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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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LOPER BRIGHT ENTERPRISES ET AL. *v*. RAIMONDO, SECRETARY OF COMMERCE, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22–451. Argued January 17, 2024—Decided June 28, 2024*

The Court granted certiorari in these cases limited to the question whether *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, should be overruled or clarified. Under the *Chevron* doctrine, courts have sometimes been required to defer to "permissible" agency interpretations of the statutes those agencies administer—even when a reviewing court reads the statute differently. *Id.*, at 843. In each case below, the reviewing courts applied *Chevron*'s framework to resolve in favor of the Government challenges by petitioners to a rule promulgated by the National Marine Fisheries Service pursuant to the Magnuson-Stevens Act, 16 U. S. C. §1801 *et seq.*, which incorporates the Administrative Procedure Act (APA), 5 U. S. C. §551 *et seq*.

Held: The Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous; *Chevron* is overruled. Pp. 7–35.

(a) Article III of the Constitution assigns to the Federal Judiciary the responsibility and power to adjudicate "Cases" and "Controversies"—concrete disputes with consequences for the parties involved. The Framers appreciated that the laws judges would necessarily apply in resolving those disputes would not always be clear, but envisioned

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*Together with No. 22–1219, *Relentless, Inc., et al.* v. *Department of Commerce, et al.*, on certiorari to the United States Court of Appeals for the First Circuit.

that the final "interpretation of the laws" would be "the proper and peculiar province of the courts." The Federalist No. 78, p. 525 (A. Hamilton). As Chief Justice Marshall declared in the foundational decision of *Marbury* v. *Madison*, "[i]t is emphatically the province and duty of the judicial department to say what the law is." 1 Cranch 137, 177. In the decades following *Marbury*, when the meaning of a statute was at issue, the judicial role was to "interpret the act of Congress, in order to ascertain the rights of the parties." *Decatur* v. *Paulding*, 14 Pet. 497, 515.

The Court recognized from the outset, though, that exercising independent judgment often included according due respect to Executive Branch interpretations of federal statutes. Such respect was thought especially warranted when an Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained consistent over time. The Court also gave "the most respectful consideration" to Executive Branch interpretations simply because "[t]he officers concerned [were] usually able men, and masters of the subject," who may well have drafted the laws at issue. *United States* v. *Moore*, 95 U. S. 760, 763. "Respect," though, was just that. The views of the Executive Branch could inform the judgment of the Judiciary, but did not supersede it. "[I]n cases where [a court's] own judgment . . . differ[ed] from that of other high functionaries," the court was "not at liberty to surrender, or to waive it." *United States* v. *Dickson*, 15 Pet. 141, 162.

During the "rapid expansion of the administrative process" that took place during the New Deal era, *United States* v. *Morton Salt Co.*, 338 U. S. 632, 644, the Court often treated agency determinations of *fact* as binding on the courts, provided that there was "evidence to support the findings," *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38, 51. But the Court did not extend similar deference to agency resolutions of questions of *law*. "The interpretation of the meaning of statutes, as applied to justiciable controversies," remained "exclusively a judicial function." *United States* v. *American Trucking Assns., Inc.*, 310 U. S. 534, 544. The Court also continued to note that the informed judgment of the Executive Branch could be entitled to "great weight." *Id.*, at 549. "The weight of such a judgment in a particular case," the Court observed, would "depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 140.

Occasionally during this period, the Court applied deferential review after concluding that a particular statute empowered an agency to decide how a broad statutory term applied to specific facts found by

the agency. See *Gray* v. *Powell*, 314 U. S. 402; *NLRB* v. *Hearst Publications, Inc.*, 322 U. S. 111. But such deferential review, which the Court was far from consistent in applying, was cabined to factbound determinations. And the Court did not purport to refashion the longstanding judicial approach to questions of law. It instead proclaimed that "[u]ndoubtedly questions of statutory interpretation . . . are for the courts to resolve, giving appropriate weight to the judgment of those whose special duty is to administer the questioned statute." *Id.*, at 130–131. Nothing in the New Deal era or before it thus resembled the deference rule the Court would begin applying decades later to all varieties of agency interpretations of statutes under *Chevron*. Pp. 7–13.

(b) Congress in 1946 enacted the APA "as a check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices." *Morton Salt*, 338 U. S., at 644. The APA prescribes procedures for agency action and delineates the basic contours of judicial review of such action. And it codifies for agency cases the unremarkable, yet elemental proposition reflected by judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment. As relevant here, the APA specifies that courts, not agencies, will decide "*all* relevant questions of law" arising on review of agency action, 5 U. S. C. §706 (emphasis added)—even those involving ambiguous laws. It prescribes no deferential standard for courts to employ in answering those legal questions, despite mandating deferential judicial review of agency policymaking and factfinding. See §§706(2)(A), (E). And by directing courts to "interpret constitutional and statutory provisions" without differentiating between the two, §706, it makes clear that agency interpretations of statutes—like agency interpretations of the Constitution—are *not* entitled to deference. The APA's history and the contemporaneous views of various respected commentators underscore the plain meaning of its text.

Courts exercising independent judgment in determining the meaning of statutory provisions, consistent with the APA, may—as they have from the start—seek aid from the interpretations of those responsible for implementing particular statutes. See *Skidmore*, 323 U. S., at 140. And when the best reading of a statute is that it delegates discretionary authority to an agency, the role of the reviewing court under the APA is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits. The court fulfills that role by recognizing constitutional delegations, fixing the boundaries of the delegated authority, and ensuring the agency has engaged in " 'reasoned decisionmaking' " within those boundaries. *Michigan* v. *EPA*, 576 U. S. 743, 750 (quoting *Allentown Mack Sales &*

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Service, Inc. v. *NLRB*, 522 U. S. 359, 374). By doing so, a court upholds the traditional conception of the judicial function that the APA adopts. Pp. 13–18.

(c) The deference that *Chevron* requires of courts reviewing agency action cannot be squared with the APA. Pp. 18–29.

(1) *Chevron*, decided in 1984 by a bare quorum of six Justices, triggered a marked departure from the traditional judicial approach of independently examining each statute to determine its meaning. The question in the case was whether an Environmental Protection Agency (EPA) regulation was consistent with the term "stationary source" as used in the Clean Air Act. 467 U. S., at 840. To answer that question, the Court articulated and employed a now familiar two-step approach broadly applicable to review of agency action. The first step was to discern "whether Congress ha[d] directly spoken to the precise question at issue." *Id.*, at 842. The Court explained that "[i]f the intent of Congress is clear, that is the end of the matter," *ibid.*, and courts were therefore to "reject administrative constructions which are contrary to clear congressional intent," *id.*, at 843, n. 9. But in a case in which "the statute [was] silent or ambiguous with respect to the specific issue" at hand, a reviewing court could not "simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation." *Id.*, at 843 (footnote omitted). Instead, at *Chevron*'s second step, a court had to defer to the agency if it had offered "a permissible construction of the statute," *ibid.*, even if not "the reading the court would have reached if the question initially had arisen in a judicial proceeding," *ibid.*, n. 11. Employing this new test, the Court concluded that Congress had not addressed the question at issue with the necessary "level of specificity" and that EPA's interpretation was "entitled to deference." *Id.*, at 865.

Although the Court did not at first treat *Chevron* as the watershed decision it was fated to become, the Court and the courts of appeals were soon routinely invoking its framework as the governing standard in cases involving statutory questions of agency authority. The Court eventually decided that *Chevron* rested on "a presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows." *Smiley* v. *Citibank (South Dakota), N. A.*, 517 U. S. 735, 740–741. Pp. 18–20.

(2) Neither *Chevron* nor any subsequent decision of the Court attempted to reconcile its framework with the APA. *Chevron* defies the command of the APA that "the reviewing court"—not the agency whose

action it reviews—is to "decide *all* relevant questions of law" and "interpret . . . statutory provisions." §706 (emphasis added). It requires a court to *ignore*, not follow, "the reading the court would have reached" had it exercised its independent judgment as required by the APA. *Chevron*, 467 U. S., at 843, n. 11. *Chevron* insists on more than the "respect" historically given to Executive Branch interpretations; it demands that courts mechanically afford *binding* deference to agency interpretations, including those that have been inconsistent over time, see *id.*, at 863, and even when a pre-existing judicial precedent holds that an ambiguous statute means something else, *National Cable & Telecommunications Assn.* v. *Brand X Internet Services*, 545 U. S. 967, 982. That regime is the antithesis of the time honored approach the APA prescribes.

Chevron cannot be reconciled with the APA by presuming that statutory ambiguities are implicit delegations to agencies. That presumption does not approximate reality. A statutory ambiguity does not necessarily reflect a congressional intent that an agency, as opposed to a court, resolve the resulting interpretive question. Many or perhaps most statutory ambiguities may be unintentional. And when courts confront statutory ambiguities in cases that do not involve agency interpretations or delegations of authority, they are not somehow relieved of their obligation to independently interpret the statutes. Instead of declaring a particular party's reading "permissible" in such a case, courts use every tool at their disposal to determine the best reading of the statute and resolve the ambiguity. But in an agency case as in any other, there is a best reading all the same—"the reading the court would have reached" if no agency were involved. *Chevron*, 467 U. S., at 843, n. 11. It therefore makes no sense to speak of a "permissible" interpretation that is not the one the court, after applying all relevant interpretive tools, concludes is best.

Perhaps most fundamentally, *Chevron*'s presumption is misguided because agencies have no special competence in resolving statutory ambiguities. Courts do. The Framers anticipated that courts would often confront statutory ambiguities and expected that courts would resolve them by exercising independent legal judgment. *Chevron* gravely erred in concluding that the inquiry is fundamentally different just because an administrative interpretation is in play. The very point of the traditional tools of statutory construction is to resolve statutory ambiguities. That is no less true when the ambiguity is about the scope of an agency's own power—perhaps the occasion on which abdication in favor of the agency is *least* appropriate. Pp. 21–23.

(3) The Government responds that Congress must generally intend for agencies to resolve statutory ambiguities because agencies have subject matter expertise regarding the statutes they administer;

because deferring to agencies purportedly promotes the uniform construction of federal law; and because resolving statutory ambiguities can involve policymaking best left to political actors, rather than courts. See Brief for Respondents in No. 22–1219, pp. 16–19. But none of these considerations justifies *Chevron*'s sweeping presumption of congressional intent.

As the Court recently noted, interpretive issues arising in connection with a regulatory scheme "may fall more naturally into a judge's bailiwick" than an agency's. *Kisor* v. *Wilkie*, 588 U. S. 558, 578. Under *Chevron*'s broad rule of deference, though, ambiguities of all stripes trigger deference, even in cases having little to do with an agency's technical subject matter expertise. And even when an ambiguity happens to implicate a technical matter, it does not follow that Congress has taken the power to authoritatively interpret the statute from the courts and given it to the agency. Congress expects courts to handle technical statutory questions, and courts did so without issue in agency cases before *Chevron*. After all, in an agency case in particular, the reviewing court will go about its task with the agency's "body of experience and informed judgment," among other information, at its disposal. *Skidmore*, 323 U. S., at 140. An agency's interpretation of a statute "cannot bind a court," but may be especially informative "to the extent it rests on factual premises within [the agency's] expertise." *Bureau of Alcohol, Tobacco and Firearms* v. *FLRA*, 464 U. S. 89, 98, n. 8. Delegating ultimate interpretive authority to agencies is simply not necessary to ensure that the resolution of statutory ambiguities is well informed by subject matter expertise.

