No. 22-451

In the Supreme Court of the United States

LOPER BRIGHT ENTERPRISES, ET AL.,
Petitioners,

v.

GINA RAIMONDO, IN HER OFFICIAL CAPACITY AS SECRETARY OF COMMERCE, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF SMALL BUSINESS ASSOCIATIONS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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Rules and Regulations

INTEREST OF *AMICI CURIAE*[1]

Amici curiae represent businesses across the nation that recognize the value of a stable and predictable federal regulatory structure to small business growth and competition.

Amicus curiae Main Street Alliance (MSA) is a national network of small businesses, which represents approximately 30,000 small businesses across 15 states. MSA helps small business owners realize their full potential as leaders for a just future that prioritizes good jobs, equity, and community through organizing, research, and policy advocacy on behalf of small businesses. MSA also seeks to amplify the voices of its small business membership by sharing their experiences with the aim of creating an economy where all small business owners have an equal opportunity to succeed.

Amicus curiae American Sustainable Business Council (ASBC) is building a business association by partnering with business organizations, companies, and investors. ASBC and its association members collectively represent more than 250,000 businesses, many of which are small businesses. ASBC advocates for solutions and policies that support a

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[1] No counsel for any party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made a monetary contribution to the preparation or submission of this brief.

just, sustainable stakeholder economy. Its mission is to educate, connect, and mobilize business leaders and investors to transform the public and private sectors and the overall economy.

Amicus curiae South Carolina Small Business Chamber of Commerce is a statewide advocacy organization with more than 5,000 members. The Chamber provides leadership in making South Carolina friendlier to small businesses in areas such as taxation, regulation, worker training, Workers Compensation Insurance, utility costs, health insurance, energy/conservation, and economic development. The Chamber has also worked at the federal level on access to capital, federal regulations, health insurance, coastal environmental protection, and democracy.

Amicus curiae Businesses for Conservation and Climate Action (BCCA) is a coalition of Indigenous-led and community-based businesses, many of which are small businesses. BCCA's mission is to establish national policies that recognize sustainable small businesses as compatible with healthy lands and oceans, and to enhance the participation of these sustainable businesses in conversations about resource access.

Amici have a strong interest in ensuring the right conditions exist for entrepreneurs to grow their small business into thriving forces of local economies. Federal regulations can aid in proper conditions in two ways. First, federal regulations bring much needed predictability and stability to the business landscape, allowing small business owners to more confidently plan and prepare for the future. Second, regulations play an important role in ensuring small businesses can compete against large corporations: appropriately tailored regulations can level the playing field to allow *all* businesses to

compete and thrive, producing a more equitable and just economy. *Amici* recognize the important role the Court's analysis in *Chevron* plays in encouraging predictable regulations and in achieving a measure of regulatory certainty. *Amici* write to express their concern about the consequences for small businesses if *Chevron* is overturned.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

It is an oft-stated maxim that small businesses are the backbone of the United States economy. It is also the truth. The vast majority—99.9 percent—of businesses in the United States are small businesses.[2] Almost half of the nation's workers are employed by a small business.[3] Small businesses have created the majority of new jobs in the United States since 1995.[4] Small businesses are especially important for the advancement of women and people of color, who own more than 40 and 30 percent of such businesses, respectively.[5]

Opening and sustaining a small business, however, is not easy, particularly in recent years. Small businesses face risk and challenges at every turn, from securing the capital necessary to open

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[2] Office of Advoc., U.S. Small Bus. Admin., *2022 Small Business Profile for the United States* 1 (2022), https://tinyurl.com/3u93bxjv.

[3] *Id.*

[4] Office of Advoc., U.S. Small Bus. Admin., *Frequently Asked Questions* 1 (Dec. 2021), https://tinyurl.com/32r2xuuv. ("From 1995 to 2020, small businesses created 12.7 million net new jobs while large businesses created 7.9 million (Figure 2). Small businesses have accounted for 62% of net new job creation since 1995.").

[5] *2022 Small Business Profile*, *supra* note 2, at 3.

their doors to making payroll during the COVID-19 pandemic. Many small businesses are unable to surmount these challenges. Less than half of new small businesses survive to the five-year mark.[6] The pandemic was particularly devastating for small businesses. On average, small businesses suffered earnings losses of 16 to 19 percent during the pandemic.[7] Many small businesses did not survive: the Federal Reserve estimates that there were 130,000 excess small business closures (i.e., above and beyond pre-pandemic rates) between March 2020 and February 2021.[8] The challenges only multiply for entrepreneurs that are trying to expand their business operations.

