

118TH CONGRESS
2D SESSION

S. _____

To codify Chevron deference.

IN THE SENATE OF THE UNITED STATES

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To codify Chevron deference.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Restoring Congres-
5 sional Authority Act”.

6 **SEC. 2. SCOPE OF JUDICIAL REVIEW OF AGENCY ACTIONS.**

7 (a) IN GENERAL.—Section 706 of title 5, United
8 States Code, is amended—

9 (1) by striking “To the extent necessary” and
10 inserting the following:

11 “(a) IN GENERAL.—To the extent necessary”; and

12 (2) by adding at the end the following:

1 “(b) DEFERENCE TO REASONABLE INTERPRETATION
2 OF AGENCY.—

3 “(1) DEFINITION OF COVERED PROVISION.—In
4 this subsection, the term ‘covered provision’, with re-
5 spect to an agency, means a statutory provision that
6 the agency has authority to implement.

7 “(2) LIMITATION ON RELIEF.—In reviewing
8 under subsection (a) an agency action that is alleged
9 to violate a covered provision, if the agency action
10 complied with the covered provision as interpreted
11 by the agency, the reviewing court may order relief
12 only if the interpretation by the agency of the cov-
13 ered provision was not reasonable.

14 “(3) CONSIDERATION OF CONGRESSIONAL IN-
15 TENT.—

16 “(A) IN GENERAL.—In reviewing the rea-
17 sonableness of an agency’s interpretation of a
18 covered provision under paragraph (1), the re-
19 viewing court shall consider congressional intent
20 with respect to the covered provision.

21 “(B) DETERMINATION OF CONGRESSIONAL
22 INTENT.—In order to determine congressional
23 intent with respect to a covered provision under
24 subparagraph (A), the reviewing court shall

1 consider, in addition to the text of the covered
2 provision, only—

3 “(i) any statement about the legisla-
4 tion that created the covered provision—

5 “(I) made—

6 “(aa) by a Member of Con-
7 gress during deliberation of an
8 applicable congressional com-
9 mittee regarding the legislation;
10 or

11 “(bb) in the report of an ap-
12 plicable congressional committee
13 with respect to the legislation; or

14 “(II) made by a Member of Con-
15 gress on the floor of the Senate or the
16 House of Representatives;

17 “(ii) any letter about or relating to
18 the legislation that created the covered
19 provision circulated by the Member of Con-
20 gress who sponsored the legislation, includ-
21 ing—

22 “(I) a letter commonly known as
23 a ‘Dear Colleague letter’; or

24 “(II) a letter sent to a Federal
25 agency that would be impacted by the

1 legislation, the response to which in-
2 formed the drafting of the legislation;

3 “(iii) any press release issued by a
4 Member of Congress about the legislation
5 that created the covered provision; and

6 “(iv) any statement, letter, or press
7 release that satisfies the requirements
8 under clause (i), (ii), or (iii), respectively,
9 except that the statement, letter, or press
10 release was about or relating to (as appli-
11 cable) companion legislation, or other near-
12 ly identical legislation, to the legislation
13 that created the covered provision.

14 “(c) FAST-TRACK CONSIDERATION OF LEGISLATION
15 OVERTURNING CERTAIN COURT DECISIONS.—

16 “(1) DEFINITIONS.—In this subsection:

17 “(A) COVERED DECISION.—The term ‘cov-
18 ered decision’ means a decision of a court of ap-
19 peals of the United States under subsection (a)
20 that an agency action violated a covered provi-
21 sion (as defined in subsection (b)) because the
22 agency’s interpretation of the covered provision
23 was not reasonable, as described in subsection
24 (b)(2).

