Ag, Food, & Federal and State Agency in a Post-Chevron World

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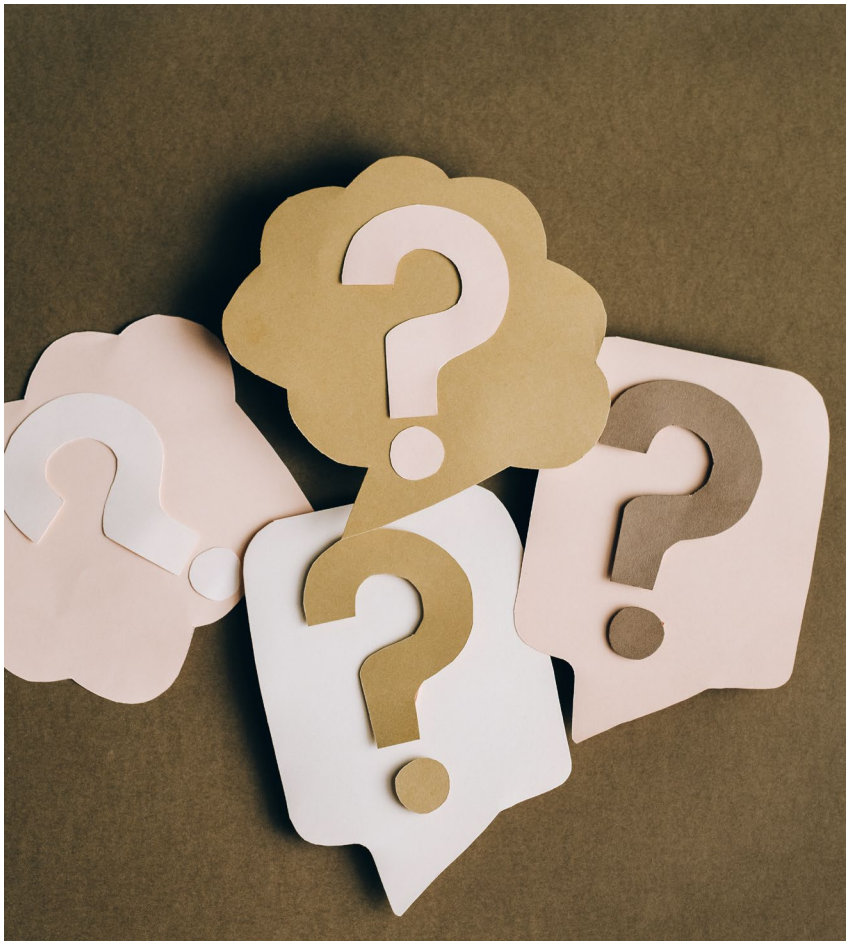
What's Going On?

- In June 2024, the United State Supreme Court issued its highly anticipated ruling in *Loper Bright Enters. v. Raimondo*
- The decision officially over-turned *Chevron* deference, a 40-year-old doctrine of administrative law
- Agriculture is regulated by numerous agencies and is likely to be impacted by the *Loper Bright* ruling in years to come



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What is *Chevron* Deference?

Chevron deference comes from a Supreme Court case from 1984 called *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*

The doctrine established a legal test for courts to use to determine when to defer to a federal agency's interpretation of a statute Congress has tasked it with implementing

Chevron deference speaks to the balance of power between the three branches of government and who gets to say what the law means

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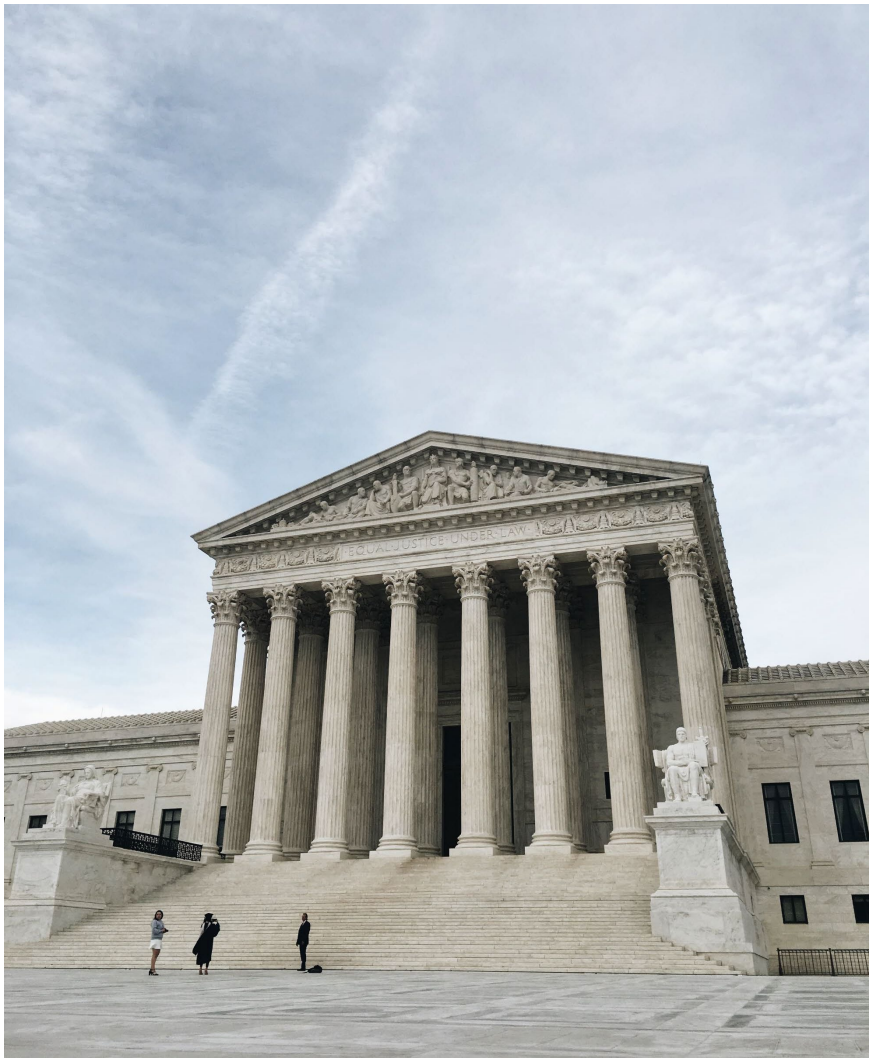
How do Courts Apply *Chevron* Deference? – Step One