For a small business, anything that reduces risk and increases stability and predictability makes opening, survival, and growth more possible. A consistent regulatory environment can provide the uniformity and predictability small businesses need to thrive. When entrepreneurs know the rules of the playing field, they can determine the best next strategic move for their business. A well-structured regulatory environment can also put small businesses on even footing with big corporations, allowing Main Street to be competitive with Wall Street.

*Chevr*on deference promotes that regulatory certainty. By creating a stable framework for courts

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[6] *Frequently Asked Questions, supra* note 4, at 2.

[7] Robert W. Fairlie, Office of Advoc., U.S. Small Bus. Admin., *The Impacts of COVID-19 on Racial Disparities in Small Business Earnings* , 37-38 (Aug. 16, 2022), https://tinyurl.com/36hb2u4y.

[8] Leland D. Crane, et al, Fed. Rsrv. Bd., *Business Exit During the COVID-19 Pandemic: Non-Traditional Measures in Historical Context* 4 (2021), https://tinyurl.com/3kvpwjnp.

to use when evaluating the validity of regulations, *Chevron* results in a more uniform and predictable interpretation of regulations. *Chevron* has also been shown to play a critical role in constraining the judiciary, ensuring that the judiciary's policy preferences do not drive regulatory policy.

Overturning this Court's nearly 40-year precedent as outlined in *Chevron*, as requested by Petitioners, would create untenable uncertainty for the world of small business. This Court should decline the invitation to do so.

ARGUMENT

I. SMALL BUSINESSES RELY ON REGULATORY CERTAINTY TO GROW, THRIVE, AND COMPETE.

It is impossible for any business to confidently plan for the future in an unstable and uncertain environment. This is particularly true for small businesses, which often operate on exceedingly thin margins, and lack the resources to hire a stable of experts to monitor and advise on the consequences of every state or federal regulatory action. While businesses exist in a dynamic environment due to a range of external factors, predictable regulatory frameworks can provide the certainty entrepreneurs need to open their doors and prepare for the future while remaining competitive with large corporate entities.

Each small business will vary in the types of planning it must do to open and prepare for the future, depending on the industry and size. But some challenges present themselves to all entrepreneurs. Small businesses must ensure that they understand their market: they must know who their customers are, what they want, and how the

small business can help fulfill their needs. Small businesses must have the cash flow needed to keep the lights on; to pay their employees, suppliers, contractors, and vendors; and to comply with their state and federal tax burdens. And all small businesses must ensure they are compliant with local, state, and federal laws, including federal regulations.

Federal regulation can affect many aspects of a small business's plans, ranging from regulatory lending programs that provide necessary capital to requirements that small businesses report their beneficial owners. Some of these regulations, such as those that implement lending programs, directly facilitate the success of small businesses. And while others impose compliance requirements, they do not unduly burden small businesses so long as they are predictable and fair. This is reflected in polling data showing that small business owners have recognized the need for some regulation of business in our modern economy.[9] Many small businesses owners recognize that federal regulation of Wall Street and the financial services industry is necessary to protect their businesses from unfair competition.[10] This makes good sense. Regulations—and the certainty they provide—can help all small businesses navigate a complex business environment.

Access to capital provides a salient example. Every business needs access to capital to open and thrive. But more than half of small businesses have

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[9] *Small Business Owners Say Commonsense Regulations Needed To Ensure A Modern, Competitive Economy*, Small Business Majority (May 22, 2018), https://tinyurl.com/4kkx5fxn.

[10] *Id.*

found it difficult to access capital[11]—a problem that is particularly acute for businesses owned by people of color and women.[12]

Regulatory lending programs can play an important role in bridging "the financing gap in the private market."[13] For example, the Small Business Administration (SBA) administers a loan program under Section 7(a) of the Small Business Act that provides "SBA-guaranteed loans to small businesses that lack adequate access to capital on reasonable terms and conditions."[14] The scope and effectiveness of this program—and others like it—are determined in no small part by the program's implementing

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[11] Small Bus. Majority, *Small Businesses Share Concerns with Recent Banking Closures, Access to Capital Challenges* 2 (May 3, 2023), https://tinyurl.com/4rmphh7f.