1 “(B) COVERED RESOLUTION.—The term
2 ‘covered resolution’ means only a joint resolu-
3 tion—

4 “(i) introduced during the period be-
5 ginning on the date on which a covered de-
6 cision is issued and ending 60 days there-
7 after (excluding days either House of Con-
8 gress is adjourned for more than 3 days
9 during a session of Congress); and

10 “(ii) the matter after the resolving
11 clause of which contains only—

12 “(I) a citation to the covered de-
13 cision;

14 “(II) a statement that Congress
15 disapproves the covered decision; and

16 “(III) any language necessary to
17 overturn the covered decision and au-
18 thorize the invalidated agency action.

19 “(2) REFERRAL.—A covered resolution shall be
20 referred to the committees in each House of Con-
21 gress with jurisdiction.

22 “(3) SENATE PROCEDURES.—

23 “(A) DISCHARGE OF COMMITTEE.—In the
24 Senate, if the committee to which is referred a
25 covered resolution has not reported the covered

1 resolution (or an identical joint resolution) at
2 the end of 20 calendar days after its introduc-
3 tion, the committee may be discharged from
4 further consideration of the covered resolution
5 upon a petition supported in writing by 30
6 Members of the Senate, and the covered resolu-
7 tion shall be placed on the calendar.

8 “(B) FLOOR CONSIDERATION.—

9 “(i) IN GENERAL.—In the Senate,
10 when the committee to which a covered
11 resolution is referred has reported, or when
12 a committee is discharged (under subpara-
13 graph (A)) from further consideration of a
14 covered resolution, it is at any time there-
15 after in order (even though a previous mo-
16 tion to the same effect has been disagreed
17 to) for a motion to proceed to the consider-
18 ation of the covered resolution, and all
19 points of order against the covered resolu-
20 tion (and against consideration of the cov-
21 ered resolution) are waived. The motion is
22 not subject to amendment, or to a motion
23 to postpone, or to a motion to proceed to
24 the consideration of other business. A mo-
25 tion to reconsider the vote by which the

1 motion is agreed to or disagreed to shall
2 not be in order. If a motion to proceed to
3 the consideration of the covered resolution
4 is agreed to, the covered resolution shall
5 remain the unfinished business of the Sen-
6 ate until disposed of.

7 “(ii) DEBATE.—In the Senate, debate
8 on the covered resolution, and on all debat-
9 able motions and appeals in connection
10 therewith, shall be limited to not more
11 than 10 hours, which shall be divided
12 equally between those favoring and those
13 opposing the covered resolution. A motion
14 further to limit debate is in order and not
15 debatable. An amendment to, or a motion
16 to postpone, or a motion to proceed to the
17 consideration of other business, or a mo-
18 tion to recommit the covered resolution is
19 not in order.

20 “(iii) VOTE ON FINAL PASSAGE.—In
21 the Senate, immediately following the con-
22 clusion of the debate on a covered resolu-
23 tion, and a single quorum call at the con-
24 clusion of the debate if requested in ac-
25 cordance with the rules of the Senate, the

1 vote on final passage of the covered resolu-
2 tion shall occur.

3 “(iv) RULINGS OF THE CHAIR ON
4 PROCEDURE.—Appeals from the decisions
5 of the Chair relating to the application of
6 the rules of the Senate to the procedure re-
7 lating to a covered resolution shall be de-
8 cided without debate.

9 “(C) EXPIRATION OF PROCEDURES.—In
10 the Senate, the procedure specified in subpara-
11 graph (A) or (B) shall not apply to the consid-
12 eration of a joint resolution respecting a cov-
13 ered decision—

14 “(i) after the expiration of the 60 ses-
15 sion days beginning with the date on which
16 the covered decision is issued; or

17 “(ii) if the covered decision is issued
18 during the period referred to in subsection
19 (d)(1), after the expiration of the 60 ses-
20 sion days beginning on the 15th session
21 day after the succeeding session of Con-
22 gress first convenes.

23 “(4) COORDINATION WITH ACTION BY OTHER
24 HOUSE.—If, before the passage by one House of a
25 covered resolution of that House, that House re-

1 ceives from the other House a covered resolution,
2 then the following procedures shall apply:

3 “(A) The covered resolution of the other
4 House shall not be referred to a committee.