Nor does a desire for the uniform construction of federal law justify *Chevron*. It is unclear how much the *Chevron* doctrine as a whole actually promotes such uniformity, and in any event, we see no reason to presume that Congress prefers uniformity for uniformity's sake over the correct interpretation of the laws it enacts.

Finally, the view that interpretation of ambiguous statutory provisions amounts to policymaking suited for political actors rather than courts is especially mistaken because it rests on a profound misconception of the judicial role. Resolution of statutory ambiguities involves legal interpretation, and that task does not suddenly become policymaking just because a court has an "agency to fall back on." *Kisor*, 588 U. S., at 575. Courts interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences. To stay out of discretionary policymaking left to the political branches, judges need only fulfill their obligations under the APA to independently identify and respect such delegations of authority, police the outer statutory boundaries of those delegations, and ensure that agencies exercise their discretion consistent with the APA.

By forcing courts to instead pretend that ambiguities are necessarily delegations, *Chevron* prevents judges from judging. Pp. 23–26.

(4) Because *Chevron*'s justifying presumption is, as Members of the Court have often recognized, a fiction, the Court has spent the better part of four decades imposing one limitation on *Chevron* after another. Confronted with the byzantine set of preconditions and exceptions that has resulted, some courts have simply bypassed *Chevron* or failed to heed its various steps and nuances. The Court, for its part, has not deferred to an agency interpretation under *Chevron* since 2016. But because *Chevron* remains on the books, litigants must continue to wrestle with it, and lower courts—bound by even the Court's crumbling precedents—understandably continue to apply it. At best, *Chevron* has been a distraction from the question that matters: Does the statute authorize the challenged agency action? And at worst, it has required courts to violate the APA by yielding to an agency the express responsibility, vested in "the reviewing *court*," to "decide all relevant questions of law" and "interpret . . . statutory provisions." §706 (emphasis added). Pp. 26–29.

(d) *Stare decisis*, the doctrine governing judicial adherence to precedent, does not require the Court to persist in the *Chevron* project. The *stare decisis* considerations most relevant here—"the quality of [the precedent's] reasoning, the workability of the rule it established, . . . and reliance on the decision," *Knick* v. *Township of Scott*, 588 U. S. 180, 203 (quoting *Janus* v. *State, County, and Municipal Employees*, 585 U. S. 878, 917)—all weigh in favor of letting *Chevron* go.

Chevron has proved to be fundamentally misguided. It reshaped judicial review of agency action without grappling with the APA, the statute that lays out how such review works. And its flaws were apparent from the start, prompting the Court to revise its foundations and continually limit its application.

Experience has also shown that *Chevron* is unworkable. The defining feature of its framework is the identification of statutory ambiguity, but the concept of ambiguity has always evaded meaningful definition. Such an impressionistic and malleable concept "cannot stand as an every-day test for allocating" interpretive authority between courts and agencies. *Swift & Co.* v. *Wickham*, 382 U. S. 111, 125. The Court has also been forced to clarify the doctrine again and again, only adding to *Chevron*'s unworkability, and the doctrine continues to spawn difficult threshold questions that promise to further complicate the inquiry should *Chevron* be retained. And its continuing import is far from clear, as courts have often declined to engage with the doctrine, saying it makes no difference.

Nor has *Chevron* fostered meaningful reliance. Given the Court's constant tinkering with and eventual turn away from *Chevron*, it is

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hard to see how anyone could reasonably expect a court to rely on *Chevron* in any particular case or expect it to produce readily foreseeable outcomes. And rather than safeguarding reliance interests, *Chevron* affirmatively destroys them by allowing agencies to change course even when Congress has given them no power to do so.

The only way to "ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion," *Vasquez* v. *Hillery*, 474 U. S. 254, 265, is for the Court to leave *Chevron* behind. By overruling *Chevron*, though, the Court does not call into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are lawful—including the Clean Air Act holding of *Chevron* itself—are still subject to statutory *stare decisis* despite the Court's change in interpretive methodology. See *CBOCS West, Inc.* v. *Humphries*, 553 U. S. 442, 457. Mere reliance on *Chevron* cannot constitute a "'special justification'" for overruling such a holding. *Halliburton Co.* v. *Erica P. John Fund, Inc.*, 573 U. S. 258, 266 (quoting *Dickerson* v. *United States*, 530 U. S. 428, 443). Pp. 29–35.

No. 22–451, 45 F. 4th 359 & No. 22–1219, 62 F. 4th 621, vacated and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which THOMAS, ALITO, GORSUCH, KAVANAUGH, and BARRETT, JJ., joined. THOMAS, J., and GORSUCH, J., filed concurring opinions. KAGAN, J., filed a dissenting opinion, in which SOTOMAYOR, J., joined, and in which JACKSON, J., joined as it applies to No. 22–1219. JACKSON, J., took no part in the consideration or decision of the case in No. 22–451.

SUPREME COURT OF THE UNITED STATES

Nos. 22–451 and 22–1219

LOPER BRIGHT ENTERPRISES, ET AL., PETITIONERS
22–451 *v.*
GINA RAIMONDO, SECRETARY OF COMMERCE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

RELENTLESS, INC., ET AL., PETITIONERS
22–1219 *v.*
DEPARTMENT OF COMMERCE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[June 28, 2024]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Since our decision in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), we have sometimes required courts to defer to "permissible" agency interpretations of the statutes those agencies administer—even when a reviewing court reads the statute differently. In these cases we consider whether that doctrine should be overruled.

I

Our *Chevron* doctrine requires courts to use a two-step

framework to interpret statutes administered by federal agencies. After determining that a case satisfies the various preconditions we have set for *Chevron* to apply, a reviewing court must first assess "whether Congress has directly spoken to the precise question at issue." *Id.*, at 842. If, and only if, congressional intent is "clear," that is the end of the inquiry. *Ibid.* But if the court determines that "the statute is silent or ambiguous with respect to the specific issue" at hand, the court must, at *Chevron*'s second step, defer to the agency's interpretation if it "is based on a permissible construction of the statute." *Id.*, at 843. The reviewing courts in each of the cases before us applied *Chevron*'s framework to resolve in favor of the Government challenges to the same agency rule.

A

Before 1976, unregulated foreign vessels dominated fishing in the international waters off the U. S. coast, which began just 12 nautical miles offshore. See, *e.g.*, S. Rep. No. 94–459, pp. 2–3 (1975). Recognizing the resultant overfishing and the need for sound management of fishery resources, Congress enacted the Magnuson-Stevens Fishery Conservation and Management Act (MSA). See 90 Stat. 331 (codified as amended at 16 U. S. C. §1801 *et seq*.). The MSA and subsequent amendments extended the jurisdiction of the United States to 200 nautical miles beyond the U. S. territorial sea and claimed "exclusive fishery management authority over all fish" within that area, known as the "exclusive economic zone." §1811(a); see Presidential Proclamation No. 5030, 3 CFR 22 (1983 Comp.); §§101, 102, 90 Stat. 336. The National Marine Fisheries Service (NMFS) administers the MSA under a delegation from the Secretary of Commerce.

The MSA established eight regional fishery management councils composed of representatives from the coastal States, fishery stakeholders, and NMFS. See 16 U. S. C.

§§1852(a), (b). The councils develop fishery management plans, which NMFS approves and promulgates as final regulations. See §§1852(h), 1854(a). In service of the statute's fishery conservation and management goals, see §1851(a), the MSA requires that certain provisions—such as "a mechanism for specifying annual catch limits . . . at a level such that overfishing does not occur," §1853(a)(15)—be included in these plans, see §1853(a). The plans may also include additional discretionary provisions. See §1853(b). For example, plans may "prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment," §1853(b)(4); "reserve a portion of the allowable biological catch of the fishery for use in scientific research," §1853(b)(11); and "prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery," §1853(b)(14).

Relevant here, a plan may also require that "one or more observers be carried on board" domestic vessels "for the purpose of collecting data necessary for the conservation and management of the fishery." §1853(b)(8). The MSA specifies three groups that must cover costs associated with observers: (1) foreign fishing vessels operating within the exclusive economic zone (which *must* carry observers), see §§1821(h)(1)(A), (h)(4), (h)(6); (2) vessels participating in certain limited access privilege programs, which impose quotas permitting fishermen to harvest only specific quantities of a fishery's total allowable catch, see §§1802(26), 1853a(c)(1)(H), (e)(2), 1854(d)(2); and (3) vessels within the jurisdiction of the North Pacific Council, where many of the largest and most successful commercial fishing enterprises in the Nation operate, see §1862(a). In the latter two cases, the MSA expressly caps the relevant fees at two or three percent of the value of fish harvested on the vessels. See §§1854(d)(2)(B), 1862(b)(2)(E). And in general, it author-

izes the Secretary to impose "sanctions" when "any payment required for observer services provided to or contracted by an owner or operator . . . has not been paid." §1858(g)(1)(D).

The MSA does not contain similar terms addressing whether Atlantic herring fishermen may be required to bear costs associated with any observers a plan may mandate. And at one point, NMFS fully funded the observer coverage the New England Fishery Management Council required in its plan for the Atlantic herring fishery. See 79 Fed. Reg. 8792 (2014). In 2013, however, the council proposed amending its fishery management plans to empower it to require fishermen to pay for observers if federal funding became unavailable. Several years later, NMFS promulgated a rule approving the amendment. See 85 Fed. Reg. 7414 (2020).

With respect to the Atlantic herring fishery, the Rule created an industry funded program that aims to ensure observer coverage on 50 percent of trips undertaken by vessels with certain types of permits. Under that program, vessel representatives must "declare into" a fishery before beginning a trip by notifying NMFS of the trip and announcing the species the vessel intends to harvest. If NMFS determines that an observer is required, but declines to assign a Government-paid one, the vessel must contract with and pay for a Government-certified third-party observer. NMFS estimated that the cost of such an observer would be up to $710 per day, reducing annual returns to the vessel owner by up to 20 percent. See *id.*, at 7417–7418.

B

Petitioners Loper Bright Enterprises, Inc., H&L Axelsson, Inc., Lund Marr Trawlers LLC, and Scombrus One LLC are family businesses that operate in the Atlantic herring fishery. In February 2020, they challenged the Rule under the MSA, 16 U. S. C. §1855(f), which incorporates

the Administrative Procedure Act (APA), 5 U. S. C. §551 *et seq*. In relevant part, they argued that the MSA does not authorize NMFS to mandate that they pay for observers required by a fishery management plan. The District Court granted summary judgment to the Government. It concluded that the MSA authorized the Rule, but noted that even if these petitioners' "arguments were enough to raise an ambiguity in the statutory text," deference to the agency's interpretation would be warranted under *Chevron*. 544 F. Supp. 3d 82, 107 (DC 2021); see *id.*, at 103–107.

A divided panel of the D. C. Circuit affirmed. See 45 F. 4th 359 (2022). The majority addressed various provisions of the MSA and concluded that it was not "wholly unambiguous" whether NMFS may require Atlantic herring fishermen to pay for observers. *Id.*, at 366. Because there remained "some question" as to Congress's intent, *id.*, at 369, the court proceeded to *Chevron*'s second step and deferred to the agency's interpretation as a "reasonable" construction of the MSA, 45 F. 4th, at 370. In dissent, Judge Walker concluded that Congress's silence on industry funded observers for the Atlantic herring fishery—coupled with the express provision for such observers in other fisheries and on foreign vessels—unambiguously indicated that NMFS lacked the authority to "require [Atlantic herring] fishermen to pay the wages of at-sea monitors." *Id.*, at 375.