[12] Research shows that firms owned by people of color are less likely to receive loans than white-owned firms. And even when they do, they are more likely to pay higher interest rates and receive lower loan amounts. Robert W. Fairlie and Alicia M. Robb, U.S. Dep't of Com., *Disparities in Capital Access between Minority and Non-Minority-Owned Businesses* 5 (Jan. 2010), https://tinyurl.com/mr94tr82. To take one recent example, business owners of color were more likely to face discouragement and discrimination when applying for forgivable Paycheck Protection Program loans during the COVID-19 pandemic. Anneliese Lederer and Sara Oros, Nat'l Cmty. Reinvestment Coal., *Lending Discrimination Within The Paycheck Protection Program* 5, https://tinyurl.com/mvxzns2d.

Likewise, female business owners are denied loans more often than male owners. In 2022, 25 percent of women-owned businesses had their loan applications denied, compared to only 19 percent for businesses owned by men. Hanneh Bareham, *SBA Loan and Startup Funding for Women*, Bankrate (June 27, 2023), https://tinyurl.com/yvbnyexw.

[13] Small Business Lending Company Moratorium Rescission and Removal of the Requirement for a Loan Authorization, 88 Fed. Reg. 21890, 21890 (Apr. 12, 2023).

[14] *Id.*

regulations. Just this year, the SBA amended its regulations to expand the pool of companies licensed to provide such SBA-backed loans. Doing so will "increase the access to capital in . . . underserved communities," such as minority-owned businesses.[15]

As explained below, undermining *Chevron* could make such programs more likely to be disrupted and thus less stable and predictable. Introducing such uncertainty would mean businesses are less able to rely on those funding programs to plan for their future. It would also undermine the more level playing field for small businesses that such programs seek to create. Without regulatory programs like this one, small businesses may continue to face challenges accessing the capital needed to run their businesses.

Likewise, overturning the *Chevron* framework will likely create a regulatory landscape that is prone to whiplash changes as courts overturn or enjoin regulations more frequently. Such changes could turn otherwise fair and beneficial requirements into onerous burdens with which small businesses struggle—or even fail—to comply. Many regulations impose initial and manageable compliance costs on small businesses, while ultimately facilitating a fairer marketplace that benefits those businesses.

One such regulation is the 2022 Beneficial Ownership Rule promulgated by the Financial Crimes Enforcement Network.[16] To come into compliance with that regulation, small businesses are required to provide certain information about their beneficial owners within one year of the rule's

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[15] *Id.* at 21893.

[16] Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498 (Sept. 30, 2022).

effective date.[17] Going forward, new businesses will be required to provide the information at the time of formation or registration in the United States. Although that regulation imposes an initial compliance cost on small businesses, it ultimately benefits them. Specifically, the regulation prevents the use of anonymous shell corporations, which are often used to compete unfairly (e.g., by trafficking in counterfeit merchandise)[18] or to commit fraud at other small businesses' expense (e.g., by stealing millions of dollars of COVID-19 relief money that was intended for legitimate small businesses).[19]

Small businesses widely welcome such regulation as necessary with data showing more than three-quarters of small business owners expressing support for this type of reporting requirement.[20] This support is because the benefits of preventing fraud and unfair competition outweigh the initial cost to prepare the necessary paperwork. But small businesses could have difficulty staying in compliance if the requirements change too frequently. As noted above, many small businesses operate on exceedingly thin margins with small staff. Truly small businesses cannot afford to waste resources on regularly monitoring, analyzing, and

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[17] *Id*. at 59510.

[18] Press Release, U.S. Immgr. & Customs Enf't, *Former Colorado Police Officer Sentenced for Selling Counterfeit Denver Broncos Merchandise* (Jan. 25, 2017), https://tinyurl.com/s55s3xuw .

[19] 87 Fed. Reg. at 59499.

[20] *Small Business Owners Support Legislation Requiring Transparency in Business Formation*, Small Business Majority (Apr. 4, 2018), https://tinyurl.com/4wsambbz .

complying with frequent and unnecessary changes in requirements.[21]

In a complex economy that demands regulation to ensure fair marketplaces, consistency and predictability are key. *Chevron* provides the certainty that allows small businesses to rely on critical programs (like SBA's lending programs) and to stay in compliance with necessary requirements.