5 “(B) With respect to a covered resolution
6 of the House receiving the covered resolution—

7 “(i) the procedure in that House shall
8 be the same as if no covered resolution had
9 been received from the other House; but

10 “(ii) the vote on final passage shall be
11 on the covered resolution of the other
12 House.

13 “(5) RULES OF SENATE AND HOUSE OF REP-
14 RESENTATIVES.—This subsection is enacted by Con-
15 gress—

16 “(A) as an exercise of the rulemaking
17 power of the Senate and House of Representa-
18 tives, respectively, and as such it is deemed a
19 part of the rules of each House, respectively,
20 but applicable only with respect to the proce-
21 dure to be followed in that House in the case
22 of a covered resolution, and it supersedes other
23 rules only to the extent that it is inconsistent
24 with such rules; and

1 “(B) with full recognition of the constitu-
2 tional right of either House to change the rules
3 (so far as relating to the procedure of that
4 House) at any time, in the same manner, and
5 to the same extent as in the case of any other
6 rule of that House.

7 “(d) FAST-TRACK CONSIDERATION OF LEGISLATION
8 OVERTURNING CERTAIN COURT DECISIONS ISSUED NEAR
9 END OF CONGRESSIONAL SESSION OR BETWEEN SES-
10 SIONS.—

11 “(1) IN GENERAL.—In addition to the oppor-
12 tunity for legislative review otherwise provided under
13 subsection (c), in the case of any covered decision
14 (as defined in that subsection) that is issued during
15 the period beginning on the date occurring, in the
16 case of the Senate, 60 session days, or in the case
17 of the House of Representatives, 60 legislative days,
18 before the date on which Congress adjourns a ses-
19 sion of Congress through the date on which the
20 same or succeeding Congress first convenes its next
21 session, subsection (c) shall apply to the covered de-
22 cision in the succeeding session of Congress.

23 “(2) DEEMED DATE OF COURT DECISION.—In
24 applying subsection (c) for purposes of the addi-
25 tional legislative review described in paragraph (1)

1 of this subsection, a covered decision described in
2 that paragraph shall be treated as though the cov-
3 ered decision were issued on, in the case of the Sen-
4 ate, the 15th session day, or, in the case of the
5 House of Representatives, the 15th legislative day,
6 after the succeeding session of Congress first con-
7 venes.”.

8 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

9 (1) CONGRESSIONAL ACCOUNTABILITY ACT OF
10 1995.—Section 409 of the Congressional Account-
11 ability Act of 1995 (2 U.S.C. 1409) is amended—

12 (A) by striking “subparagraphs (A)
13 through (D) of section 706(2)” and inserting
14 “subparagraphs (A) through (D) of section
15 706(a)(2)”; and

16 (B) by striking “section 706(2)(B)” and
17 inserting “section 706(a)(2)(B)”.

18 (2) UNFUNDED MANDATES REFORM ACT OF
19 1995.—Section 401(a)(2)(A) of the Unfunded Man-
20 dates Reform Act of 1995 (2 U.S.C. 1571(a)(2)(A))
21 is amended by striking “section 706(1)” and insert-
22 ing “section 706(a)(1)”.

23 (3) UNITED STATES WAREHOUSE ACT.—Section
24 13(d)(2) of the United States Warehouse Act (7

1 U.S.C. 252(d)(2)) is amended by striking “section
2 706(2)” and inserting “section 706(a)(2)”.

3 (4) TITLE 11, UNITED STATES CODE.—Section
4 1172(b) of title 11, United States Code, is amended
5 by striking “sections 706(2)(A), 706(2)(B),
6 706(2)(C), and 706(2)(D)” and inserting “subpara-
7 graphs (A) through (D) of section 706(a)(2)”.

8 (5) TITLE 14, UNITED STATES CODE.—Section
9 2507(b)(2)(A) of title 14, United States Code, is
10 amended by striking “section 706(1)” and inserting
11 “section 706(a)(1)”.