- The *Chevron* doctrine is applied through a two-step framework
- In step one, a court will consider "whether Congress has directly spoken to the precise question at issue"
  - Courts review the relevant statute to see whether the statutory language is "ambiguous"
    - Example: the definition of "habitat" in the Endangered Species Act is ambiguous because Congress did not provide a statutory definition for the term but uses it throughout the statute; however, "endangered species" is *not* ambiguous because Congress clearly defined the term
  - If the statutory language is *not* ambiguous, then the *Chevron* process is at an end – the court should review the challenged agency action to determine whether the agency exceeded its statutory authority
  - If the statutory language is ambiguous, courts should proceed to step two

How do Courts Apply *Chevron* Deference? – Step Two

- In step two, a court will determine whether an agency's interpretation of ambiguous statutory language is "reasonable"
  - In other words, is the agency's interpretation "rationally related to the goals" of the statute
  - If the agency's interpretation is reasonable, then the court will defer to the agency even if the court believes another interpretation would be better
- *Chevron* does not ask what the best interpretation of a statute is, *Chevron* asks whether an agency's interpretation is reasonable
  - Example: In *Northwest Ecosystem All. v. U.S. Fish & Wildlife Serv.*, 475 F.3d 1136 (9th Cir. 2007), the court concluded that it was reasonable for FWS to define a "distinct population segment" of a species as a population that is both "discrete" and "significant"

Loper Bright: The Basics



- SCOTUS issued its decision in *Loper Bright* on June 28, 2024
- The Court's ruling formally overturned its previous holding in *Chevron* and the doctrine of *Chevron* deference
- The decision did *not* reverse any court cases decided under *Chevron*
- Ultimate conclusion: It is the duty of courts to "say what the law is."

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Pathway to the Supreme Court

Plaintiffs filed *Loper Bright* in 2020 to challenge a rule issued by the National Marine Fisheries Service under the Magnuson-Stevens Act

The MSA regulates marine fisheries management in the US and requires fishing vessels to collect certain data

The NMFS rule required federal observers to be on board fishing vessels for the purpose of data collection and required vessels to pay a portion of the observer's salary

Plaintiffs challenged the rule, claiming that the text of the MSA did not grant NMFS authority to require vessels to pay for a federal observer's salary

The D.C. Circuit upheld the regulation, finding that the MSA granted NMFS the authority to adopt regulations "necessary" for appropriate fishery management

Plaintiffs appealed, challenging both the NMFS rule and the doctrine of *Chevron* deference

- Text of *Loper Bright*:

- More NALC analysis:

Loper Bright v. Raimondo

- **Question before the Court:**
  - Should the Supreme Court "overrule *Chevron* or at least clarify that statutory silence concerning controversial powers expressly but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency"?
- **Holding:**
  - The Administrative Procedure Act requires courts to "exercise their independent judgment" when determining whether an agency has acted outside its statutory authority.
  - "Courts may not defer to an agency interpretation of the law simply because a statute is ambiguous[.]"
  - "In an agency case as in any other […] there is a best reading [of the law] all the same – 'the reading the court would have reached' if no agency were involved."
- **Reasoning:**
  - The Court cited both the Administrative Procedure Act and past SCOTUS decisions to support its conclusion
  - "To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law[.]"
    - 5 U.S.C. § 706.
  - It is "the province and duty of the judicial department to say what the law is."
    - *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803)

Loper Bright vs. *Chevron*

Chevron

- When considering whether an agency exceeded its statutory authority, apply *Chevron* framework
- If statutory language is ambiguous *and* the agency's interpretation is reasonable, defer to agency
- Gives agencies more power to "say what the law is"

Loper Bright

- When considering whether an agency exceeded its statutory authority, courts should "exercise their independent judgment"
- Courts should resolve statutory ambiguities by applying the interpretation the court would have reached "if no agency were involved"
- Gives courts more power to "say what the law is"

What Stayed the Same?