II. *CHEVRON* PROMOTES THE REGULATORY CERTAINTY NECESSARY FOR SMALL BUSINESSES.

This Court has recognized the "stabilizing purpose of *Chevron*." *City of Arlington, Tex. v. F.C.C.*, 569 U.S. 290, 307 (2013). *Chevron* provides a predictable framework for interpreting regulations, giving deference to agency decisions in the face of ambiguity and therefore allowing businesses to better rely on regulations and plan for the future. *Chevron* also promotes the rule of law by serving as a check on judicial power. *Chevron* deference has been shown to curb the judiciary from imposing its own ideological or policy-driven perspectives when interpreting regulations. Both create more stability in the regulatory environment, stability that is of critical importance for small

[21] Tax regulation is another area of critical importance, both for predictability and for allowing small businesses to be competitive. The predictability of tax regulations allows businesses to plan and prepare for its annual tax burden. Most small business owners do not have the resources to keep a tax accountant on staff to identify every available tax loophole and potential write off, making regular predictability even more vital.

businesses. Removing this framework will set off a cascade of consequences that will harm small businesses, stifle innovation, and undermine progress towards a more equitable economy. Small businesses must already navigate a dynamic and uncertain environment without being subject to the regulatory instability that would ensue if *Chevron* were overturned.

1. For nearly 40 years, *Chevron* has provided a consistent framework for court interpretation of regulations, resulting in a more uniform and predictable interpretation of regulations across time and geography.

Prior to *Chevron*, courts engaged in statute-by-statute evaluation of agency interpretations—a "font of uncertainty and litigation."[22] Federal courts provided some deference to agency interpretations. However, questions on the degree of deference that should be "given by courts to an agency's interpretation of a statute produced a large number of statutory interpretation opinions that defy easy reconciliation."[23]

This Court's decision in *Chevron* resolved that inconsistency. By recognizing that "ambiguity in a statute" represents a legislative intent to "confer[] discretion upon the agency," the Court ensured that all federal courts would apply the same framework for evaluating and determining whether to defer to

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[22] Antonin Scalia, *Judicial Deference to Administrative Interpretations of Law*, 1989 Duke L.J. 511, 516 (1989), https://tinyurl.com/ybnav83c.

[23] Jonathan R. Siegel, *The Constitutional Case for* Chevron *Deference,* 71 Vand. L. Rev. 937, 944 (2018), https://tinyurl.com/yc5z9cx2 (quoting Cynthia R. Farina, *Statutory Interpretation and the Balance of Power in the Administrative State*, 89 Colum. L. Rev. 452, 453 (1989)).

regulations.[24] This framework has governed for nearly 40 years. Since its imposition, regulated entities—including small businesses—have been able to justifiably rely on a predictable structure in which courts will interpret federal regulations when ordering their affairs, rather than being subject to the whiplash of unpredictable litigation and court decisions. It is reasonable for a business to assume that a regulation imposing a workplace safety standard will continue to apply five years down the line, knowing that in any legal challenge, a court would be instructed to rely on this reasonable interpretation in the face of ambiguity.

Petitioners' *amici* suggest that *Chevron* does not engender predictability, as agencies can change their interpretation of an ambiguous statute.[25] This misunderstands what is meant by "predictability." To alter a preexisting regulatory interpretation, an agency is required to commence and complete notice-and-comment rulemaking. This is no small feat. Agencies are required to give affected parties—including interested small businesses and groups—an opportunity to provide comment. Small businesses are afforded special protections during notice and comment rulemaking. Pursuant to the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, certain agencies are required to meet with impacted small businesses prior to proposing rules that would have a significant economic impact on a substantial number of small

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[24] Scalia, *supra* note 22, at 516.

[25] Brief for *Amicus Curiae* Chamber of Commerce of the U.S. in Support of Petitioners at 2, *Loper Bright Enters., et al. v. Raimondo*, No. 22-451 (U.S. Jul. 24, 2023).

entities.[26] This process allows small businesses to weigh in—in advance—on ways that agencies can ease any regulatory burden, as well as to describe reliance interests that should be accorded consideration.

Formal rulemaking also takes time. One study estimated that the average length of time necessary to complete a rulemaking was four years, with a range of one to 14 years.[27] So there is rarely a concern that small businesses will be jolted by sudden regulatory change.

No such protection and process are afforded with unconstrained judicial review. Under a regime without *Chevron* deference, the regulatory landscape could—and will—change overnight at almost any time due to a new interpretation by a single court. This would be particularly burdensome on small businesses, which do not have the resources to monitor all 107 federal courts for every pending lawsuit that could impact their business, much less participate in such cases. Without *Chevron*, small businesses would face untenable uncertainty.

