



March 19, 2024

Representative Thomas Massie
Chairman
House Judiciary Committee
Subcommittee on the Administrative
State, Regulatory Reform, and Antitrust
2141 Rayburn House Office Building
Washington, DC 20515

Representative J. Luis Correa
Ranking Member
House Judiciary Committee
Subcommittee on the Administrative
State, Regulatory Reform, and Antitrust
2141 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Massie and Ranking Member Correa:

The Coalition for Sensible Safeguards (CSS), an alliance of over 180 labor, scientific, research, good government, faith, community, health, environmental, and public interest groups, is writing regarding the House Judiciary's Subcommittee on the Administrative State, Regulatory Reform, and Antitrust hearing, "Reining in the Administrative State: Agency Adjudication and Other Agency Action," taking place tomorrow, March 20, 2024. As explained below, maintaining the current robust system of agency adjudication is important for efficient and effective enforcement of our nation's protective statutes, which help keep our workplaces safe, our drinking water free of contaminants, and our hard-earned money safeguarded against fraud.

Agency adjudication is an important tool agencies have to enforce regulatory requirements. Without these mechanisms, agency enforcement would become practically impossible to achieve in practice. This in turn would lead to greater noncompliance with agency regulations, resulting in the very harms to the public those regulations are intended to prevent.

Indeed, administrative adjudication mechanisms are critical to ensuring clean air and water; protection of consumers, workers, minorities, investors, and public health and safety; and ensuring a fair and effective process for government benefits programs such as Social Security. The prospect of eliminating agency adjudication is particularly concerning from a justice and equity perspective, as members of structurally marginalized communities who benefit most from regulatory protections would bear a disproportionately greater share of the harms that would result from the absence of agency adjudication these harms.

Agency adjudication generally takes two forms: formal and informal. Formal adjudication is conducted pursuant to the procedures set forth in the Administrative Procedure Act (APA) and is presided over by a class of special government officials known as Administrative Law Judges (ALJs).¹ In contrast, informal adjudication is generally conducted pursuant to procedures set

¹ See generally 5 U.S.C. §§554, 556-557.

forth in relevant agency organic statutes (which are often supplemented by detailed implementing regulations) and is presided over by a class of special government officials generally referred to as Administrative Judges (AJs).²

Over the last several decades, agency adjudication has proven itself to be an effective and efficient mechanism for resolving disputes over the application of agency regulations. These disputes can be large in number, and many are intensely fact-based. Fortunately, ALJs and AJs that preside over these disputes, as relevant, can develop specialized expertise in the substance of these regulations and the practical issues involved in their enforcement.

Importantly, this system of resolving disputes also spares our already overtaxed federal judiciary. The federal judiciary simply lacks the capacity to handle the influx of cases that would occur if the authority of agencies to conduct adjudications were significantly curtailed or outright eliminated. Nor would individual Article III judges be positioned to build up the kind of specialized expertise that ALJs and AJs are often able to acquire to ensure that the disputes they do hear are resolved efficiently, fairly, and effectively. The result would be poorer quality decisions and fewer enforcement cases, thereby undermining the justice and accountability goals of agency enforcement of regulations.

The practical advantages of agency adjudication have been well-balanced against countervailing concerns for individual due process rights. Both informal and formal adjudications must comply with procedural due process requirements, including effective prior notice, an opportunity to be heard, and access to a neutral decision maker. The procedures that currently govern federal agency adjudication have developed over the decades since adoption of the APA in ways that generally conform to due process requirements. Moreover, affected members of the public still have recourse to appeal adverse agency adjudication decisions to Article III courts, ensuring that they have the right to challenge such decisions before judges who are shielded from undue political influence through lifetime appointments and prohibitions on salary reductions.

We urge this subcommittee to refrain from pursuing legislation that would have the effect of undermining the independence of ALJs that preside over formal adjudications. Congress was well aware of the need to ensure ALJ independence and consciously incorporated mechanisms in the APA's provisions governing the structural design of formal adjudications to insulate them from undue political interference.³ Significantly, the Supreme Court has, in decisions spanning several decades, endorsed this design choice by Congress.⁴ Eliminating this independence risks causing undue politicization of the formal adjudicatory process, as individual ALJs may resort to basing their decisions on whatever the particular policy preferences of the current president are

² Note that some of the procedures set forth in 5. U.S.C. §555 technically apply to both informal and formal adjudications.

³ *Amicus Curiae Brief of Administrative Law Scholars in Support of Neither Party* (Lucia v. Securities & Exchange Comm'n, S. Ct. filed Feb. 28, 2018) (with Richard J. Pierce, Robert Glicksman, Alan B. Morrison, & Jonathan R. Siegel), available at https://www.supremecourt.gov/DocketPDF/17/17-130/36964/20180228104706057_SEC%20Amicus%20Brief%20-%20Final.pdf.

⁴ *Id.*

to avoid pressure, heightened oversight, or the imposition of sanctions, rather than on what considerations of impartial justice may require in that particular situation.⁵

We urge you to maintain the current robust system of agency adjudication and appreciate your attention to the concerns outlined in this letter. We look forward to working with the members of this Subcommittee on legislative reforms that would strengthen agency enforcement.

Sincerely,

A handwritten signature in black ink that reads "Rachel Weintraub". The signature is written in a cursive style with a horizontal line extending to the right from the end of the name.

Rachel Weintraub
Executive Director
Coalition for Sensible Safeguards

Cc: Members of the House Judiciary Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

⁵ See Richard E. Levy & Robert L. Glicksman, *Restoring ALJ Independence*, 105 MINN. L. REV. 39 (2020); Robert L. Glicksman & Richard E. Levy, *The New Separation of Powers Formalism in Administrative Adjudication*, 90 GEO. WASH. L. REV. 1088 (2022).