The Supreme Court stressed that courts must continue to respect when Congress delegates authority to an agency consistent with constitutional limits

For example, Congress may direct an agency to define a particular term or to pass "appropriate" regulations

APA still directs courts to review agency policymaking and factfinding under the "arbitrary and capricious review standard"

APA requires courts to set aside agency action, findings, and conclusions that are "otherwise not in accordance with law"

Agencies continue to receive deference for interpretations of its own regulation, otherwise known as *Auer* deference

Note! *Auer* deference was narrowed by *Kisor v. Wilke* in 2019

What about *Skidmore*?

Loper Bright referenced *Skidmore* throughout as a standard for courts to use post-*Chevron*

In *Skidmore*, the Court held that interpretations and opinions of federal agencies made in an official capacity may be considered by courts and given due respect, granting agencies the "power to persuade," not the "power to control"

Under *Skidmore*, courts may be persuaded by agency statutory interpretations, but are not required to defer to them

Don’t Forget *Corner Post*!

The Supreme Court also decided *Corner Post, Inc. v. Bd. of Governors of the Fed. Reserve System* during the 2024 season

Focused on the statute of limitations to challenge agency actions under the APA

Previously, APA was interpreted as setting a six-year statute of limitations starting once an agency rule was finalized

Under *Corner Post*, the six-year SOL begins as soon as a party is injured by an agency rule

Likely to result in long-standing agency rules being revisited

What Does it All Mean?

Courts may no longer defer to agency statutory interpretations, but must instead "say what the law means"	• This could prove challenging! For example, the Public Health Service Act requires FDA to regulate biological products, including "proteins." When does an alpha amino acid polymer qualify as a "protein"? Complex litigation lies ahead!
Not all judges will reach the same conclusion	• Some courts may interpret statutory language more strictly than an agency does while others could be more permissive
While *Loper Bright* overturned *Chevron*, it left *Skidmore* in place – agencies may still have the "power to persuade"	• For now, it is still unclear how *Skidmore* will be applied in a post-*Chevron* world

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How Will *Loper Bright* Impact Ag?

The agricultural industry is heavily regulated, many of the statutes that impact ag have ambiguous statutory language that courts and agencies have struggled to interpret, including:

- Clean Water Act
- Food Safety Modernization Act
- Packers and Stockyards Act
- Endangered Species Act
- Perishable Agricultural Commodities Act
- Federal Insecticide, Fungicide, & Rodenticide Act
- And so many more!

Ultimately, this ruling could impact almost all areas of the agricultural industry in some way, shape, or form

- In another Supreme Court case issued this term, *Corner Post, Inc. v. Bd. of Governors of the Fed. Reserve System*, the Court made it easier to challenge agency regulations that are over six years old
- Between *Loper Bright* and *Corner Post*, it is likely that some agency regulations which were considered settled will face new legal challenges

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The following are examples of how *Loper Bright* is playing out in subject areas that may interest you. Needless to say, it has been cited hundreds of times by lower courts.

Clean Air Act – An Area to Watch

Massachusetts v. Environmental Protection Agency, 549 U.S. 497 (2007)

The Clean Air Act authorized EPA to regulate greenhouse gas emissions from new motor vehicles, contrary to EPA's view.

Greenhouse gases fit within the Act's definition of "air pollutant."

EPA was not instructed to regulate greenhouse gas emissions, but was instructed to determine if an endangerment finding was appropriate.

EPA published an endangerment finding in 2009. 74 Fed. Reg. 66,496 (Dec. 15, 2009), *reconsideration denied*, 75 Fed. Reg. 49,556 (Aug. 13, 2010).

The Administrator of EPA found that the air pollution being studied was the combined mix of six key directly-emitted, long-lived and well-mixed greenhouse gases that together constitute the root cause of human-induced climate change and the resulting impacts on public health and welfare. Carbon dioxide was one of the six.

The EPA recently issued its proposed rule entitled Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units, 90 Fed. Reg. 25,752 (June 17, 2025). It proposes to repeal all greenhouse gas (GHG) standards for fossil fuel-fired power plants.

The EPA is proposing that Clean Air Act (CAA) section 111 requires it to make a finding that GHG emissions from fossil fuel-fired power plants contribute significantly to dangerous air pollution, as a predicate to regulating GHG
emissions from plants in this source category.

The EPA is further proposing to make a finding that GHG emissions from fossil fuel-fired power plants do not contribute significantly to dangerous air pollution within the meaning of the statute.

The EPA is also proposing, as an alternative, to repeal a narrower set of requirements that include the emission guidelines for existing fossil fuel-fired steam generating units, the carbon capture and sequestration/storage (CCS)-based standards for coal-fired steam generating units undertaking a large modification, and the CCS-based standards for new base load stationary combustion turbines.

The U.S. Energy Information Administration reported that the electric power sector contributed 31% of the carbon dioxide emissions in the United States for the period 2020-2024.

The EPA also issued its proposed rule entitled National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units, 90 Fed. Reg. 25,535 (June 17, 2025).