Chevron likewise encourages the uniform interpretation of federal regulations across each of the 13 federal courts of appeal and the 94 federal district courts. By constraining the federal courts, it ensures that judges are likely to reach similar conclusions as to the reasonableness of a regulation

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[26] *SBREFA*, Office of Advocacy, U.S. Small Business Administration, https://tinyurl.com/3ujedwm8.

[27] U.S. Gov't Accountability Off., GAO-09-205, *Improvements Needed to Monitoring and Evaluation of Rules Development as Well as to the Transparency of OMB Regulatory Reviews* 5 (2009), https://tinyurl.com/3s76av2v.

regardless of their location.[28] Without it, regulated entities might be subject to one interpretation of a federal regulation in Mississippi and another in Maine.[29] This is particularly problematic given this Court's "practical inability in most cases to give its own precise renditions of statutory meaning," which "virtually assures that circuit readings will be diverse."[30] Thirteen Courts of Appeals applying different standards "would render the binding effect of agency rules unpredictable and destroy the whole stabilizing purpose of *Chevron*." *City of Arlington, Tex.*, 569 U.S. at 307.

2. *Chevron* likewise restricts the judiciary from imposing its own policy preferences on agency decision-making. A core objective of *Chevron* itself was to ensure that the branches of government accountable to the people (i.e., the legislative and executive branches) are entrusted with making policy, not the judiciary's or a particular judge's

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[28] *See* Peter L. Strauss, *One Hundred Fifty Cases Per Year: Some Implications of Agency Action*, 87 Colum. L. Rev. 1093, 1121 (1987), https://tinyurl.com/skadjtx8 ("Any reviewing panel of judges from one of the twelve circuits, if made responsible for precise renditions of statutory meaning, could vary in its judgment from the agency's, and from the judgments of other panels in other circuits, without being wrong.").

[29] While nationwide vacatur and injunctions are possible, courts often provide injunctive relief that is limited to the parties in the case or to a circumscribed jurisdiction. *See, e.g.*, *New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d 42, 87-88 (2d Cir. 2020) (limiting geographic scope of injunction to three plaintiff states); *Innovation L. Lab v. Wolf*, 951 F.3d 986, 990 (9th Cir. 2020) (limiting geographic scope of injunction to Ninth Circuit).

[30] Strauss, *supra* note 28, at 1121; *see also id.* ("By removing the responsibility for precision from the courts of appeals, the Chevron rule subdues this diversity, and thus enhances the probability of uniform national administration of the laws.").

"personal policy preferences." *Chevron, U.S.A., Inc. v. Nat'l Res. Def. Council, Inc.,* 467 U.S. 837, 865–66 (1984). As the Court emphasized in *Chevron*, agencies, unlike courts, are more accountable to the people, and therefore "it is entirely appropriate for this political branch of the Government to make such policy choices—resolving the competing interests which Congress itself either inadvertently did not resolve, or intentionally left to be resolved by the agency charged with the administration of the statute in light of everyday realities." *Id.* at 865-66. Empirical analysis demonstrates *Chevron* is a successful tool for curbing adjudication that is overly ideological.

Data analysis of every published circuit court decision between 2003 and 2013 discussing *Chevron* or *Skidmore* deference—1,382 cases in all—demonstrates that *Chevron* has served an important function in achieving predictability and curbing a regulatory environment based on judicial policy preferences.[31] These data show that when an agency issues an ideologically conservative interpretation of a statute, an ideologically liberal judicial panel using *Chevron* deference agrees with the agency's statutory interpretation about 51 percent of the time.[32] When not applying *Chevron*, that number drops to about 18 percent.[33] Ideologically conservative judicial panels respond similarly when

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[31] Kent Barnett et. al., *Administrative Law's Political Dynamics*, 71 Vand. L. Rev. 1463, 1467-68 (2019), https://tinyurl.com/dvthftdx. *See also* Brief of Law Professors Kent Barnett and Christopher J. Walker as *Amici Curiae* in Support of Neither Party at 29-31, *Loper Bright Enters., et al. v. Raimondo*, No. 22-451 (U.S. Jul. 24, 2023).

[32] Barnett et al., *supra* note 31, at 1468.