C

Petitioners Relentless Inc., Huntress Inc., and Seafreeze Fleet LLC own two vessels that operate in the Atlantic herring fishery: the F/V *Relentless* and the F/V *Persistence*.[1] These vessels use small-mesh bottom-trawl gear and can freeze fish at sea, so they can catch more species of fish and take longer trips than other vessels (about 10 to 14 days, as

[1] For any landlubbers, "F/V" is simply the designation for a fishing vessel.

opposed to the more typical 2 to 4). As a result, they generally declare into multiple fisheries per trip so they can catch whatever the ocean offers up. If the vessels declare into the Atlantic herring fishery for a particular trip, they must carry an observer for that trip if NMFS selects the trip for coverage, even if they end up harvesting fewer herring than other vessels—or no herring at all.

This set of petitioners, like those in the D. C. Circuit case, filed a suit challenging the Rule as unauthorized by the MSA. The District Court, like the D. C. Circuit, deferred to NMFS's contrary interpretation under *Chevron* and thus granted summary judgment to the Government. See 561 F. Supp. 3d 226, 234–238 (RI 2021).

The First Circuit affirmed. See 62 F. 4th 621 (2023). It relied on a "default norm" that regulated entities must bear compliance costs, as well as the MSA's sanctions provision, Section 1858(g)(1)(D). See *id.*, at 629–631. And it rejected petitioners' argument that the express statutory authorization of three industry funding programs demonstrated that NMFS lacked the broad implicit authority it asserted to impose such a program for the Atlantic herring fishery. See *id.*, at 631–633. The court ultimately concluded that the "[a]gency's interpretation of its authority to require at-sea monitors who are paid for by owners of regulated vessels does not 'exceed[] the bounds of the permissible.'" *Id.*, at 633–634 (quoting *Barnhart* v. *Walton*, 535 U. S. 212, 218 (2002); alteration in original). In reaching that conclusion, the First Circuit stated that it was applying *Chevron*'s two-step framework. 62 F. 4th, at 628. But it did not explain which aspects of its analysis were relevant to which of *Chevron*'s two steps. Similarly, it declined to decide whether the result was "a product of *Chevron* step one or step two." *Id.*, at 634.

We granted certiorari in both cases, limited to the question whether *Chevron* should be overruled or clarified. See

601 U. S. ___ (2023); 598 U. S. ___ (2023).[2]

II

A

Article III of the Constitution assigns to the Federal Judiciary the responsibility and power to adjudicate "Cases" and "Controversies"—concrete disputes with consequences for the parties involved. The Framers appreciated that the laws judges would necessarily apply in resolving those disputes would not always be clear. Cognizant of the limits of human language and foresight, they anticipated that "[a]ll new laws, though penned with the greatest technical skill, and passed on the fullest and most mature deliberation," would be "more or less obscure and equivocal, until their meaning" was settled "by a series of particular discussions and adjudications." The Federalist No. 37, p. 236 (J. Cooke ed. 1961) (J. Madison).

The Framers also envisioned that the final "interpretation of the laws" would be "the proper and peculiar province of the courts." *Id.*, No. 78, at 525 (A. Hamilton). Unlike the political branches, the courts would by design exercise "neither Force nor Will, but merely judgment." *Id.*, at 523. To ensure the "steady, upright and impartial administration of the laws," the Framers structured the Constitution to allow judges to exercise that judgment independent of influence from the political branches. *Id.*, at 522; see *id.*, at 522–524; *Stern* v. *Marshall*, 564 U. S. 462, 484 (2011).

This Court embraced the Framers' understanding of the judicial function early on. In the foundational decision of *Marbury* v. *Madison*, Chief Justice Marshall famously declared that "[i]t is emphatically the province and duty of the judicial department to say what the law is." 1 Cranch 137,

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[2] Both petitions also presented questions regarding the consistency of the Rule with the MSA. See Pet. for Cert. in No. 22–451, p. i; Pet. for Cert. in No. 22–1219, p. ii. We did not grant certiorari with respect to those questions and thus do not reach them.

177 (1803). And in the following decades, the Court understood "interpret[ing] the laws, in the last resort," to be a "solemn duty" of the Judiciary. *United States* v. *Dickson*, 15 Pet. 141, 162 (1841) (Story, J., for the Court). When the meaning of a statute was at issue, the judicial role was to "interpret the act of Congress, in order to ascertain the rights of the parties." *Decatur* v. *Paulding*, 14 Pet. 497, 515 (1840).

The Court also recognized from the outset, though, that exercising independent judgment often included according due respect to Executive Branch interpretations of federal statutes. For example, in *Edwards' Lessee* v. *Darby*, 12 Wheat. 206 (1827), the Court explained that "[i]n the construction of a doubtful and ambiguous law, the contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect." *Id.*, at 210; see also *United States* v. *Vowell*, 5 Cranch 368, 372 (1809) (Marshall, C. J., for the Court).

Such respect was thought especially warranted when an Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained consistent over time. See *Dickson*, 15 Pet., at 161; *United States* v. *Alabama Great Southern R. Co.*, 142 U. S. 615, 621 (1892); *National Lead Co.* v. *United States*, 252 U. S. 140, 145–146 (1920). That is because "the longstanding 'practice of the government'"—like any other interpretive aid—"can inform [a court's] determination of 'what the law is.'" *NLRB* v. *Noel Canning*, 573 U. S. 513, 525 (2014) (first quoting *McCulloch* v. *Maryland*, 4 Wheat. 316, 401 (1819); then quoting *Marbury*, 1 Cranch, at 177). The Court also gave "the most respectful consideration" to Executive Branch interpretations simply because "[t]he officers concerned [were] usually able men, and masters of the subject," who were "[n]ot unfrequently . . . the draftsmen of the laws they [were] afterwards called upon to interpret." *United*

States v. *Moore*, 95 U. S. 760, 763 (1878); see also *Jacobs* v. *Prichard*, 223 U. S. 200, 214 (1912).

"Respect," though, was just that. The views of the Executive Branch could inform the judgment of the Judiciary, but did not supersede it. Whatever respect an Executive Branch interpretation was due, a judge "certainly would not be bound to adopt the construction given by the head of a department." *Decatur*, 14 Pet., at 515; see also *Burnet* v. *Chicago Portrait Co.*, 285 U. S. 1, 16 (1932). Otherwise, judicial judgment would not be independent at all. As Justice Story put it, "in cases where [a court's] own judgment . . . differ[ed] from that of other high functionaries," the court was "not at liberty to surrender, or to waive it." *Dickson*, 15 Pet., at 162.

B

The New Deal ushered in a "rapid expansion of the administrative process." *United States* v. *Morton Salt Co.*, 338 U. S. 632, 644 (1950). But as new agencies with new powers proliferated, the Court continued to adhere to the traditional understanding that questions of law were for courts to decide, exercising independent judgment.

During this period, the Court often treated agency determinations of *fact* as binding on the courts, provided that there was "evidence to support the findings." *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38, 51 (1936). "When the legislature itself acts within the broad field of legislative discretion," the Court reasoned, "its determinations are conclusive." *Ibid.* Congress could therefore "appoint[] an agent to act within that sphere of legislative authority" and "endow the agent with power to make *findings of fact* which are conclusive, provided the requirements of due process which are specially applicable to such an agency are met, as in according a fair hearing and acting upon evidence and not arbitrarily." *Ibid.* (emphasis added).

But the Court did not extend similar deference to agency

resolutions of questions of *law*. It instead made clear, repeatedly, that "[t]he interpretation of the meaning of statutes, as applied to justiciable controversies," was "exclusively a judicial function." *United States* v. *American Trucking Assns., Inc.*, 310 U. S. 534, 544 (1940); see also *Social Security Bd.* v. *Nierotko*, 327 U. S. 358, 369 (1946); *Medo Photo Supply Corp.* v. *NLRB*, 321 U. S. 678, 681–682, n. 1 (1944). The Court understood, in the words of Justice Brandeis, that "[t]he supremacy of law demands that there shall be opportunity to have some court decide whether an erroneous rule of law was applied." *St. Joseph Stock Yards*, 298 U. S., at 84 (concurring opinion). It also continued to note, as it long had, that the informed judgment of the Executive Branch—especially in the form of an interpretation issued contemporaneously with the enactment of the statute—could be entitled to "great weight." *American Trucking Assns.*, 310 U. S., at 549.

Perhaps most notably along those lines, in *Skidmore* v. *Swift & Co.*, 323 U. S. 134 (1944), the Court explained that the "interpretations and opinions" of the relevant agency, "made in pursuance of official duty" and "based upon . . . specialized experience," "constitute[d] a body of experience and informed judgment to which courts and litigants [could] properly resort for guidance," even on legal questions. *Id.*, at 139–140. "The weight of such a judgment in a particular case," the Court observed, would "depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Id.*, at 140.

On occasion, to be sure, the Court applied deferential review upon concluding that a particular statute empowered an agency to decide how a broad statutory term applied to specific facts found by the agency. For example, in *Gray* v. *Powell*, 314 U. S. 402 (1941), the Court deferred to an administrative conclusion that a coal-burning railroad that

had arrangements with several coal mines was not a coal "producer" under the Bituminous Coal Act of 1937. Congress had "specifically" granted the agency the authority to make that determination. *Id.*, at 411. The Court thus reasoned that "[w]here, as here, a determination has been left to an administrative body, this delegation will be respected and the administrative conclusion left untouched" so long as the agency's decision constituted "a sensible exercise of judgment." *Id.*, at 412–413. Similarly, in *NLRB* v. *Hearst Publications, Inc.*, 322 U. S. 111 (1944), the Court deferred to the determination of the National Labor Relations Board that newsboys were "employee[s]" within the meaning of the National Labor Relations Act. The Act had, in the Court's judgment, "assigned primarily" to the Board the task of marking a "definitive limitation around the term 'employee.'" *Id.*, at 130. The Court accordingly viewed its own role as "limited" to assessing whether the Board's determination had a "'warrant in the record' and a reasonable basis in law." *Id.*, at 131.

Such deferential review, though, was cabined to fact-bound determinations like those at issue in *Gray* and *Hearst*. Neither *Gray* nor *Hearst* purported to refashion the longstanding judicial approach to questions of law. In *Gray*, after deferring to the agency's determination that a particular entity was not a "producer" of coal, the Court went on to discern, based on its own reading of the text, whether another statutory term—"other disposal" of coal—encompassed a transaction lacking a transfer of title. See 314 U. S., at 416–417. The Court evidently perceived no basis for deference to the agency with respect to that pure legal question. And in *Hearst*, the Court proclaimed that "[u]ndoubtedly questions of statutory interpretation . . . are for the courts to resolve, giving appropriate weight to the judgment of those whose special duty is to administer the questioned statute." 322 U. S., at 130–131. At least with

respect to questions it regarded as involving "statutory interpretation," the Court thus did not disturb the traditional rule. It merely thought that a different approach should apply where application of a statutory term was sufficiently intertwined with the agency's factfinding.