This proposed rule would repeal aspects of the 2024 rule amendments pertaining to mercury emissions, asserting that they were not necessary as they imposed large compliance costs or raised potential technical feasibility concerns.

The EPA estimates that this proposed action would result in total cost savings of $1 billion at a 3 % discount rate and $770 million at a 7 % discount rate over the 2028 to 2037 timeframe, with total annualized cost savings of $120 and $110 million per year, respectively (in 2024 dollars).

In 2020 the EPA concluded that mercury was the hazardous air pollutant of greatest concern to public health from coal- and oil-fired electric generating units. 85 Fed. Reg. 31,286, 31,288 (May 22, 2020).

If these proposed rules become final, and depending on their terms, there is little doubt that these proposed rules will spawn litigation.

Michigan v. Environmental Protection Agency, 576 U.S. 743 (2015)

It was unreasonable for EPA to read the statute to mean that cost is irrelevant to the initial decision to regulate power plants. It is up to EPA to decide (within the limits of reasonable interpretation) how to account for cost.

West Virginia v. Environmental Protection Agency, 597 U.S. 697 (2022)

This is a "major questions doctrine" case.

Since passage of the Clean Air Act in 1970, EPA exercised this authority by setting performance standards based on measures that would reduce pollution by causing plants to operate more cleanly.

In 2015, however, EPA issued a new rule concluding that the "best system of emission reduction" for existing coal-fired power plants included a requirement that such facilities reduce their own production of electricity, or subsidize increased generation by natural gas, wind, or solar sources.

It is not plausible that Congress gave EPA the authority to adopt a regulatory scheme that forced a nationwide transition from the use of coal to generate electricity. A decision of such magnitude rests with Congress itself, or an agency acting pursuant to a clear delegation from Congress.

National Ambient Air Quality Standards

Texas v. U.S. Environmental Protection Agency, 137 F.4th 353 (5th Cir. 2025)

This case concerns the standards that the Environmental Protection Agency must follow when reviewing attainment recommendations by the States in relation to the National Ambient Air Quality Standards ("NAAQS").

Section 109 of the Clean Air Act directs EPA to establish the NAAQS, which set maximum permissible concentrations of harmful air pollutants deemed to pose a risk to public health and safety. Congress delegated authority to EPA to establish the particular limits for these "criteria pollutants." Among the criteria pollutants is sulfur dioxide ("SO_2").

Affected here are two lightly populated counties in east Texas: Rusk and Panola. Luminant Generation Company, L.L.C., owns and operates the Martin Lake power plant in Rusk County. That power plant is relevant because SO_2 is a natural byproduct of burning coal to generate electricity. The State of Texas must consider that source of SO_2 emissions in assessing whether Rusk and Panola Counties were in attainment for the new NAAQS.

Texas recommended that Rusk and Panola County be designated as either unclassifiable or in attainment and that data gathered from air quality monitors be used. EPA subsequently issued a draft Technical Support Document that rejected Texas's recommendations and stated it would instead rely upon the Sierra Club's modeling.

Contrary to Texas's recommendations and after providing the required notice to Texas, EPA designated the two counties as "nonattainment."

We conclude that the best reading of Section 7407(d)(1)(A)(iii) is that Congress insisted on a finding of "we don't know" when the "available information" does not reliably support a finding of attainment or nonattainment. A finding is not to be forced.

EPA should have designated the areas as unclassifiable or rationally explained why an alternative designation was clear and not debatable. EPA did neither. Instead, EPA seems to have forced a result on sparse and suspect evidence. That violates the APA and cannot withstand our searching review.

Clean Water Act

Extent of CWA Jurisdiction

Sackett v. Environmental Protection Agency, 598 U.S. 651 (2023)

The Clean Water Act extends to only those wetlands that are "as a practical matter indistinguishable from waters of the United States."

This requires the party asserting jurisdiction over adjacent wetlands to establish "first, that the adjacent [body of water constitutes] ... 'water[s] of the United States,' (i.e., a relatively permanent body of water connected to traditional interstate navigable waters); and second, that the wetland has a continuous surface connection with that water, making it difficult to determine where the 'water' ends and the 'wetland' begins."

Lewis v. United States, 764 F. Supp. 3d 362 (M.D. La. 2025)

The Corps of Engineers found that Switch Cane Bayou is an intermittent tributary. At the time, the agency's interpretation of the statute may have allowed for a finding of Clean Water Act jurisdiction based on these facts. Today, post-*Sackett*, the agency's facts do not support a finding of Clean Water Act jurisdiction.

While the Court continues to treat an agency's factfinding with deference, an agency may not simply change its findings of fact to meet the agency's preferred outcome in a case.

End-Result Provision in NPDES Permit

City & County of San Francisco v. Environmental Protection Agency, 145 S. Ct. 704 (2025)

This case involves provisions that do not spell out what a Clean Water Act permittee must do or refrain from doing; rather, they make a permittee responsible for the quality of the water in the body of water into which the permittee discharges pollutants.

When a permit contains such requirements, a permittee that punctiliously follows every specific requirement in its permit may nevertheless face crushing penalties if the quality of the water in its receiving waters falls below the applicable standards.

