AMERICAN LUNG ASSOCIATION.

July 7, 2016

Dear Representative:

The American Lung Association urges you to oppose H.R. 4768, the "Separation of Powers Restoration Act of 2016." This harmful and flawed bill will abandon a longstanding and well-established framework, delaying critical health protections for the public.

When Congress writes a statute with unmistakable terms that reflect a clear policy intent, executive branch agencies are required to follow those terms and intent exactly. However, sometimes Congress intentionally writes a statute to be flexible or ambiguous, recognizing that it does not have the expertise to anticipate or address every contingency – especially for a statute that is designed to be flexible and effective over time, with changing circumstances. In 1984, the United States Supreme Court upheld this approach, confirming that when Congress is silent or ambiguous, deference is given to agencies for administrative interpretations.[1]

H.R. 4768 would abandon this longstanding and well-established framework to address ambiguity in statutes. H.R. 4768 mandates the courts to give less judicial deference to agencies with the relevant subject matter expertise. The bill would require a de novo standard of review – allowing the court to substitute its own judgement – for all relevant questions of law, including the interpretation of constitutional and statutory provisions, and rules made by agencies.

Agencies have extensive experience with the statutes they administer, as well as superior expertise on the scientific and technical matters that are at the heart of the actions carried out by the agencies. Knowing this, Congress has appropriately left some measure of decision-making to the executive branch agencies – an approach that has long successfully guided our regulatory system.

For example, the Food and Drug Administration's (FDA) Center for Tobacco Products has hundreds of scientists, epidemiologists, public health professionals, communications experts and others on staff to implement the Family Smoking Prevention and Tobacco Control Act. FDA has been directed by Congress to make science-based decisions that are "appropriate for the protection of the public health." Inherent in the standards established by Congress, public health expertise is both necessary and required in order to carry out the law over time – expertise that the judicial branch is unlikely to possess in almost all cases.

[1] *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984).

Advocacy Office:
1331 Pennsylvania Avenue NW, Suite 1425 North
Washington, DC 20004-1710
Ph: 202-785-3355 F: 202-452-1805

Corporate Office:
55 West Wacker Drive, Suite 1150 | Chicago, IL 60601
Ph: 312-801-7630 F: 202-452-1805 info@Lung.org

In the Clean Air Act, Congress intentionally directed the U.S. Environmental Protection Agency (EPA) to set limits on specific air pollutants so that the limits "protect public health with an adequate margin of safety." EPA has established a multi-year process to review the thousands of health and medical studies that must inform that decision. During that process, EPA produces detailed analyses of the science and policy implications, which are reviewed multiple times by an independent panel of outside scientists and physicians. EPA further incorporates public comment on these analyses as scores of EPA researchers and, ultimately, the Administrator makes the final determination.

If passed, H.R. 4768 would require judges to make decisions outside their areas of expertise and with limited access to information, rather than continue to defer to the professional and informed decisions of scientists, physicians, economists, engineers, and other professional experts that work within these agencies.

This bill is an unprecedented and dangerous move away from traditional judicial deference that has been successful and effective for more than three decades. We urge you to support the role agency experts play in implementing critical public health laws. Please oppose H.R. 4768.

Sincerely,

Harold P. Wimmer
National President and CEO