In any event, the Court was far from consistent in reviewing deferentially even such factbound statutory determinations. Often the Court simply interpreted and applied the statute before it. See K. Davis, Administrative Law §248, p. 893 (1951) ("The one statement that can be made with confidence about applicability of the doctrine of Gray v. Powell is that sometimes the Supreme Court applies it and sometimes it does not."); B. Schwartz, Gray vs. Powell and the Scope of Review, 54 Mich. L. Rev. 1, 68 (1955) (noting an "embarrassingly large number of Supreme Court decisions that do not adhere to the doctrine of *Gray v. Powell*"). In one illustrative example, the Court rejected the U. S. Price Administrator's determination that a particular warehouse was a "public utility" entitled to an exemption from the Administrator's General Maximum Price Regulation. Despite the striking resemblance of that administrative determination to those that triggered deference in *Gray* and *Hearst*, the Court declined to "accept the Administrator's view in deference to administrative construction." *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144, 156 (1944). The Administrator's view, the Court explained, had "hardly seasoned or broadened into a settled administrative practice," and thus did not "overweigh the considerations" the Court had "set forth as to the proper construction of the statute." *Ibid.*

Nothing in the New Deal era or before it thus resembled the deference rule the Court would begin applying decades later to all varieties of agency interpretations of statutes. Instead, just five years after *Gray* and two after *Hearst*, Congress codified the opposite rule: the traditional understanding that *courts* must "decide all relevant questions of

law." 5 U. S. C. §706.[3]

C

Congress in 1946 enacted the APA "as a check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices." *Morton Salt*, 338 U. S., at 644. It was the culmination of a "comprehensive rethinking of the place of administrative agencies in a regime of separate and divided powers." *Bowen* v. *Michigan Academy of Family Physicians*, 476 U. S. 667, 670–671 (1986).

In addition to prescribing procedures for agency action, the APA delineates the basic contours of judicial review of such action. As relevant here, Section 706 directs that "[t]o

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[3]The dissent plucks out *Gray*, *Hearst*, and—to "gild the lily," in its telling—three more 1940s decisions, claiming they reflect the relevant historical tradition of judicial review. *Post*, at 21–22, and n. 6 (opinion of KAGAN, J.). But it has no substantial response to the fact that *Gray* and *Hearst* themselves endorsed, implicitly in one case and explicitly in the next, the traditional rule that "questions of statutory interpretation . . . are for the courts to resolve, giving appropriate weight"—not outright deference—"to the judgment of those whose special duty is to administer the questioned statute." *Hearst*, 322 U. S., at 130–131. And it fails to recognize the deep roots that this rule has in our Nation's judicial tradition, to the limited extent it engages with that tradition at all. See *post*, at 20–21, n. 5. Instead, like the Government, it strains to equate the "respect" or "weight" traditionally afforded to Executive Branch interpretations with binding deference. See *ibid.*; Brief for Respondents in No. 22–1219, pp. 21–24. That supposed equivalence is a fiction. The dissent's cases establish that a "*contemporaneous* construction" shared by "not *only* . . . the courts" but also "the departments" could be "controlling," *Schell's Executors* v. *Fauché*, 138 U. S. 562, 572 (1891) (emphasis added), and that courts might "lean in favor" of a "contemporaneous" and "continued" construction of the Executive Branch as strong evidence of a statute's meaning, *United States* v. *Alabama Great Southern R. Co.*, 142 U. S. 615, 621 (1892). They do not establish that Executive Branch interpretations of ambiguous statutes—no matter how inconsistent, late breaking, or flawed—always *bound* the courts. In reality, a judge was never "bound to adopt the construction given by the head of a department." *Decatur* v. *Paulding*, 14 Pet. 497, 515 (1840).

the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." 5 U. S. C. §706. It further requires courts to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . not in accordance with law." §706(2)(A).

The APA thus codifies for agency cases the unremarkable, yet elemental proposition reflected by judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment. It specifies that courts, not agencies, will decide "*all* relevant questions of law" arising on review of agency action, §706 (emphasis added)—even those involving ambiguous laws—and set aside any such action inconsistent with the law as they interpret it. And it prescribes no deferential standard for courts to employ in answering those legal questions. That omission is telling, because Section 706 *does* mandate that judicial review of agency policymaking and factfinding be deferential. See §706(2)(A) (agency action to be set aside if "arbitrary, capricious, [or] an abuse of discretion"); §706(2)(E) (agency factfinding in formal proceedings to be set aside if "unsupported by substantial evidence").

In a statute designed to "serve as the fundamental charter of the administrative state," *Kisor* v. *Wilkie*, 588 U. S. 558, 580 (2019) (plurality opinion) (internal quotation marks omitted), Congress surely would have articulated a similarly deferential standard applicable to questions of law had it intended to depart from the settled pre-APA understanding that deciding such questions was "exclusively a judicial function," *American Trucking Assns.*, 310 U. S., at 544. But nothing in the APA hints at such a dramatic departure. On the contrary, by directing courts to "interpret constitutional and statutory provisions" without differentiating between the two, Section 706 makes clear that

agency interpretations of statutes—like agency interpretations of the Constitution—are *not* entitled to deference. Under the APA, it thus "remains the responsibility of the court to decide whether the law means what the agency says." *Perez* v. *Mortgage Bankers Assn.*, 575 U. S. 92, 109 (2015) (Scalia, J., concurring in judgment).[4]

The text of the APA means what it says. And a look at its history if anything only underscores that plain meaning. According to both the House and Senate Reports on the legislation, Section 706 "provide[d] that questions of law are for courts *rather than agencies* to decide in the last analysis." H. R. Rep. No. 1980, 79th Cong., 2d Sess., 44 (1946) (emphasis added); accord, S. Rep. No. 752, 79th Cong., 1st Sess., 28 (1945). Some of the legislation's most prominent supporters articulated the same view. See 92 Cong. Rec. 5654 (1946) (statement of Rep. Walter); P. McCarran, Improving "Administrative Justice": Hearings and Evidence; Scope of Judicial Review, 32 A. B. A. J. 827, 831 (1946). Even the Department of Justice—an agency with every incentive to endorse a view of the APA favorable to the Executive Branch—opined after its enactment that Section 706 merely "restate[d] the present law as to the scope of judicial review." Dept. of Justice, Attorney General's Manual on the

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[4]The dissent observes that Section 706 does not say expressly that courts are to decide legal questions using "a *de novo* standard of review." *Post*, at 16. That much is true. But statutes can be sensibly understood only "by reviewing text in context." *Pulsifer* v. *United States*, 601 U. S. 124, 133 (2024). Since the start of our Republic, courts have "decide[d] . . . questions of law" and "interpret[ed] constitutional and statutory provisions" by applying their own legal judgment. §706. Setting aside its misplaced reliance on *Gray* and *Hearst*, the dissent does not and could not deny that tradition. But it nonetheless insists that to codify that tradition, Congress needed to expressly reject a sort of deference the courts had never before applied—and would not apply for several decades to come. It did not. "The notion that some things 'go without saying' applies to legislation just as it does to everyday life." *Bond* v. *United States*, 572 U. S. 844, 857 (2014).

Administrative Procedure Act 108 (1947); see also *Kisor*, 588 U. S., at 582 (plurality opinion) (same). That "present law," as we have described, adhered to the traditional conception of the judicial function. See *supra*, at 9–13.

Various respected commentators contemporaneously maintained that the APA required reviewing courts to exercise independent judgment on questions of law. Professor John Dickinson, for example, read the APA to "impose a clear mandate that all [questions of law] shall be decided by the reviewing Court itself, and in the exercise of its own independent judgment." Administrative Procedure Act: Scope and Grounds of Broadened Judicial Review, 33 A. B. A. J. 434, 516 (1947). Professor Bernard Schwartz noted that §706 "would seem . . . to be merely a legislative restatement of the familiar review principle that questions of law are for the reviewing court, at the same time leaving to the courts the task of determining in each case what are questions of law." Mixed Questions of Law and Fact and the Administrative Procedure Act, 19 Ford. L. Rev. 73, 84–85 (1950). And Professor Louis Jaffe, who had served in several agencies at the advent of the New Deal, thought that §706 leaves it up to the reviewing "court" to "decide as a 'question of law' whether there is 'discretion' in the premises"—that is, whether the statute at issue delegates particular discretionary authority to an agency. Judicial Control of Administrative Action 570 (1965).

The APA, in short, incorporates the traditional understanding of the judicial function, under which courts must exercise independent judgment in determining the meaning of statutory provisions. In exercising such judgment, though, courts may—as they have from the start—seek aid from the interpretations of those responsible for implementing particular statutes. Such interpretations "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance" consistent with the APA. *Skidmore*, 323 U. S., at 140. And

interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning. See *ibid.*; *American Trucking Assns.*, 310 U. S., at 549.

In a case involving an agency, of course, the statute's meaning may well be that the agency is authorized to exercise a degree of discretion. Congress has often enacted such statutes. For example, some statutes "expressly delegate[]" to an agency the authority to give meaning to a particular statutory term. *Batterton* v. *Francis*, 432 U. S. 416, 425 (1977) (emphasis deleted).[5] Others empower an agency to prescribe rules to "fill up the details" of a statutory scheme, *Wayman* v. *Southard*, 10 Wheat. 1, 43 (1825), or to regulate subject to the limits imposed by a term or phrase that "leaves agencies with flexibility," *Michigan* v. *EPA*, 576 U. S. 743, 752 (2015), such as "appropriate" or "reasonable."[6]

When the best reading of a statute is that it delegates

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[5] See, *e.g.*, 29 U. S. C. §213(a)(15) (exempting from provisions of the Fair Labor Standards Act "any employee employed on a casual basis in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (*as such terms are defined and delimited by regulations of the Secretary*)" (emphasis added)); 42 U. S. C. §5846(a)(2) (requiring notification to Nuclear Regulatory Commission when a facility or activity licensed or regulated pursuant to the Atomic Energy Act "contains a defect which could create a substantial safety hazard, *as defined by regulations which the Commission shall promulgate*" (emphasis added)).

[6] See, *e.g.*, 33 U. S. C. §1312(a) (requiring establishment of effluent limitations "[w]henever, in the judgment of the [Environmental Protection Agency (EPA)] Administrator . . . , discharges of pollutants from a point source or group of point sources . . . would interfere with the attainment or maintenance of that water quality . . . which shall assure" various outcomes, such as the "protection of public health" and "public water supplies"); 42 U. S. C. §7412(n)(1)(A) (directing EPA to regulate power plants "if the Administrator finds such regulation is appropriate and necessary").

discretionary authority to an agency, the role of the reviewing court under the APA is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits. The court fulfills that role by recognizing constitutional delegations, "fix[ing] the boundaries of [the] delegated authority," H. Monaghan, *Marbury* and the Administrative State, 83 Colum. L. Rev. 1, 27 (1983), and ensuring the agency has engaged in "'reasoned decisionmaking'" within those boundaries, *Michigan*, 576 U. S., at 750 (quoting *Allentown Mack Sales & Service, Inc.* v. *NLRB*, 522 U. S. 359, 374 (1998)); see also *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29 (1983). By doing so, a court upholds the traditional conception of the judicial function that the APA adopts.

III

The deference that *Chevron* requires of courts reviewing agency action cannot be squared with the APA.

A

In the decades between the enactment of the APA and this Court's decision in *Chevron*, courts generally continued to review agency interpretations of the statutes they administer by independently examining each statute to determine its meaning. Cf. T. Merrill, Judicial Deference to Executive Precedent, 101 Yale L. J. 969, 972–975 (1992). As an early proponent (and later critic) of *Chevron* recounted, courts during this period thus identified delegations of discretionary authority to agencies on a "statute-by-statute basis." A. Scalia, Judicial Deference to Administrative Interpretations of Law, 1989 Duke L. J. 511, 516.

Chevron, decided in 1984 by a bare quorum of six Justices, triggered a marked departure from the traditional approach. The question in the case was whether an EPA regulation "allow[ing] States to treat all of the pollution-

emitting devices within the same industrial grouping as though they were encased within a single 'bubble'" was consistent with the term "stationary source" as used in the Clean Air Act. 467 U. S., at 840. To answer that question of statutory interpretation, the Court articulated and employed a now familiar two-step approach broadly applicable to review of agency action.