33 U.S.C. § 1311(b)(1)(C) does not authorize the EPA to include "end-result" provisions in National Pollutant Discharge Elimination System (NPDES) permits. Determining what steps a permittee must take to ensure that water quality standards are met is the EPA's responsibility, and Congress has given it the tools needed to make that determination.

Wetland Determination

CTM Holdings, LLC v. U.S. Dep't of Agriculture, 2025 WL 1532146 (N.D. Iowa May 29, 2025)

When plaintiff was under contract to purchase the land, Conlan began emailing with USDA representatives regarding wetland determinations. Initially, in July 2022, Conlan asked for the employee's "help with the process of seeking" a redetermination of the nine acres previously denoted as wetlands, among other things. Conlan noted that one of his plans for the property was to remove trees from several areas of the property.

Plaintiff brings this action under the general review provisions of the Administrative Procedure Act, and therefore the "agency action" in question must be "final agency action."

Plaintiff contends defendants' letter notifying plaintiff how to request review of the 2010 wetlands determination was a final agency action. The letter is not final agency action.

The Swampbuster Act, 16 U.S.C. §§ 3801, 3821–3824, refers to the wetland conservation provisions of the Food Security Act of 1985. The purpose of the Swampbuster Act is "to combat the disappearance of wetlands through their conversion into crop lands." As an enforcement mechanism, the Swampbuster Act sets forth that persons who convert certified wetlands to crop lands are disqualified from receiving federal farm benefits.

The issue is whether Swampbuster is an unconstitutional exercise of Congress's authority under the Commerce Clause. The problem with this framing of the issue, however, is that it misses the point. The Food Security Act, of which Swampbuster is a part, is an exercise of Congress's spending power.

Plaintiff's argument is that because Congress could not regulate intrastate wetlands directly under the Commerce Clause, Congress cannot attempt to effectuate the regulation through conditional spending. But, in *Dole*, the Supreme Court specifically rejected this type of argument, holding instead that Congress's spending power is not as narrow as its other enumerated powers, and Congress can therefore condition spending in areas that it could not regulate directly. Congress did just that in Swampbuster.

Thus, plaintiff's argument that Swampbuster effectuates an unconstitutional condition in requiring farmers to give up their interests protected by the Commerce Clause fails.

Courts must analyze the issue independently, but "with due respect for the views of the Executive Branch." Finally, the *Loper Bright* opinion specifically noted that holdings which relied upon *Chevron* "are still subject to statutory stare decisis" despite the Court's "change in interpretive methodology."

Endangered Species Act

Kansas Natural Resource Coalition v. U.S. Fish & Wildlife Service, 2025 WL 1367834 (W.D. Tex. March 29, 2025)

Section 4(d) of the Endangered Species Act provides that when a species is listed as threatened under the Act, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of the species.

The Fish and Wildlife listed the lesser prairie-chicken's Northern Distinct Population as threatened under the Endangered Species Act and simultaneously issued a 4(d) Rule regulating its take.

Does "necessary and advisable" require consideration of economic costs? Plaintiffs believe it does. Fish and Wildlife see no distinction between a listing decision, which cannot consider costs, and its 4(d) Rule, largely because they issued here at the same time.

Because Fish and Wildlife failed to account for costs, to include cost of compliance, it failed to consider the "all relevant factors" and ignored "important aspect[s] of the problem" before it. For these reasons, the Court VACATES the 4(d) Rule.

Art & Antique Dealers League of America, Inc. v. Seggos, 121 F.4th 423 (2d Cir. 2024)

Plaintiffs sought relief from the State of New York's enforcement against them of the State Ivory Law and a licensing restriction thereunder.

The Endangered Species Act prohibits the import and export of endangered species and any part or product derived from them, with certain exceptions. Two of those exceptions are the de minimis exception (restricted by volume, weight and timing of manufacture) and the antiques exception (at least 100 years old).

The State Ivory Law prohibits the sale of ivory, with exceptions that are narrower that the ESA exceptions. In addition, an item not authorized for intrastate sale may not be physically displayed for sale within New York.

The State Ivory Law is not preempted by the ESA. It is possible, even likely, that a restriction on intrastate sales could make it much less profitable to be an interstate ivory dealer in New York. However, there is not an irreconcilable conflict between allowing the out-of-State sale of some items and prohibiting the sale of those same items within the State.

The State Department of Environmental Conservation will not deny permits for interstate or foreign sales of ivory. Because Plaintiffs are free to sell these items across state lines in accordance with the ESA, there is no basis to conclude that the State Ivory Law undermines the regulatory scheme established in federal law.

We find, on this record, assuming as the State concedes that the Display Restriction impinges on speech, that the restriction is more extensive than necessary to serve the State's interest.

One to Watch -- ESA

16 U.S.C. § 1532(19) defines "take" for purposes of the Endangered Species Act to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."

50 C.F.R. § 17.3 defines "harm" in the definition of "take" to mean an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

This regulatory interpretation of "harm" was upheld in *Babbitt v. Sweet Home Chapter*, 515 U.S. 687 (1995), finding that it was reasonable under *Chevron*.

