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SCOTUS’s Chevron Decision Elevates its Own Opinions over the Constitutional Rights and Responsibilities of the Elected Branches

Statement by Jim Townsend, director of the Carl Levin Center for Oversight and Democracy, about the Supreme Court’s decision in *Loper Bright Enterprises et al v. Raimondo*.

“Today the Supreme Court overturned the forty-year-old Chevron doctrine that requires courts to defer to reasonable agency interpretations of statutes. This decision undermines the constitutional system of checks and balances by enlarging the judiciary’s role in rulemaking at the expense of the other two branches of government. This judicial power grab – intended or not – will sabotage congressional oversight, trigger unprecedented inter-branch conflict, and reduce democratic accountability.

“The Court’s opinion in *Loper vs. Raimondo* ignores how Congress and the executive branch work together to produce federal regulations, a complex process where congressional committees and agencies use formal and informal means – from phone calls, letters, and meetings to public hearings – to hash out the specifics of rules to implement congressional intent. Because the Constitution gives Congress sole authority to legislate and the executive branch sole authority to execute the laws, this policymaking process has long been recognized as the domain of the two elected branches of government.

“But the Loper decision, together with other recent rulings like *Garland v. Cargill* which invalidated agency rules banning guns with bump stocks, now enables the judicial branch to override agency expertise informed by congressional oversight. The Supreme Court has given permission to the judicial branch, at will, to elevate its own opinions over the constitutional rights and responsibilities of the two elected branches.

“By dominating the rulemaking process, the Court subverts Congress’ vital oversight role and undermines the executive branch’s implementation efforts, upsetting the Constitution’s intended balancing of the branches. After two centuries in which courts have confined both Congress and the federal agencies to written pleadings and oral argument, does anyone think the courts could

or would participate in the kind of negotiated rulemaking that now routinely takes place between the two political branches of government?

“With this decision, the Court has boosted the regulatory authority of unelected and inexperienced judges, circumvented congressional oversight, and trampled the checks and balances established in the Constitution.”

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About The Carl Levin Center

The Carl Levin Center for Oversight and Democracy works to carry on the legislative oversight legacy and public vision of U.S. Senator Carl Levin, a champion of fact-based, bipartisan oversight investigations by Congress. The Levin Center strives to strengthen congressional oversight efforts through training programs, symposia, awards, and research.

The Levin Center is headquartered at Wayne State University Law School in Detroit with an office in Washington, D.C. The opinions expressed herein do not necessarily reflect the views, if any, of the Law School or the University.