The first step was to discern "whether Congress ha[d] directly spoken to the precise question at issue." *Id.*, at 842. The Court explained that "[i]f the intent of Congress is clear, that is the end of the matter," *ibid.*, and courts were therefore to "reject administrative constructions which are contrary to clear congressional intent," *id.*, at 843, n. 9. To discern such intent, the Court noted, a reviewing court was to "employ[] traditional tools of statutory construction." *Ibid.*

Without mentioning the APA, or acknowledging any doctrinal shift, the Court articulated a second step applicable when "Congress ha[d] not directly addressed the precise question at issue." *Id.*, at 843. In such a case—that is, a case in which "the statute [was] silent or ambiguous with respect to the specific issue" at hand—a reviewing court could not "simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation." *Ibid.* (footnote omitted). A court instead had to set aside the traditional interpretive tools and defer to the agency if it had offered "a permissible construction of the statute," *ibid.*, even if not "the reading the court would have reached if the question initially had arisen in a judicial proceeding," *ibid.*, n. 11. That directive was justified, according to the Court, by the understanding that administering statutes "requires the formulation of policy" to fill statutory "gap[s]"; by the long judicial tradition of according "considerable weight" to Executive Branch interpretations; and by a host of other considerations, including the complexity of the regulatory scheme, EPA's "detailed

and reasoned" consideration, the policy-laden nature of the judgment supposedly required, and the agency's indirect accountability to the people through the President. *Id.*, at 843, 844, and n. 14, 865.

Employing this new test, the Court concluded that Congress had not addressed the question at issue with the necessary "level of specificity" and that EPA's interpretation was "entitled to deference." *Id.*, at 865. It did not matter *why* Congress, as the Court saw it, had not squarely addressed the question, see *ibid.*, or that "the agency ha[d] from time to time changed its interpretation," *id.*, at 863. The latest EPA interpretation was a permissible reading of the Clean Air Act, so under the Court's new rule, that reading controlled.

Initially, *Chevron* "seemed destined to obscurity." T. Merrill, The Story of *Chevron*: The Making of an Accidental Landmark, 66 Admin. L. Rev. 253, 276 (2014). The Court did not at first treat it as the watershed decision it was fated to become; it was hardly cited in cases involving statutory questions of agency authority. See *ibid.* But within a few years, both this Court and the courts of appeals were routinely invoking its two-step framework as the governing standard in such cases. See *id.*, at 276–277. As the Court did so, it revisited the doctrine's justifications. Eventually, the Court decided that *Chevron* rested on "a presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows." *Smiley* v. *Citibank (South Dakota), N. A.*, 517 U. S. 735, 740–741 (1996); see also, *e.g.*, *Cuozzo Speed Technologies, LLC* v. *Lee*, 579 U. S. 261, 276–277 (2016); *Utility Air Regulatory Group* v. *EPA*, 573 U. S. 302, 315 (2014); *National Cable & Telecommunications Assn.* v. *Brand X Internet Services*, 545 U. S. 967, 982 (2005).

B

Neither *Chevron* nor any subsequent decision of this Court attempted to reconcile its framework with the APA. The "law of deference" that this Court has built on the foundation laid in *Chevron* has instead been "[h]eedless of the original design" of the APA. *Perez*, 575 U. S., at 109 (Scalia, J., concurring in judgment).

1

Chevron defies the command of the APA that "the reviewing court"—not the agency whose action it reviews—is to "decide *all* relevant questions of law" and "interpret . . . statutory provisions." §706 (emphasis added). It requires a court to *ignore*, not follow, "the reading the court would have reached" had it exercised its independent judgment as required by the APA. *Chevron*, 467 U. S., at 843, n. 11. And although exercising independent judgment is consistent with the "respect" historically given to Executive Branch interpretations, see, *e.g.*, *Edwards' Lessee*, 12 Wheat., at 210; *Skidmore*, 323 U. S., at 140, *Chevron* insists on much more. It demands that courts mechanically afford *binding* deference to agency interpretations, including those that have been inconsistent over time. See 467 U. S., at 863. Still worse, it forces courts to do so even when a pre-existing judicial precedent holds that the statute means something else—unless the prior court happened to also say that the statute is "unambiguous." *Brand X*, 545 U. S., at 982. That regime is the antithesis of the time honored approach the APA prescribes. In fretting over the prospect of "allow[ing]" a judicial interpretation of a statute "to override an agency's" in a dispute before a court, *ibid.*, *Chevron* turns the statutory scheme for judicial review of agency action upside down.

Chevron cannot be reconciled with the APA, as the Government and the dissent contend, by presuming that statutory ambiguities are implicit delegations to agencies. See

Brief for Respondents in No. 22–1219, pp. 13, 37–38; *post*, at 4–15 (opinion of KAGAN, J.). Presumptions have their place in statutory interpretation, but only to the extent that they approximate reality. *Chevron*'s presumption does not, because "[a]n ambiguity is simply not a delegation of law-interpreting power. *Chevron* confuses the two." C. Sunstein, Interpreting Statutes in the Regulatory State, 103 Harv. L. Rev. 405, 445 (1989). As *Chevron* itself noted, ambiguities may result from an inability on the part of Congress to squarely answer the question at hand, or from a failure to even "consider the question" with the requisite precision. 467 U. S., at 865. In neither case does an ambiguity necessarily reflect a congressional intent that an agency, as opposed to a court, resolve the resulting interpretive question. And many or perhaps most statutory ambiguities may be unintentional. As the Framers recognized, ambiguities will inevitably follow from "the complexity of objects, . . . the imperfection of the human faculties," and the simple fact that "no language is so copious as to supply words and phrases for every complex idea." The Federalist No. 37, at 236.

Courts, after all, routinely confront statutory ambiguities in cases having nothing to do with *Chevron*—cases that do not involve agency interpretations or delegations of authority. Of course, when faced with a statutory ambiguity in such a case, the ambiguity is not a delegation to anybody, and a court is not somehow relieved of its obligation to independently interpret the statute. Courts in that situation do not throw up their hands because "Congress's instructions have" supposedly "run out," leaving a statutory "gap." *Post*, at 2 (opinion of KAGAN, J.). Courts instead understand that such statutes, no matter how impenetrable, do—in fact, must—have a single, best meaning. That is the whole point of having written statutes; "every statute's meaning is fixed at the time of enactment." *Wisconsin Cen-*

tral Ltd. v. *United States*, 585 U. S. 274, 284 (2018) (emphasis deleted). So instead of declaring a particular party's reading "permissible" in such a case, courts use every tool at their disposal to determine the best reading of the statute and resolve the ambiguity.

In an agency case as in any other, though, even if some judges might (or might not) consider the statute ambiguous, there is a best reading all the same—"the reading the court would have reached" if no agency were involved. *Chevron*, 467 U. S., at 843, n. 11. It therefore makes no sense to speak of a "permissible" interpretation that is not the one the court, after applying all relevant interpretive tools, concludes is best. In the business of statutory interpretation, if it is not the best, it is not permissible.

Perhaps most fundamentally, *Chevron*'s presumption is misguided because agencies have no special competence in resolving statutory ambiguities. Courts do. The Framers, as noted, anticipated that courts would often confront statutory ambiguities and expected that courts would resolve them by exercising independent legal judgment. And even *Chevron* itself reaffirmed that "[t]he judiciary is the final authority on issues of statutory construction" and recognized that "in the absence of an administrative interpretation," it is "necessary" for a court to "impose its own construction on the statute." *Id.*, at 843, and n. 9. *Chevron* gravely erred, though, in concluding that the inquiry is fundamentally different just because an administrative interpretation is in play. The very point of the traditional tools of statutory construction—the tools courts use every day—is to resolve statutory ambiguities. That is no less true when the ambiguity is about the scope of an agency's own power—perhaps the occasion on which abdication in favor of the agency is *least* appropriate.

2

The Government responds that Congress must generally

intend for agencies to resolve statutory ambiguities because agencies have subject matter expertise regarding the statutes they administer; because deferring to agencies purportedly promotes the uniform construction of federal law; and because resolving statutory ambiguities can involve policymaking best left to political actors, rather than courts. See Brief for Respondents in No. 22–1219, pp. 16–19. The dissent offers more of the same. See *post*, at 9–14. But none of these considerations justifies *Chevron*'s sweeping presumption of congressional intent.

Beginning with expertise, we recently noted that interpretive issues arising in connection with a regulatory scheme often "may fall more naturally into a judge's bailiwick" than an agency's. *Kisor*, 588 U. S., at 578 (opinion of the Court). We thus observed that "[w]hen the agency has no comparative expertise in resolving a regulatory ambiguity, Congress presumably would not grant it that authority." *Ibid.* *Chevron*'s broad rule of deference, though, demands that courts presume just the opposite. Under that rule, ambiguities of all stripes trigger deference. Indeed, the Government and, seemingly, the dissent continue to defend the proposition that *Chevron* applies even in cases having little to do with an agency's technical subject matter expertise. See Brief for Respondents in No. 22–1219, p. 17; *post*, at 10.

But even when an ambiguity happens to implicate a technical matter, it does not follow that Congress has taken the power to authoritatively interpret the statute from the courts and given it to the agency. Congress expects courts to handle technical statutory questions. "[M]any statutory cases" call upon "courts [to] interpret the mass of technical detail that is the ordinary diet of the law," *Egelhoff* v. *Egelhoff*, 532 U. S. 141, 161 (2001) (Breyer, J., dissenting), and courts did so without issue in agency cases before *Chevron*, see *post*, at 30 (GORSUCH, J., concurring). Courts, after all, do not decide such questions blindly. The parties and

amici in such cases are steeped in the subject matter, and reviewing courts have the benefit of their perspectives. In an agency case in particular, the court will go about its task with the agency's "body of experience and informed judgment," among other information, at its disposal. *Skidmore*, 323 U. S., at 140. And although an agency's interpretation of a statute "cannot bind a court," it may be especially informative "to the extent it rests on factual premises within [the agency's] expertise." *Bureau of Alcohol, Tobacco and Firearms* v. *FLRA*, 464 U. S. 89, 98, n. 8 (1983). Such expertise has always been one of the factors which may give an Executive Branch interpretation particular "power to persuade, if lacking power to control." *Skidmore*, 323 U. S., at 140; see, *e.g.*, *County of Maui* v. *Hawaii Wildlife Fund*, 590 U. S. 165, 180 (2020); *Moore*, 95 U. S., at 763.

For those reasons, delegating ultimate interpretive authority to agencies is simply not necessary to ensure that the resolution of statutory ambiguities is well informed by subject matter expertise. The better presumption is therefore that Congress expects courts to do their ordinary job of interpreting statutes, with due respect for the views of the Executive Branch. And to the extent that Congress and the Executive Branch may disagree with how the courts have performed that job in a particular case, they are of course always free to act by revising the statute.

Nor does a desire for the uniform construction of federal law justify *Chevron*. Given inconsistencies in how judges apply *Chevron*, see *infra*, at 30–33, it is unclear how much the doctrine as a whole (as opposed to its highly deferential second step) actually promotes such uniformity. In any event, there is little value in imposing a uniform interpretation of a statute if that interpretation is wrong. We see no reason to presume that Congress prefers uniformity for uniformity's sake over the correct interpretation of the laws it enacts.