The U.S. Fish & Wildlife Service and National Oceanic and Atmospheric Administration published a notice of proposed rulemaking to rescind the existing regulatory definition of "harm." 90 Fed. Reg. 16,102 (April 17, 2025).

According to the Services, their regulations do not accord with the single, best meaning of the statutory text. They propose to rescind the regulatory definition of ''harm'' and rest on the statutory definition of ''take.'' This revision would be prospective only and would not affect permits that have been granted as of the date the regulation becomes final.

Assuming the rule is issued in final and depending on its terms, this may lead to robust litigation.

H-2A Visa Program – Non-Citizen Migrant Agricultural Workers

Kansas v. U.S. Dep't of Labor, 749 F. Supp. 3d 1363 (S.D. Ga. 2024)

Seventeen states sued claiming that a Department of Labor (DOL) regulation illegally provided collective bargaining rights to agricultural migrant workers employed in the United States under the H-2A visa program.

The Court finds that the Final Rule falls within the DOL's rulemaking authority under § 1188.

The Final Rule provides for agricultural workers' right to participate in concerted activity to further their interests. That is a right that Congress has not created by statute.

Relief is limited to a party-specific preliminary injunction.

Barton v. U.S. Dep't of Labor, 757 F. Supp. 3d 766 (E.D. Ky. 2024)

The plaintiffs include seven Kentucky farmers who employ workers through the H-2A visa program and five association entities that, on behalf of their members and shareholders, file H-2A applications and offer support through a variety of educational and advocacy efforts related to the program. Thereafter, West Virginia, Alabama, Ohio, and Kentucky were granted permission to intervene as plaintiffs.

"[T]he 'best reading' of § 1188, in its entirety, is that Congress granted the DOL the authority to issue regulations to ensure that any certifications it issues for H-2A visas do not 'adversely affect' American agricultural workers."

The undersigned does not deny the DOL's authority under § 1188. Rather, the Court refuses to extend it to labor regulations traditionally limited to Congress and the states.

The Final Rule creates substantive collective bargaining rights for H-2A agricultural workers through the "prohibitions" it places on their employers. Framing these provisions as mere expansions of anti-retaliation policies, the DOL attempts to grant H-2A workers substantive rights without Congressional authorization. The worker voice and empowerment provisions thus illegally contravene the National Labor Relations Act (NLRA).

The change to the Final Rule deviates from the DOL's longstanding practice recognizing that employers may choose to pay their employees in the manner that best serves their business interest. Because the DOL has neither provided sufficient justification nor displayed awareness that its position is different, this change is arbitrary and capricious.

While information collection can be warranted, the personal information here far exceeds what the DOL may need to address the limited instances of misfeasance it cites. The DOL's justification for the additional information is thus arbitrary and capricious because it lacks "a rational connection between the facts found and the choice made."

Under the Final Rule, an employer can be held liable for the decisions of employees whether to wear a seatbelt despite having little control over whether the employee does so. As such, the Court finds this part of the Final Rule to be arbitrary and capricious.

The Final Rule's mandate that H-2A employers allow their employees to invite guests onto employer property, without the employer's consent, and without compensation constitutes an unconstitutional taking.

Relief is limited to a party-specific preliminary injunction.

International Fresh Produce Ass'n v. U.S. Dep't of Labor, 758 F. Supp. 3d 575 (S.D. Miss. 2024)

Plaintiffs argue that DOL exceeded its authority by creating collective bargaining rights for migrant workers. Plaintiffs further maintain that DOL exceeded its authority because the NLRA exempts agricultural laborers from receiving collective bargaining rights, and by including language in the amendments that is "nearly identical" to that of the NLRA, "Defendants have attempted to bypass express congressional intent."

As for the prohibition on employers threatening employees who refuse to attend meetings whose primary purpose is for the employer to express anti-union views, Plaintiffs take the position that 20 C.F.R. § 655.135(h)(2)(ii) violates the First Amendment by restricting speech based on the employer's viewpoint.

The plain text of these phrases cannot be read as such a broad grant of authority as to allow DOL to effectively provide collective action rights to H-2A workers in the name of reducing the adverse effect of the H-2A program on domestic workers; the language does not support the conclusion that DOL can prescribe these kinds of rights as part of the "criteria for certification[.]"

The best reading of the statute is that it does not delegate to DOL the authority to create the challenged amendments to the regulations.

The court stayed the challenged portions of the rule until the conclusion of the suit, and did not restrict that remedy to the benefit of plaintiffs in this action, citing the harm caused by the amendments, the public interest in maintaining national uniformity, and the likelihood that the amendments would be found unlawful.

North Carolina Farm Bureau Federation, Inc. v. U.S. Dep't of Labor, 2025 WL 1296245 (E.D.N.C. May 5, 2025)

The court cannot conclude that a regulation raises a major question simply because it relates to an important industry. Rather, it is "the history and breadth and economic and political significance of the action at issue" that requires application of the major questions doctrine.

Because Congress explicitly excluded agricultural laborers from its definition of employees subject to regulation by the National Labor Relations Board (the "NLRB"), that agency's regulations do not and cannot govern the relationships at issue here: those between employers, foreign temporary agricultural workers, and workers in corresponding employment. Therefore, Labor's issuance of the Final Rule does not arrogate authority left by Congress to the NLRB.

