



Dear Members of Congress,

We write to express support for the Separation of Powers Act (SOPRA) ([H.R. 4768](#) and [S. 2724](#)), which would require courts to check regulatory overreach. As organizations dedicated to a free and open Internet, we believe SOPRA would be especially important in restoring judicial oversight of the FCC — and thus protecting Internet freedom from government overreach.

Two Supreme Court decisions, *Chevron v. NRDC* (1984) and *Auer v. Robbins* (1997), mean that courts generally grant broad deference to administrative agencies in interpreting ambiguous statutes and agency regulations. Only because of *Chevron* deference did two (of three) D.C. Circuit judges recently vote to uphold the FCC’s 2015 Open Internet Order.

That decision gave the FCC a blank check to regulate the Internet as it sees fit, even to the point of effectively rewriting the Telecommunications Act of 1996. The Open Internet Order represented a fundamental break from the light-touch, bipartisan approach that had allowed the Internet to flourish for nearly two decades.

Despite the FCC’s talk of protecting “net neutrality,” the FCC went well beyond that: reclassifying broadband under Title II of the 1934 Communications Act and claiming sweeping power over broadband. Under the panel majority’s blind *Chevron* deference to the FCC, it is hard to see how the courts could stop the FCC from extending such outmoded regulations to “edge” companies like Facebook and Google, too. Similarly, while the FCC has promised to “forebear” from certain provisions of Title II, the court’s decision suggests that the FCC would get deference in *unforbearing* — which could result in the full weight of Title II being imposed on the Internet. Or, conversely, a deregulatory-minded FCC could use forbearance to gut not just the Order, but much of the existing regulations.

In short, the majority’s view of *Chevron* means Internet regulation will now be a game of political ping-pong — with the courts resigned to sitting on the sidelines, watching the ball bounce back and forth. This ongoing uncertainty is particularly damaging to small businesses, who often lack the resources needed to comply with shifting regulatory burdens and litigate against unfavorable regulatory changes.

SOPRA would restore the Judiciary’s constitutional role in checking agency overreach and preventing excessive regulations from impeding innovation and economic growth. Specifically, the bill would clarify that the Administrative Procedure Act requires courts to conduct a new review of relevant questions of law when evaluating agency regulations — rather than simply deferring to the agency’s judgment.

Sincerely,

TechFreedom
American Commitment
American Consumer Institute
Americans for Tax Reform
Center for Freedom and Prosperity
Civitas Institute
Competitive Enterprise Institute
Digital Liberty
Free the People
Independent Women's Forum
Institute for Liberty
Less Government
Mississippi Center for Public Policy
National Taxpayers Union
Protect Internet Freedom
Rio Grande Foundation
Taxpayers Protection Alliance
Tech Knowledge