The view that interpretation of ambiguous statutory provisions amounts to policymaking suited for political actors rather than courts is especially mistaken, for it rests on a profound misconception of the judicial role. It is reasonable to assume that Congress intends to leave policymaking to political actors. But resolution of statutory ambiguities involves legal interpretation. That task does not suddenly become policymaking just because a court has an "agency to fall back on." *Kisor*, 588 U. S., at 575 (opinion of the Court). Courts interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences. Indeed, the Framers crafted the Constitution to ensure that federal judges could exercise judgment free from the influence of the political branches. See The Federalist, No. 78, at 522–525. They were to construe the law with "[c]lear heads . . . and honest hearts," not with an eye to policy preferences that had not made it into the statute. 1 Works of James Wilson 363 (J. Andrews ed. 1896).

That is not to say that Congress cannot or does not confer discretionary authority on agencies. Congress may do so, subject to constitutional limits, and it often has. But to stay out of discretionary policymaking left to the political branches, judges need only fulfill their obligations under the APA to independently identify and respect such delegations of authority, police the outer statutory boundaries of those delegations, and ensure that agencies exercise their discretion consistent with the APA. By forcing courts to instead pretend that ambiguities are necessarily delegations, *Chevron* does not prevent judges from making policy. It prevents them from judging.

3

In truth, *Chevron*'s justifying presumption is, as Members of this Court have often recognized, a fiction. See *Buffington* v. *McDonough*, 598 U. S. ___, ___ (2022) (GORSUCH,

J., dissenting from denial of certiorari) (slip op., at 11); *Cuozzo*, 579 U. S., at 286 (THOMAS, J., concurring); Scalia, 1989 Duke L. J., at 517; see also *post*, at 15 (opinion of KAGAN, J.). So we have spent the better part of four decades imposing one limitation on *Chevron* after another, pruning its presumption on the understanding that "where it is in doubt that Congress actually intended to delegate particular interpretive authority to an agency, *Chevron* is 'inapplicable.'" *United States* v. *Mead Corp.*, 533 U. S. 218, 230 (2001) (quoting *Christensen* v. *Harris County*, 529 U. S. 576, 597 (2000) (Breyer, J., dissenting)); see also *Adams Fruit Co.* v. *Barrett*, 494 U. S. 638, 649 (1990).

Consider the many refinements we have made in an effort to match *Chevron*'s presumption to reality. We have said that *Chevron* applies only "when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority." *Mead*, 533 U. S., at 226–227. In practice, that threshold requirement—sometimes called *Chevron* "step zero"—largely limits *Chevron* to "the fruits of notice-and-comment rulemaking or formal adjudication." 533 U. S., at 230. But even when those processes are used, deference is still not warranted "where the regulation is 'procedurally defective'—that is, where the agency errs by failing to follow the correct procedures in issuing the regulation." *Encino Motorcars, LLC* v. *Navarro*, 579 U. S. 211, 220 (2016) (quoting *Mead*, 533 U. S., at 227).

Even where those procedural hurdles are cleared, substantive ones remain. Most notably, *Chevron* does not apply if the question at issue is one of "deep 'economic and political significance.'" *King* v. *Burwell*, 576 U. S. 473, 486 (2015). We have instead expected Congress to delegate such authority "expressly" if at all, *ibid.*, for "[e]xtraordinary grants of regulatory authority are rarely accomplished through 'modest words,' 'vague terms,' or 'subtle device[s],'"

West Virginia v. *EPA*, 597 U. S. 697, 723 (2022) (quoting *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 468 (2001); alteration in original). Nor have we applied *Chevron* to agency interpretations of judicial review provisions, see *Adams Fruit Co.*, 494 U. S., at 649–650, or to statutory schemes not administered by the agency seeking deference, see *Epic Systems Corp.* v. *Lewis*, 584 U. S. 497, 519–520 (2018). And we have sent mixed signals on whether *Chevron* applies when a statute has criminal applications. Compare *Abramski* v. *United States*, 573 U. S. 169, 191 (2014), with *Babbitt* v. *Sweet Home Chapter, Communities for Great Ore.*, 515 U. S. 687, 704, n. 18 (1995).

Confronted with this byzantine set of preconditions and exceptions, some courts have simply bypassed *Chevron*, saying it makes no difference for one reason or another.[7] And even when they do invoke *Chevron*, courts do not always heed the various steps and nuances of that evolving doctrine. In one of the cases before us today, for example, the First Circuit both skipped "step zero," see 62 F. 4th, at 628, and refused to "classify [its] conclusion as a product of *Chevron* step one or step two"—though it ultimately appears to have deferred under step two, *id.*, at 634.

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[7] See, *e.g.*, *Guedes* v. *Bureau of Alcohol, Tobacco, Firearms and Explosives*, 45 F. 4th 306, 313–314 (CADC 2022), abrogated by *Garland* v. *Cargill*, 602 U. S. ___ (2024); *County of Amador* v. *United States Dept. of Interior*, 872 F. 3d 1012, 1021–1022 (CA9 2017); *Estrada-Rodriguez* v. *Lynch*, 825 F. 3d 397, 403–404 (CA8 2016); *Nielsen* v. *AECOM Tech. Corp.*, 762 F. 3d 214, 220 (CA2 2014); *Alaska Stock, LLC* v. *Houghton Mifflin Harcourt Publishing Co.*, 747 F. 3d 673, 685, n. 52 (CA9 2014); *Jurado-Delgado* v. *Attorney Gen. of U. S.*, 498 Fed. Appx. 107, 117 (CA3 2009); see also D. Brookins, Confusion in the Circuit Courts: How the Circuit Courts Are Solving the *Mead*-Puzzle by Avoiding It Altogether, 85 Geo. Wash. L. Rev. 1484, 1496–1499 (2017) (documenting *Chevron* avoidance by the lower courts); A. Vermeule, Our Schmittian Administrative Law, 122 Harv. L. Rev. 1095, 1127–1129 (2009) (same); L. Bressman, How *Mead* Has Muddled Judicial Review of Agency Action, 58 Vand. L. Rev. 1443, 1464–1466 (2005) (same).

This Court, for its part, has not deferred to an agency interpretation under *Chevron* since 2016. See *Cuozzo*, 579 U. S., at 280 (most recent occasion). But *Chevron* remains on the books. So litigants must continue to wrestle with it, and lower courts—bound by even our crumbling precedents, see *Agostini* v. *Felton*, 521 U. S. 203, 238 (1997)—understandably continue to apply it.

The experience of the last 40 years has thus done little to rehabilitate *Chevron*. It has only made clear that *Chevron*'s fictional presumption of congressional intent was always unmoored from the APA's demand that courts exercise independent judgment in construing statutes administered by agencies. At best, our intricate *Chevron* doctrine has been nothing more than a distraction from the question that matters: Does the statute authorize the challenged agency action? And at worst, it has required courts to violate the APA by yielding to an agency the express responsibility, vested in "the reviewing *court*," to "decide all relevant questions of law" and "interpret . . . statutory provisions." §706 (emphasis added).

IV

The only question left is whether *stare decisis*, the doctrine governing judicial adherence to precedent, requires us to persist in the *Chevron* project. It does not. *Stare decisis* is not an "inexorable command," *Payne* v. *Tennessee*, 501 U. S. 808, 828 (1991), and the *stare decisis* considerations most relevant here—"the quality of [the precedent's] reasoning, the workability of the rule it established, . . . and reliance on the decision," *Knick* v. *Township of Scott*, 588 U. S. 180, 203 (2019) (quoting *Janus* v. *State, County, and Municipal Employees*, 585 U. S. 878, 917 (2018))—all weigh in favor of letting *Chevron* go.

Chevron has proved to be fundamentally misguided. Despite reshaping judicial review of agency action, neither it nor any case of ours applying it grappled with the APA—

the statute that lays out how such review works. Its flaws were nonetheless apparent from the start, prompting this Court to revise its foundations and continually limit its application. It has launched and sustained a cottage industry of scholars attempting to decipher its basis and meaning. And Members of this Court have long questioned its premises. See, *e.g.*, *Pereira* v. *Sessions*, 585 U. S. 198, 219–221 (2018) (Kennedy, J., concurring); *Michigan*, 576 U. S., at 760–764 (THOMAS, J., concurring); *Buffington*, 598 U. S. ___ (opinion of GORSUCH, J.); B. Kavanaugh, Fixing Statutory Interpretation, 129 Harv. L. Rev. 2118, 2150–2154 (2016). Even Justice Scalia, an early champion of *Chevron*, came to seriously doubt whether it could be reconciled with the APA. See *Perez*, 575 U. S., at 109–110 (opinion concurring in judgment). For its entire existence, *Chevron* has been a "rule in search of a justification," *Knick*, 588 U. S., at 204, if it was ever coherent enough to be called a rule at all.

Experience has also shown that *Chevron* is unworkable. The defining feature of its framework is the identification of statutory ambiguity, which requires deference at the doctrine's second step. But the concept of ambiguity has always evaded meaningful definition. As Justice Scalia put the dilemma just five years after *Chevron* was decided: "How clear is clear?" 1989 Duke L. J., at 521.

We are no closer to an answer to that question than we were four decades ago. "'[A]mbiguity' is a term that may have different meanings for different judges." *Exxon Mobil Corp.* v. *Allapattah Services, Inc.*, 545 U. S. 546, 572 (2005) (Stevens, J., dissenting). One judge might see ambiguity everywhere; another might never encounter it. Compare L. Silberman, Chevron—The Intersection of Law & Policy, 58 Geo. Wash. L. Rev. 821, 822 (1990), with R. Kethledge, Ambiguities and Agency Cases: Reflections After (Almost) Ten Years on the Bench, 70 Vand. L. Rev. En Banc 315, 323 (2017). A rule of law that is so wholly "in the eye of the

beholder," *Exxon Mobil Corp.*, 545 U. S., at 572 (Stevens, J., dissenting), invites different results in like cases and is therefore "arbitrary in practice," *Gulfstream Aerospace Corp.* v. *Mayacamas Corp.*, 485 U. S. 271, 283 (1988). Such an impressionistic and malleable concept "cannot stand as an every-day test for allocating" interpretive authority between courts and agencies. *Swift & Co.* v. *Wickham*, 382 U. S. 111, 125 (1965).

The dissent proves the point. It tells us that a court should reach *Chevron*'s second step when it finds, "at the end of its interpretive work," that "Congress has left an ambiguity or gap." *Post*, at 1–2. (The Government offers a similar test. See Brief for Respondents in No. 22–1219, pp. 7, 10, 14; Tr. of Oral Arg. 113–114, 116.) That is no guide at all. Once more, the basic nature and meaning of a statute does not change when an agency happens to be involved. Nor does it change just because the agency has happened to offer its interpretation through the sort of procedures necessary to obtain deference, or because the other preconditions for *Chevron* happen to be satisfied. The statute still has a best meaning, necessarily discernible by a court deploying its full interpretive toolkit. So for the dissent's test to have any meaning, it must think that in an agency case (unlike in any other), a court should give up on its "interpretive work" before it has identified that best meaning. But how does a court know when to do so? On that point, the dissent leaves a gap of its own. It protests only that some other interpretive tools—all with pedigrees more robust than *Chevron*'s, and all designed to help courts identify the meaning of a text rather than allow the Executive Branch to displace it—also apply to ambiguous texts. See *post*, at 27. That this is all the dissent can come up with, after four decades of judicial experience attempting to identify ambiguity under *Chevron*, reveals the futility of the

exercise.[8]

Because *Chevron* in its original, two-step form was so indeterminate and sweeping, we have instead been forced to clarify the doctrine again and again. Our attempts to do so have only added to *Chevron*'s unworkability, transforming the original two-step into a dizzying breakdance. See *Adams Fruit Co.*, 494 U. S., at 649–650; *Mead*, 533 U. S., at 226–227; *King*, 576 U. S., at 486; *Encino Motorcars*, 579 U. S., at 220; *Epic Systems*, 584 U. S., at 519–520; on and on. And the doctrine continues to spawn difficult threshold questions that promise to further complicate the inquiry should *Chevron* be retained. See, *e.g.*, *Cargill* v. *Garland*, 57 F. 4th 447, 465–468 (CA5 2023) (plurality opinion) (May the Government waive reliance on *Chevron*? Does *Chevron* apply to agency interpretations of statutes imposing criminal penalties? Does *Chevron* displace the rule of lenity?), aff'd, 602 U. S. ___ (2024).