This court finds persuasive the determination in *Kansas* and *Barton* that Labor acted within its § 1188 authority in issuing the Final Rule.

The court concludes that the Final Rule falls within Labor's authority "to prescribe rules to fill up the details of [the] statutory scheme," and to "regulate subject to the limits imposed by a term or phrase that leaves agencies with flexibility.

Issuance of the final rule was not arbitrary or capricious.

Because nothing in the Final Rule requires such "mutual obligation" or "negotiation," it does not convey a right to collectively bargain. The court therefore departs from the reasoning of the *Kansas* and *Barton* courts on the issue of NLRA conflict.

Defendants were entitled to judgment in their favor on all claims.

"Product of USA" Labeling

Taylor v. JBS Foods USA, 2025 WL 102450 (D.S.D. Jan. 15, 2025)

Plaintiffs are ranchers who domestically sell cattle born, raised, and slaughtered in the United States.

Defendants are meat packers who manufacture, market, distribute, and sell meat throughout the United States, including South Dakota. According to the Complaint, Defendants have imported live cattle from foreign countries, slaughtered and processed the cattle in the United States, and labeled the resulting beef products as "Products of the USA."

Plaintiffs allege Defendants have misled the public by selling foreign raised beef under a "Product of USA" label because the meat was processed in the United States.

The Federal Meat Inspection Act ("FMIA"), which governs meat inspection and label requirements, prohibits false and misleading labels.

The twist before the Court is the Food Safety Inspection Service ("FSIS")—the agency that administers the FMIA—has issued guidance allowing Defendants' use of their "Product of USA" label. Defendants contend the FSIS's approval conclusively establishes their compliance with the FMIA's labeling requirements.

Because the FMIA also delegates its misbranding enforcement to the States, and the FMIA's purpose was to prevent misbranded meat, Plaintiffs' state-law claims for restraint of trade and unjust enrichment survive. The FSIS's approval does not conclusively establish that a label is not false or misleading.

Although the States may not impose additional or different requirements than those under the FMIA, States may exercise concurrent jurisdiction with the Secretary of Agriculture to protect consumers from receiving "misbranded" meat.

Relevant here, the term "misbranded" means "meat or meat food product ... labeling [that] is false or misleading in any particular." Thus, Congress did not make the Secretary the sole arbiter of whether a label is false or misleading.

Despite the FSIS's past and present takes on the "Product of USA" label and whether they believe it was misleading or not to consumers, courts "no longer treat [an agency's] views as controlling or even 'especially informative.' " Thus, the FSIS's guidance in their Policy Book does not conclusively determine whether the label at issue is false or misleading.

Pesticide Labeling

Schaffner v. Monsanto Corp., 113 F.4th 364 (3d Cir. 2024)

This appeal presents the question of whether, once the Environmental Protection Agency ("EPA") registers and approves a pesticide label that omits a particular health warning, a state-law duty to include that warning is preempted by a federal statute expressly preempting any state-law pesticide labeling requirement that differs from or adds to the requirements imposed under federal law.

Plaintiffs allege that defendant Monsanto Company ("Monsanto") violated Pennsylvania law by omitting a cancer warning from the label of its weed-killer, Roundup (the "Cancer Warning").

The Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), the federal statute that regulates pesticides such as Roundup, mandates nationwide uniformity in pesticide labeling by prohibiting states from imposing labeling requirements that are in addition to or different from the requirements imposed under FIFRA itself. This provision, Monsanto argues, preempts the Pennsylvania duty to warn that it allegedly breached.

Because regulations promulgated to implement FIFRA require the health warnings on a pesticide's label to conform to the proposed label approved by the EPA during the registration process (the "Preapproved Label"), and because during Roundup's registration process the EPA approved proposed labels omitting a cancer warning following an extensive review of scientific evidence concerning Roundup's possible carcinogenicity, we conclude that the alleged state-law duty to include the Cancer Warning on Roundup's label (the "Pa. Duty to Warn") imposes requirements that are different from those imposed under FIFRA, and that it is therefore preempted by FIFRA.

We do not hold that FIFRA necessarily preempts any state-law duty requiring modification to a pesticide's Preapproved Label. Rather, we hold only that such duties may sometimes be preempted, including in the circumstances of this case.

Genetically Engineered Crops

National Family Farm Coalition v. Vilsack, 758 F. Supp. 3d 1060 (N.D. Cal. 2024), *dismissed as moot*, 2025 WL 315412 (N.D. Cal. Jan. 28, 2025)

The Animal and Plant Health Inspection Service (APHIS) issued a final rule in May 2020 governing genetically engineered (GE) organisms.

Plaintiffs, who are non-profit and public-interest groups organized around concerns for farmers, crops, food safety, and the environment, object to the final rule. In plaintiffs' view, the final rule effectively abandoned federal government regulation of GE organisms, leaving GE crop developers and agribusinesses to their own devices without adequate safety and other oversight.

Plaintiffs ask to set aside the final rule under the Administrative Procedure Act on the ground that APHIS acted arbitrarily and capriciously, and contrary to various federal statutes.