12 (6) FEDERAL TRADE COMMISSION ACT.—Sec-
13 tion 18(e) of the Federal Trade Commission Act (15
14 U.S.C. 57a(e)) is amended—

15 (A) in paragraph (3), in the matter pre-
16 ceding subparagraph (A), by striking “section
17 706(2)” and inserting “section 706(a)(2)”; and

18 (B) in paragraph (5)(C), by striking “sec-
19 tion 706(2)(E)” and inserting “section
20 706(a)(2)(E)”.

21 (7) FEDERAL HAZARDOUS SUBSTANCES ACT.—
22 Section 3(e)(3)(C) of the Federal Hazardous Sub-
23 stances Act (15 U.S.C. 1262(e)(3)(C)) is amended
24 by striking “section 706” and inserting “section
25 706(a)”.

1 (8) POISON PREVENTION PACKAGING ACT OF
2 1970.—Section 5(b)(3) of the Poison Prevention
3 Packaging Act of 1970 (15 U.S.C. 1474(b)(3)) is
4 amended by striking “section 706” and inserting
5 “section 706(a)”.

6 (9) TOXIC SUBSTANCES CONTROL ACT.—Sec-
7 tion 19(c)(1)(B) of the Toxic Substances Control
8 Act (15 U.S.C. 2618(c)(1)(B)) is amended by strik-
9 ing “706” each place it appears and inserting
10 “706(a)”.

11 (10) FASTENER QUALITY ACT.—Section 6(b)(3)
12 of the Fastener Quality Act (15 U.S.C. 5408(b)(3))
13 is amended by striking “section 706(2)” and insert-
14 ing “section 706(a)(2)”.

15 (11) NORTHERN PACIFIC HALIBUT ACT OF
16 1982.—Section 8(b) of the Northern Pacific Halibut
17 Act of 1982 (16 U.S.C. 773f(b)) is amended by
18 striking “section 706(2)” and inserting “section
19 706(a)(2)”.

20 (12) SOUTH PACIFIC TUNA ACT OF 1988.—Sec-
21 tion 8(b) of the South Pacific Tuna Act of 1988 (16
22 U.S.C. 973f(b)) is amended by striking “section
23 706(2)” and inserting “section 706(a)(2)”.

24 (13) MARINE MAMMAL PROTECTION ACT OF
25 1972.—Section 109(c)(4) of the Marine Mammal

1 Protection Act of 1972 (16 U.S.C. 1379(c)(4)) is
2 amended by striking “section 706(2) (A) through
3 (E)” and inserting “subparagraphs (A) through (E)
4 of section 706(a)(2)”.

5 (14) MAGNUSON-STEVENSON FISHERY CONSERVA-
6 TION AND MANAGEMENT ACT.—Section 308(b) of
7 the Magnuson-Stevens Fishery Conservation and
8 Management Act (16 U.S.C. 1858(b)) is amended
9 by striking “section 706(2)” and inserting “section
10 706(a)(2)”.

11 (15) ANTARCTIC MARINE LIVING RESOURCES
12 CONVENTION ACT OF 1984.—Section 308(c) of the
13 Antarctic Marine Living Resources Convention Act
14 of 1984 (16 U.S.C. 2437(c)) is amended by striking
15 “section 706(2)(E)” and inserting “section
16 706(a)(2)(E)”.

17 (16) ALASKA NATIONAL INTEREST LANDS CON-
18 SERVATION ACT.—Section 1002(g)(2) of the Alaska
19 National Interest Lands Conservation Act (16
20 U.S.C. 3142(g)(2)) is amended by striking “section
21 706(2)(E)” and inserting “section 706(a)(2)(E)”.

22 (17) FISHERIES ACT OF 1995.—Section 108(d)
23 of the Fisheries Act of 1995 (16 U.S.C. 5507(d)) is
24 amended by striking “section 706(2)” and inserting
25 “section 706(a)(2)”.