Four decades after its inception, *Chevron* has thus become an impediment, rather than an aid, to accomplishing the basic judicial task of "say[ing] what the law is." *Marbury*, 1 Cranch, at 177. And its continuing import is far from clear. Courts have often declined to engage with the doctrine, saying it makes no difference. See n. 7, *supra*. And as noted, we have avoided deferring under *Chevron* since 2016. That trend is nothing new; for decades, we have often declined to invoke *Chevron* even in those cases where it might appear to be applicable. See W. Eskridge & L. Baer, The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations From *Chevron* to *Hamdan*, 96 Geo. L. J. 1083, 1125 (2008). At this point, all

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[8] Citing an empirical study, the dissent adds that *Chevron* "fosters *agreement* among judges." *Post*, at 28. It is hardly surprising that a study might find as much; *Chevron*'s second step is supposed to be hospitable to agency interpretations. So when judges get there, they tend to agree that the agency wins. That proves nothing about the supposed ease or predictability of identifying ambiguity in the first place.

that remains of *Chevron* is a decaying husk with bold pretensions.

Nor has *Chevron* been the sort of "'stable background' rule" that fosters meaningful reliance. *Post*, at 8, n. 1 (opinion of KAGAN, J.) (quoting *Morrison* v. *National Australia Bank Ltd.*, 561 U. S. 247, 261 (2010)). Given our constant tinkering with and eventual turn away from *Chevron*, and its inconsistent application by the lower courts, it instead is hard to see how anyone—Congress included—could reasonably expect a court to rely on *Chevron* in any particular case. And even if it were possible to predict accurately when courts will apply *Chevron*, the doctrine "does not provide 'a clear or easily applicable standard, so arguments for reliance based on its clarity are misplaced.'" *Janus*, 585 U. S., at 927 (quoting *South Dakota* v. *Wayfair, Inc.*, 585 U. S. 162, 186 (2018)). To plan on *Chevron* yielding a particular result is to gamble not only that the doctrine will be invoked, but also that it will produce readily foreseeable outcomes and the stability that comes with them. History has proved neither bet to be a winning proposition.

Rather than safeguarding reliance interests, *Chevron* affirmatively destroys them. Under *Chevron*, a statutory ambiguity, no matter why it is there, becomes a license authorizing an agency to change positions as much as it likes, with "[u]nexplained inconsistency" being "at most . . . a reason for holding an interpretation to be . . . arbitrary and capricious." *Brand X*, 545 U. S., at 981. But statutory ambiguity, as we have explained, is not a reliable indicator of actual delegation of discretionary authority to agencies. *Chevron* thus allows agencies to change course even when Congress has given them no power to do so. By its sheer breadth, *Chevron* fosters unwarranted instability in the law, leaving those attempting to plan around agency action in an eternal fog of uncertainty.

Chevron accordingly has undermined the very "rule of law" values that *stare decisis* exists to secure. *Michigan* v.

Bay Mills Indian Community, 572 U. S. 782, 798 (2014). And it cannot be constrained by admonishing courts to be extra careful, or by tacking on a new batch of conditions. We would need to once again "revis[e] its theoretical basis . . . in order to cure its practical deficiencies." *Montejo* v. *Louisiana*, 556 U. S. 778, 792 (2009). *Stare decisis* does not require us to do so, especially because any refinements we might make would only point courts back to their duties under the APA to "decide all relevant questions of law" and "interpret . . . statutory provisions." §706. Nor is there any reason to wait helplessly for Congress to correct our mistake. The Court has jettisoned many precedents that Congress likewise could have legislatively overruled. See, *e.g.*, *Patterson* v. *McLean Credit Union*, 485 U. S. 617, 618 (1988) (*per curiam*) (collecting cases). And part of "judicial humility," *post*, at 3, 25 (opinion of KAGAN, J.,), is admitting and in certain cases correcting our own mistakes, especially when those mistakes are serious, see *post*, at 8–9 (opinion of GORSUCH, J.).

This is one of those cases. *Chevron* was a judicial invention that required judges to disregard their statutory duties. And the only way to "ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion," *Vasquez* v. *Hillery*, 474 U. S. 254, 265 (1986), is for us to leave *Chevron* behind.

By doing so, however, we do not call into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are lawful—including the Clean Air Act holding of *Chevron* itself—are still subject to statutory *stare decisis* despite our change in interpretive methodology. See *CBOCS West, Inc.* v. *Humphries*, 553 U. S. 442, 457 (2008). Mere reliance on *Chevron* cannot constitute a "'special justification'" for overruling such a holding, because to say a precedent relied on *Chevron* is, at best, "just an argument that the precedent was wrongly decided." *Halliburton Co.* v. *Erica P. John Fund,*

Inc., 573 U. S. 258, 266 (2014) (quoting *Dickerson* v. *United States*, 530 U. S. 428, 443 (2000)). That is not enough to justify overruling a statutory precedent.

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The dissent ends by quoting *Chevron*: "'Judges are not experts in the field.'" *Post*, at 31 (quoting 467 U. S., at 865). That depends, of course, on what the "field" is. If it is legal interpretation, that has been, "emphatically," "the province and duty of the judicial department" for at least 221 years. *Marbury*, 1 Cranch, at 177. The rest of the dissent's selected epigraph is that judges "'are not part of either political branch.'" *Post*, at 31 (quoting *Chevron*, 467 U. S., at 865). Indeed. Judges have always been expected to apply their "judgment" *independent* of the political branches when interpreting the laws those branches enact. The Federalist No. 78, at 523. And one of those laws, the APA, bars judges from disregarding that responsibility just because an Executive Branch agency views a statute differently.

Chevron is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires. Careful attention to the judgment of the Executive Branch may help inform that inquiry. And when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it. But courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.

Because the D. C. and First Circuits relied on *Chevron* in deciding whether to uphold the Rule, their judgments are vacated, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

Nos. 22–451 and 22–1219

LOPER BRIGHT ENTERPRISES, ET AL.,
PETITIONERS
22–451 *v.*
GINA RAIMONDO, SECRETARY OF
COMMERCE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

RELENTLESS, INC., ET AL., PETITIONERS
22–1219 *v.*
DEPARTMENT OF COMMERCE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[June 28, 2024]

JUSTICE THOMAS, concurring.

I join the Court's opinion in full because it correctly concludes that *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), must finally be overruled. Under *Chevron*, a judge was required to adopt an agency's interpretation of an ambiguous statute, so long as the agency had a "permissible construction of the statute." See *id.*, at 843. As the Court explains, that deference does not comport with the Administrative Procedure Act, which requires judges to decide "all relevant questions of law" and "interpret constitutional and statutory provisions" when reviewing an agency action. 5 U. S. C. §706; see also *ante,* at 18–23; *Baldwin* v. *United States*, 589 U. S. ___, ___–___ (2020) (THOMAS, J., dissenting from denial of certiorari) (slip op., at 4–5).

I write separately to underscore a more fundamental problem: *Chevron* deference also violates our Constitution's separation of powers, as I have previously explained at length. See *Baldwin*, 589 U. S., at ___–___ (dissenting opinion) (slip op., at 2–4); *Michigan* v. *EPA*, 576 U. S. 743, 761–763 (2015) (concurring opinion); see also *Perez* v. *Mortgage Bankers Assn.*, 575 U. S. 92, 115–118 (2015) (opinion concurring in judgment). And, I agree with JUSTICE GORSUCH that we should not overlook *Chevron*'s constitutional defects in overruling it.* *Post*, at 15–20 (concurring opinion). To provide "practical and real protections for individual liberty," the Framers drafted a Constitution that divides the legislative, executive, and judicial powers between three branches of Government. *Perez*, 575 U. S., at 118 (opinion of THOMAS, J.). *Chevron* deference compromises this separation of powers in two ways. It curbs the judicial power afforded to courts, and simultaneously expands agencies' executive power beyond constitutional limits.

Chevron compels judges to abdicate their Article III "judicial Power." §1. "[T]he judicial power, as originally understood, requires a court to exercise its independent judgment in interpreting and expounding upon the laws." *Perez*, 575 U. S., at 119 (opinion of THOMAS, J.); accord, *post*, at 17–18 (opinion of GORSUCH, J.). The Framers understood that "legal texts . . . often contain ambiguities," and that the judicial power included "the power to resolve these ambiguities over time." *Perez*, 575 U. S., at 119 (opinion of THOMAS, J.); accord, *ante,* at 7–9. But, under *Chevron*, a judge must accept an agency's interpretation of an ambiguous law, even if he thinks another interpretation is correct. *Ante*, at 19. *Chevron* deference thus prevents judges from

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*There is much to be commended in JUSTICE GORSUCH's careful consideration from first principles of the weight we should afford to our precedent. I agree with the lion's share of his concurrence. See generally *Gamble* v. *United States*, 587 U. S. 678, 710 (2019) (THOMAS, J., concurring).

exercising their independent judgment to resolve ambiguities. *Baldwin*, 589 U. S., at ___ (opinion of THOMAS, J.) (slip op., at 3); see also *Michigan*, 576 U. S., at 761 (opinion of THOMAS, J.); see also *Perez*, 575 U. S., at 123 (opinion of THOMAS, J.). By tying a judge's hands, *Chevron* prevents the Judiciary from serving as a constitutional check on the Executive. It allows "the Executive . . . to dictate the outcome of cases through erroneous interpretations." *Baldwin*, 589 U. S., at ___ (opinion of THOMAS, J.) (slip op., at 4); *Michigan*, 576 U. S., at 763, n. 1 (opinion of THOMAS, J.); see also *Perez*, 575 U. S., at 124 (opinion of THOMAS, J.). Because the judicial power requires judges to exercise their independent judgment, the deference that *Chevron* requires contravenes Article III's mandate.

Chevron deference also permits the Executive Branch to exercise powers not given to it. "When the Government is called upon to perform a function that requires an exercise of legislative, executive, or judicial power, only the vested recipient of that power can perform it." *Department of Transportation* v. *Association of American Railroads*, 575 U. S. 43, 68 (2015) (THOMAS, J., concurring in judgment). Because the Constitution gives the Executive Branch only "[t]he executive Power," executive agencies may constitutionally exercise only that power. Art. II, §1, cl. 1. But, *Chevron* gives agencies license to exercise judicial power. By allowing agencies to definitively interpret laws so long as they are ambiguous, *Chevron* "transfer[s]" the Judiciary's "interpretive judgment to the agency." *Perez*, 575 U. S., at 124 (opinion of THOMAS, J.); see also *Baldwin*, 589 U. S., at ___ (opinion of THOMAS, J.) (slip op., at 4); *Michigan*, 576 U. S., at 761–762 (opinion of THOMAS, J.); *post*, at 18 (GORSUCH, J., concurring).