The final rule revised the scope of regulations under part 340 to reflect the fact that APHIS changed its risk assessment of GE plants to focus on the specific trait introduced in the plant and that trait's potential to pose plant-pest risks in the modified plant.

The final rule categorically exempts GE plants created by conventional-breeding techniques. But unlike the 2017 proposal, the final rule does not regulate such plants under part 330.

The final rule excludes from regulation under part 340 GE plants with "plant-trait-mechanism of action" combinations that the agency has determined do not pose plant-pest risks. A "mechanism of action" is the "biochemical process(es) through which genetic material determines a trait."

The final rule does not treat noxious weeds as a trigger for part 340 regulation, unlike the 2008 and 2017 proposals.

APHIS said that it was not "statutorily obligated to integrate noxious weed authority into a revised part 340" and that it did "not perceive a basis at this time for overhauling part 360 noxious weed regulations, which we believe have functioned well over the years, or establishing alternate regulations in title 7 governing noxious weeds."

Plaintiffs did not identify any statutory text that "command[s]" the agency to discharge that responsibility in a particular way, let alone plaintiffs' preferred way. Rather, as the agency notes, the statute is replete with language indicating that the way in which that responsibility is to be discharged is within the agency's discretion.

Overall, plaintiffs did not establish that the agency exceeded its statutory authority here.

APHIS "recognize[d]" that genetic engineering could introduce traits that increase the weedy aspects of a plant.

The rule further provides that APHIS would consider "potential effects on the weediness of other plants with which the engineered plant can interbreed" and "whether the plant with the specific trait being evaluated should be considered for regulation pursuant to" the separate part 360 regulations.

Statements about maintaining the status quo sidestep the problems with the status quo that APHIS "had previously recognized." The final rule's silence on this score indicates that APHIS "failed to consider an important aspect of the problem" that the agency itself had identified.

APHIS's failure to address the limitations in the part 360 regulations with respect to GE plants that its prior assessments identified as justifying adding noxious weeds as a trigger to part 340 regulations was arbitrary and capricious. Ignoring concerns the agency had previously recognized is not "reasoned decisionmaking."

"An agency conclusion that is in 'direct conflict with the conclusion of its own experts' ... is arbitrary and capricious." Nowhere in the final rule does APHIS acknowledge the conflicting scientific evidence concerning the basis on which the exemption is premised. That is arbitrary and capricious.

Unlike its decision-making for the conventional-breeding exemption, APHIS recognized contrary scientific evidence and explained its disagreement with it based on other scientific evidence, namely its own expertise from three decades' worth of regulatory analyses. Agencies need not credit every piece of scientific evidence before them, and they are permitted to credit their own experts over others.

The Court concludes that the remedy that best balances the law and that which "equity demands," is vacatur of the final rule as of the date of this order.

APHIS revised the CFR to conform to the court's vacatur of the final rule. Final rule, Movement of Certain Genetically Engineered Organisms, 90 Fed. Reg. 25,123 (June 16, 2025).

But hold on . . . .

National Environmental Policy Act

Seven County Infrastructure Coalition v. Eagle County, 2025 WL 1520964 (U.S. May 29, 2025)

The U. S. Surface Transportation Board approved a proposal by a group of seven Utah counties for the construction and operation of an approximately 88-mile railroad line in northeastern Utah. The new railroad line would facilitate the transportation of crude oil from Utah to refineries in Louisiana, Texas, and elsewhere.

When determining whether an agency's EIS complied with NEPA, a court should afford substantial deference to the agency.

In practice, judicial deference in NEPA cases can take several forms. For example:

NEPA says that the EIS should be "detailed." The meaning of "detailed" is a question of law to be decided by a court. But what details need to be included in any given EIS? For the most part, that question does not turn on the meaning of "detailed"—instead, it "involves primarily issues of fact." The question of whether a particular report is detailed enough in a particular case itself requires the exercise of agency discretion—which should not be excessively second-guessed by a court.

Brevity should not be mistaken for lack of detail.

The EIS also must identify significant environmental impacts and feasible alternatives. But there too, an agency exercises substantial discretion. An agency must make predictive and scientific judgments in assessing the relevant impacts (what are the likely impacts; do they rise to the level of "significant"?) and alternatives (what are the potential alternatives; are they really "feasible"?).

When an agency makes those kinds of speculative assessments or predictive or scientific judgments, and decides what qualifies as significant or feasible or the like, a reviewing court must be at its "most deferential."

In preparing an EIS, an agency also must determine the scope of the environmental effects that it will address. The textual focus of NEPA is the "proposed action"—that is, the project at hand.

So long as the EIS addresses environmental effects from the project at issue, courts should defer to agencies' decisions about where to draw the line—including (i) how far to go in considering indirect environmental effects from the project at hand and (ii) whether to analyze environmental effects from other projects separate in time or place from the project at hand.

When assessing significant environmental effects and feasible alternatives for purposes of NEPA, an agency will invariably make a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry—and also about the length, content, and level of detail of the resulting EIS. Courts should afford substantial deference and should not micromanage those agency choices so long as they fall within a broad zone of reasonableness.


Questions?


Thank
you.