1 (18) TARIFF ACT OF 1930.—Section 777(f)(5)
2 of the Tariff Act of 1930 (19 U.S.C. 1677f(f)(5)) is
3 amended by striking “section 706(2)” and inserting
4 “section 706(a)(2)”.

5 (19) FEDERAL FOOD, DRUG, AND COSMETIC
6 ACT.—Section 912(b) of the Federal Food, Drug,
7 and Cosmetic Act (21 U.S.C. 387l(b)) is amended
8 by striking “section 706(2)(A)” and inserting “sec-
9 tion 706(a)(2)(A)”.

10 (20) TITLE 28, UNITED STATES CODE.—Section
11 3902 of title 28, United States Code, is amended by
12 striking “section 706(2)” and inserting “section
13 706(a)(2)”.

14 (21) MIGRANT AND SEASONAL AGRICULTURAL
15 WORKER PROTECTION ACT.—The Migrant and Sea-
16 sonal Agricultural Worker Protection Act (29 U.S.C.
17 1801 et seq.) is amended—

18 (A) in section 103(c) (29 U.S.C. 1813(c)),
19 by striking “section 706(2)(E)” and inserting
20 “section 706(a)(2)(E)”; and

21 (B) in section 503(c) (29 U.S.C. 1853(c)),
22 by striking “section 706(2)(E)” and inserting
23 “section 706(a)(2)(E)”.

24 (22) DEEP SEABED HARD MINERAL RESOURCES
25 ACT.—Section 302(b) of the Deep Seabed Hard

1 Mineral Resources Act (30 U.S.C. 1462(b)) is
2 amended by striking “section 706(2)(E)” and insert-
3 ing “section 706(a)(2)(E)”.

4 (23) PUBLIC HEALTH SERVICE ACT.—Section
5 2723(b)(2)(E)(iii) of the Public Health Service Act
6 (42 U.S.C. 300gg–22(b)(2)(E)(iii)) is amended by
7 striking “section 706(2)(E)” and inserting “section
8 706(a)(2)(E)”.

9 (24) SOCIAL SECURITY ACT.—Section 410(c)(2)
10 of the Social Security Act (42 U.S.C. 610(c)(2)) is
11 amended by striking “section 706(2)” and inserting
12 “section 706(a)(2)”.

13 (25) OCEAN THERMAL ENERGY CONVERSION
14 ACT OF 1980.—Section 302(c)(2) of the Ocean Ther-
15 mal Energy Conversion Act of 1980 (42 U.S.C.
16 9152(c)(2)) is amended by striking “section 706(2)”
17 and inserting “section 706(a)(2)”.

18 (26) REGIONAL RAIL REORGANIZATION ACT OF
19 1973.—Section 216(c)(3) of the Regional Rail Reor-
20 ganization Act of 1973 (45 U.S.C. 726(c)(3)) is
21 amended by striking “section 706(2)” and inserting
22 “section 706(a)(2)”.

23 (27) MILWAUKEE RAILROAD RESTRUCTURING
24 ACT.—The Milwaukee Railroad Restructuring Act
25 (45 U.S.C. 901 et seq.) is amended—

1 (A) in section 5(b)(2) (45 U.S.C.
2 904(b)(2)), by striking “sections 706(2)(A),
3 706(2)(B), 706(2)(C), and 706(2)(D)” and in-
4 serting “subparagraphs (A) through (D) of sec-
5 tion 706(a)(2)”; and

6 (B) in section 17(b)(2) (45 U.S.C.
7 915(b)(2)), by striking “sections 706(2)(A),
8 706(2)(B), 706(2)(C), and 706(2)(D)” and in-
9 serting “subparagraphs (A) through (D) of sec-
10 tion 706(a)(2)”.

11 (28) TITLE 46, UNITED STATES CODE.—Section
12 102(c)(3)(B) of title 46, United States Code, is
13 amended by striking “section 706(2)(E)” and insert-
14 ing “section 706(a)(2)(E)”.