

Questions for the Record from Rep. Hageman for
Mr. Mark Chenoweth, Ms. Jennifer Mascott, and Mr. Robert Alt
“Reining in the Administrative State: Agency Adjudication and Other Agency Action”
March 20, 2024

1. Reports differ as to the scope of the administrative judiciary, as well as the roles of Administrative Law Judges.
 - a. What is the exact scope of the Administrative judiciary? For this, please explain how many agencies rely on administrative law judges, the types of adjudication they address, and whether they can impose fines and sanctions.
 - b. Please describe instances where, in your opinion, agency reliance on an ALJ is not Constitutional, and please explain why. Please provide examples if applicable.
 - c. Please describe instances where, in your opinion, agency reliance on an ALJ is Constitutional, and please explain why. Please provide examples if applicable.
2. Many agencies act as prosecutors when suing the parties they investigate in their own courts, and then act as adjudicators when the parties appeal ALJ decisions. This can lead to issues of bias and prejudgment by agency heads, such as when FTC Chair Lina Khan ignored the ethical advice of the FTC’s Designated Agency Ethics Official, and then sought to keep her ethical misconduct hidden.¹ Situations like this erode confidence in such government tribunals.
 - a. Please provide examples of other instances where agency adjudicators have proceeded to oversee cases where they may be ethically compromised by bias or prejudgment.
 - b. What legislative steps would you recommend Congress take to hold agency heads accountable for their ethics when they act as a prosecutor or adjudicator?
3. Even though it was not a topic on the agenda for the March 20, 2024, hearing, several members raised concerns over “Chevron Deference,” and potential Supreme Court rulings later in this term. To the extent you have studied the issue, please explain how “Chevron Deference” impacts litigation today, and how changing the status quo on “Chevron Deference” by limiting its scope or eliminating it entirely, will impact existing federal law and federal agencies. Further, please explain whether such changes may impact Congress.

¹ See *Oversight of the Federal Trade Commission: Hearing Before the H. Comm. on the Judic.*, 118th Cong. (2023) (Questions for the Record of Rep. Harriet Hageman) (Responses to the Questions for the Record of Hon. Lina Khan, Chair, Fed. Trade Comm’n), at 25-28 (Questions seeking clarity as to why Chair Khan ignored the ethics advice, and Khan’s continued persistence in refusing to answer) (attached).