[33] *Id*.

addressing liberal interpretations of a statute. When faced with a liberal interpretation by an agency, an ideologically conservative panel applying *Chevron* deference will agree with an agency's statutory interpretation about 66 percent of the time.[34] When not applying *Chevron*, that number likewise drops to 18 percent.[35]

This analysis suggests that *Chevron* places a critical limitation on the federal judiciary, ensuring the judiciary and individual judges are not acting solely in line with their personal policy preferences. This promotes uniformity and ensures the stability of a regulatory regime that is crucial for small businesses. Without this check on judicial decision-making, courts may be more willing to apply their policy preferences on the people, often at the expense of the entrepreneurs who rely on predictability. While our form of government necessarily means that small businesses grapple with uncertainty that may be created by the more politically accountable branches of government, the judiciary is not intended to be a source of this uncertainty. Small businesses should not have the added burden of responding to uncertainty created by disparate judicial interpretations, especially in light of the volume of administrative litigation that takes place in courts across the country.

3. Upending the consistent framework established by *Chevron*—applied for nearly forty years—would set off a cascade of consequences that would harm small businesses and, in turn, millions of Americans who are employed by small businesses for their livelihoods.

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[34] *Id.*

[35] *Id.*

Uncertainty in business heightens the risk of investment. Even a marginal increase in costs can be detrimental to a small business, where margins are slim and incomes are modest. This consistency is particularly vital for small businesses, which lack the resources to retain counsel to evaluate changes in regulations. When a business is unsure what a regulation might mean in two years, it might choose not to make an investment when the utility or profitability of that investment might be lessened following a change in regulations. For example, small businesses may choose to invest resources in obtaining voluntary certifications under federal regulatory programs that can help those businesses stand out in competitive markets. Examples of such certifications include the U.S. Department of Agriculture's organic food certification (which could make a small farmer's produce more competitive)[36] or the SBA's women-owned small business certification (which provides otherwise unavailable opportunities to bid on government contracts).[37] In the absence of predictability in these programs, small businesses may not risk resources to come into compliance with requirements that could easily change, despite the benefits they could receive under the existing programs. For small businesses that operate on thin margins, even a small loss can be catastrophic.

If a business cannot fairly assume that a regulation will continue to apply years into the future, it must incorporate that risk into its business

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[36] *See* 7 C.F.R. § 205.1 et seq. (establishing standards for the National Organic Program).

[37] *See* 13 C.F.R. § 127.100 et seq. (establishing requirements for the Women-Owned Small Business Federal Contract Program).

planning. This undermines the entire purpose of federal rulemaking. *See, e.g.*, *Price v. Stevedoring Servs. of Am., Inc.*, 697 F.3d 820, 830 (9th Cir. 2012) (formal rulemaking is "meant to promote" "notice and predictability to regulated parties"); *Ass'n of Data Processing Serv. Organizations, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 745 F.2d 677, 689 (D.C. Cir. 1984) ("[T]he whole point of rulemaking as opposed to adjudication (or of statutory law as opposed to case-by-case common law development) is to incur a small possibility of inaccuracy in exchange for a large increase in efficiency and predictability.").

Overruling *Chevron* could create uncertainty around even decades-old regulations. Individuals and entities can often challenge regulations when such regulations first apply to them, meaning a regulation can be overturned after being in effect for decades. *See Garcia-Carias v. Holder*, 697 F.3d 257, 261 (5th Cir. 2012) (overturning a regulation under *Chevron* Step 1 that was promulgated nearly 60 years before). Absent the certainty provided by *Chevron*, questions regarding long-existing regulations emerge.

The resulting uncertainty and inconsistency will do more than just drive increasing costs. Competing interpretations of federal regulations in the Courts of Appeals and district courts could impede small business growth across jurisdictions. Consider how conflicting interpretations might impact a small business in a metro area straddling two federal circuits. For example, a local hardware store in Kansas City, Missouri looking to open a new outpost in neighboring Overland Park, Kansas would have to navigate more than just differing state laws in Kansas and Missouri. It would also have to understand whether any applicable federal regulations have been interpreted differently by the

Tenth Circuit and the Eighth Circuit—or could be in the future. This hardware store could have two locations, just 10 miles apart, but subject to entirely different federal regulatory regimes. The complexity and cost of navigating this regime could prove to be too much, preventing expansion and harming both the businesses' owners and the local economies.

* * *

Overturning this Court's precedent in *Chevron*, as requested by Petitioners, would create untenable uncertainty for small businesses in the United States. Small businesses have the power to transform the United States economy and are a backbone for millions of people and communities. Overturning *Chevron* would impose new regulatory burdens and challenges for small businesses, endangering the heart of the United States economy.

CONCLUSION

For the foregoing reasons, the decision below should be affirmed.

Respectfully submitted,

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