

DISMANTLE THE ADMINISTRATIVE STATE

To prevent the federal government from abusing its power, the Framers of the Constitution created an unprecedented system of a democratically accountable government with internal checks and balances. As Alexander Hamilton argued in Federalist No. 51:

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

Based on this reasoning, the Constitution was designed to protect the American people from concentrated and unaccountable government power. It divided legislative, executive, and judicial power between three separate branches of government and further divided legislative power between the House of Representatives and the Senate. Regular elections hold the legislative and executive branches accountable to the people. The Bill of Rights further requires due process before Americans can be deprived of life, liberty, or property and protects additional rights such as the right to a speedy trial.

Unfortunately, the modern “administrative state” has largely circumvented these safeguards. Congress has broadly delegated much of its legislative authority to executive branch administrative agencies, which issue thousands of rules annually that bind the American people. Many of these rules are issued by unaccountable career staff—not political appointees. And under the Supreme Court’s Chevron and Auer doctrines, courts must generally uphold these rules.

As a result, administrative agencies now do most

federal policymaking, and Congress often has little say in major federal policy decisions. For example, the government’s recent policies mandating that healthcare workers receive COVID-19 vaccines, restricting oil and gas drilling, standing down immigration enforcement, and providing federal funding to abortion providers all took effect without a vote of Congress. Indeed, the healthcare vaccine mandate took effect despite the Senate voting against it.

While the Framers created an independent judiciary, “administrative judges”—senior agency officials—typically determine whether Americans have violated administrative rules in internal agency proceedings. These administrative proceedings often lack the due process safeguards that protect Americans in criminal prosecutions. Administrative agencies now wield concentrated executive, legislative, and judicial power in a manner that the Framers sought to prevent.

Administrative agencies are also insulated from accountability to the American people. While voters can write to their representatives or senators or volunteer to work on their reelection campaigns, voters have little influence on the enormous federal bureaucracy. The career bureaucracy focuses primarily on operating its agencies, not representing citizens’ concerns. In dozens of “independent agencies,” the elected president cannot even remove agency leaders after appointing them. As a result, these agencies exercise vast regulatory power without accountability to voters or the president.

America can restore the Constitution’s checks and balances by dismantling the administrative state and returning federal authorities to their proper branches. The federal government can be made accountable to the American people.

THE FACTS

- ★ The U.S. federal government has 278 executive branch departments, bureaus, agencies, and sub-agencies.
- ★ The Biden Administration issued 3,273 final rules, including 164 “significant” final rules, during President Biden’s first year in office.
 - Elected Members of Congress did not vote to approve any of these rules, but they legally bind the American people.
- ★ Appeals courts uphold agency interpretations of the law in 71% of Chevron cases.
- ★ 55% of voters believe letting government bureaucrats set rules without approval from Congress or voters is a major threat to democracy.
- ★ Only 25% of the Department of Health and Human Services’ rules were issued by officials appointed by the President and confirmed by the United States Senate. Many of these rules were instead issued by career bureaucrats.
- ★ 28 independent agencies are led by officials whom the president cannot remove at-will. These independent agencies include the National Labor Relations Board, the Federal Trade Commission, and the Federal Energy Regulatory Commission.
- ★ 1,931 administrative law judges (ALJs) and 10,831 non-ALJ executive branch employees perform quasi-judicial adjudications in the executive branch.

THE AMERICA FIRST AGENDA

At the federal level, support policies that:

- ★ Prevent major agency rules or guidance documents from taking effect without an affirmative vote of Congress.
- ★ Prohibit career bureaucrats from issuing regulations. That authority should be restricted to political appointees alone.
- ★ Do not let agencies authoritatively interpret statutes and regulations they administer. That role should be the responsibility of the courts.
- ★ Make all agency heads serve at the pleasure of the president, without removal protections.
- ★ Allow only Article III Judges—not senior agency officials—to perform judicial functions, such as

imposing fines or penalties.

- ★ Require agencies to provide Americans the due process protections contained in the Trump Administration’s since-rescinded “Regulatory Bill of Rights” in administrative enforcement proceedings.
- ★ Establish agency ombudsmen to investigate and redress bureaucratic abuses.

At the state level, support policies that:

- ★ Prevent major agency rules or guidance documents from taking effect without an affirmative vote of the legislature.
- ★ Give state governors final responsibility for the issuance of state rules.
- ★ Do not let agencies authoritatively interpret statutes and regulations they administer. That should be the responsibility of state courts.

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