reporting Act’s preemption authority, allowing states to pass laws impacting implementation of the FCRA.

As we have stated on several previous occasions, you have consistently operated the Bureau outside its authority. Instead of using the procedures Congress intended in the APA, you have worked to use administrative devices that keep Congress, industry, and the tax-paying public in the dark. To that end, we request that you provide the following information no later than September 30, 2022.

1. A list of all actions, including the above the Bureau intends to take during the remainder of 2022. This list should include the specific Congressional authority for each action.
2. A list of all expected actions, including but not limited to major rulemaking, staff guidance, advisory opinions, and interpretive rules and the specific Congressional authority for each rulemaking.

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<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Alabama Assn. of Relators v. Department of Health and Human Servs*, 594 U.S. \_\_\_ (2021).

<sup>11</sup> *National Federation of Independent Business v. Occupational Safety and Health Administration*, 595 U.S. \_\_\_ (2022).

<sup>12</sup> *West Virginia*, 597 at 56 (Gorsuch, J., concurring).

<sup>13</sup> *Fletcher v. Peck*, 6 Cranch 87, 136 (1810).

The House Committees for Financial Services and Oversight and Reform intend to exercise robust investigative and legislative powers to not only forcefully reassert our Article I responsibilities, but to ensure that neither you nor the Biden administration can continue to exceed Congressional authorizations.

We appreciate your prompt attention to this request.



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Patrick McHenry  
Republican Leader  
Committee on Financial Services



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James Comer  
Republican Leader  
Committee on Oversight and Reform