Chevron deference "cannot be salvaged" by recasting it as deference to an agency's "formulation of policy." *Baldwin*, 589 U. S., at ___ (opinion of THOMAS, J.) (internal quotation marks omitted) (slip op., at 3). If that were true, *Chevron*

would mean that "agencies are unconstitutionally exercising 'legislative Powers' vested in Congress." *Baldwin*, 589 U. S., at ___ (opinion of THOMAS, J.) (slip op., at 3) (quoting Art. I, §1). By "giv[ing] the force of law to agency pronouncements on matters of private conduct as to which Congress did not actually have an intent," *Chevron* "permit[s] a body other than Congress to perform a function that requires an exercise of legislative power." *Michigan*, 576 U. S., at 762 (opinion of THOMAS, J.) (internal quotation marks omitted). No matter the gloss put on it, *Chevron* expands agencies' power beyond the bounds of Article II by permitting them to exercise powers reserved to another branch of Government.

Chevron deference was "not a harmless transfer of power." *Baldwin*, 589 U. S., at ___ (opinion of THOMAS, J.) (slip op., at 3). "The Constitution carefully imposes structural constraints on all three branches, and the exercise of power free of those accompanying restraints subverts the design of the Constitution's ratifiers." *Ibid.* In particular, the Founders envisioned that "the courts [would] check the Executive by applying the correct interpretation of the law." *Id.*, at ___ (slip op., at 4). *Chevron* was thus a fundamental disruption of our separation of powers. It improperly strips courts of judicial power by simultaneously increasing the power of executive agencies. By overruling *Chevron*, we restore this aspect of our separation of powers. To safeguard individual liberty, "[s]tructure is everything." A. Scalia, Foreword: The Importance of Structure in Constitutional Interpretation, 83 Notre Dame L. Rev. 1417, 1418 (2008). Although the Court finally ends our 40-year misadventure with *Chevron* deference, its more profound problems should not be overlooked. Regardless of what a statute says, the type of deference required by *Chevron* violates the Constitution.

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COMMERCE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

RELENTLESS, INC., ET AL., PETITIONERS
22–1219 *v.*
DEPARTMENT OF COMMERCE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[June 28, 2024]

JUSTICE GORSUCH, concurring.

In disputes between individuals and the government about the meaning of a federal law, federal courts have traditionally sought to offer independent judgments about "what the law is" without favor to either side. *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803). Beginning in the mid-1980s, however, this Court experimented with a radically different approach. Applying *Chevron* deference, judges began deferring to the views of executive agency officials about the meaning of federal statutes. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). With time, the error of this approach became widely appreciated. So much so that this Court has refused to apply *Chevron* deference since 2016. Today, the Court places a tombstone on *Chevron* no one can miss. In doing

so, the Court returns judges to interpretive rules that have guided federal courts since the Nation's founding. I write separately to address why the proper application of the doctrine of *stare decisis* supports that course.

I

A

Today, the phrase "common law judge" may call to mind a judicial titan of the past who brilliantly devised new legal rules on his own. The phrase "*stare decisis*" might conjure up a sense that judges who come later in time are strictly bound to follow the work of their predecessors. But neither of those intuitions fairly describes the traditional common-law understanding of the judge's role or the doctrine of *stare decisis*.

At common law, a judge's charge to decide cases was not usually understood as a license to make new law. For much of England's early history, different rulers and different legal systems prevailed in different regions. As England consolidated into a single kingdom governed by a single legal system, the judge's task was to examine those pre-existing legal traditions and apply in the disputes that came to him those legal rules that were "common to the whole land and to all Englishmen." F. Maitland, Equity, Also the Forms of Action at Common Law 2 (1929). That was "common law" judging.

This view of the judge's role had consequences for the authority due judicial decisions. Because a judge's job was to find and apply the law, not make it, the "opinion of the judge" and "the law" were not considered "one and the same thing." 1 W. Blackstone, Commentaries on the Laws of England 71 (1765) (Blackstone) (emphasis deleted). A judge's decision might bind the parties to the case at hand. M. Hale, The History and Analysis of the Common Law of England 68 (1713) (Hale). But none of that meant the judge had the power to "make a Law properly so called" for society

at large, "for that only the King and Parliament can do." *Ibid.*

Other consequences followed for the role precedent played in future judicial proceedings. Because past decisions represented something "less than a Law," they did not bind future judges. *Ibid.* At the same time, as Matthew Hale put it, a future judge could give a past decision "Weight" as "Evidence" of the law. *Ibid.* Expressing the same idea, William Blackstone conceived of judicial precedents as "evidence" of "the common law." 1 Blackstone 69, 71. And much like other forms of evidence, precedents at common law were thought to vary in the weight due them. Some past decisions might supply future courts with considerable guidance. But others might be entitled to lesser weight, not least because judges are no less prone to error than anyone else and they may sometimes "mistake" what the law demands. *Id.*, at 71 (emphasis deleted). In cases like that, both men thought, a future judge should not rotely repeat a past mistake but instead "vindicate" the law "from misrepresentation." *Id.*, at 70.

When examining past decisions as evidence of the law, common law judges did not, broadly speaking, afford overwhelming weight to any "single precedent." J. Baker, An Introduction to English Legal History 209–210 (5th ed. 2019). Instead, a prior decision's persuasive force depended in large measure on its "Consonancy and Congruity with Resolutions and Decisions of former Times." Hale 68. An individual decision might reflect the views of one court at one moment in time, but a consistent line of decisions representing the wisdom of many minds across many generations was generally considered stronger evidence of the law's meaning. *Ibid.*

With this conception of precedent in mind, Lord Mansfield cautioned against elevating "particular cases" above the "general principles" that "run through the cases, and govern the decision of them." *Rust* v. *Cooper*, 2 Cowp. 629,

632, 98 Eng. Rep. 1277, 1279 (K. B. 1777). By discarding aberrational rulings and pursuing instead the mainstream of past decisions, he observed, the common law tended over time to "wor[k] itself pure." *Omychund* v. *Barker*, 1 Atk. 22, 33, 26 Eng. Rep. 15, 23 (Ch. 1744) (emphasis deleted). Reflecting similar thinking, Edmund Burke offered five principles for the evaluation of past judicial decisions: "They ought to be shewn; first, to be numerous and not scattered here and there;—secondly, concurrent and not contradictory and mutually destructive;—thirdly, to be made in good and constitutional times;—fourthly, not to be made to serve an occasion;—and fifthly, to be agreeable to the general tenor of legal principles." Speech of Dec. 23, 1790, in 3 The Speeches of the Right Honourable Edmund Burke 513 (1816).

Not only did different decisions carry different weight, so did different language within a decision. An opinion's holding and the reasoning essential to it (the *ratio decidendi*) merited careful attention. Dicta, stray remarks, and digressions warranted less weight. See N. Duxbury, The Intricacies of Dicta and Dissent 19–24 (2021) (Duxbury). These were no more than "the vapours and fumes of law." F. Bacon, The Lord Keeper's Speech in the Exchequer (1617), in 2 The Works of Francis Bacon 478 (B. Montagu ed. 1887) (Bacon).

That is not to say those "vapours" were worthless. Often dicta might provide the parties to a particular dispute a "fuller understanding of the court's decisional path or related areas of concern." B. Garner et al., The Law of Judicial Precedent 65 (2016) (Precedent). Dicta might also provide future courts with a source of "thoughtful advice." *Ibid.* But future courts had to be careful not to treat every "hasty expression . . . as a serious and deliberate opinion." *Steel* v. *Houghton*, 1 Bl. H. 51, 53, 126 Eng. Rep. 32, 33 (C. P. 1788). To do so would work an "injustice to [the] memory" of their predecessors who could not expect judicial

remarks issued in one context to apply perfectly in others, perhaps especially ones they could not foresee. *Ibid.* Also, the limits of the adversarial process, a distinctive feature of English law, had to be borne in mind. When a single judge or a small panel reached a decision in a case, they did so based on the factual record and legal arguments the parties at hand have chosen to develop. Attuned to those constraints, future judges had to proceed with an open mind to the possibility that different facts and different legal arguments might dictate different outcomes in later disputes. See Duxbury 19–24.

B

Necessarily, this represents just a quick sketch of traditional common-law understandings of the judge's role and the place of precedent in it. It focuses, too, on the horizontal, not vertical, force of judicial precedents. But there are good reasons to think that the common law's understandings of judges and precedent outlined above crossed the Atlantic and informed the nature of the "judicial Power" the Constitution vests in federal courts. Art. III, §1.

Not only was the Constitution adopted against the backdrop of these understandings and, in light of that alone, they may provide evidence of what the framers meant when they spoke of the "judicial Power." Many other, more specific provisions in the Constitution reflect much the same distinction between lawmaking and lawfinding functions the common law did. The Constitution provides that its terms may be amended only through certain prescribed democratic processes. Art. V. It vests the power to enact federal legislation exclusively in the people's elected representatives in Congress. Art. I, §1. Meanwhile, the Constitution describes the judicial power as the power to resolve cases and controversies. Art. III, §2, cl. 1. As well, it delegates that authority to life-tenured judges, see §1, an assignment that would have made little sense if judges could

usurp lawmaking powers vested in periodically elected representatives. But one that makes perfect sense if what is sought is a neutral party "to interpret and apply" the law without fear or favor in a dispute between others. 2 The Works of James Wilson 161 (J. Andrews ed. 1896) (Wilson); see *Osborn* v. *Bank of United States*, 9 Wheat. 738, 866 (1824).

The constrained view of the judicial power that runs through our Constitution carries with it familiar implications, ones the framers readily acknowledged. James Madison, for example, proclaimed that it would be a "fallacy" to suggest that judges or their precedents could "repeal or alter" the Constitution or the laws of the United States. Letter to N. Trist (Dec. 1831), in 9 The Writings of James Madison 477 (G. Hunt ed. 1910). A court's opinion, James Wilson added, may be thought of as "effective la[w]" "[a]s to the parties." Wilson 160–161. But as in England, Wilson said, a prior judicial decision could serve in a future dispute only as "evidence" of the law's proper construction. *Id.*, at 160; accord, 1 J. Kent, Commentaries on American Law 442–443 (1826).

The framers also recognized that the judicial power described in our Constitution implies, as the judicial power did in England, a power (and duty) of discrimination when it comes to assessing the "evidence" embodied in past decisions. So, for example, Madison observed that judicial rulings "*repeatedly confirmed*" may supply better evidence of the law's meaning than isolated or aberrant ones. Letter to C. Ingersoll (June 1831), in 4 Letters and Other Writings of James Madison 184 (1867) (emphasis added). Extending the thought, Thomas Jefferson believed it would often take "numerous decisions" for the meaning of new statutes to become truly "settled." Letter to S. Jones (July 1809), in 12 The Writings of Thomas Jefferson 299 (A. Bergh ed. 1907).

From the start, too, American courts recognized that not everything found in a prior decision was entitled to equal

weight. As Chief Justice Marshall warned, "It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used." *Cohens* v. *Virginia*, 6 Wheat. 264, 399 (1821). To the extent a past court offered views "beyond the case," those expressions "may be respected" in a later case "but ought not to control the judgment." *Ibid.* One "obvious" reason for this, Marshall continued, had to do with the limits of the adversarial process we inherited from England: Only "[t]he question actually before the Court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated." *Id.*, at 399–400.

Abraham Lincoln championed these traditional understandings in his debates with Stephen Douglas. Douglas took the view that a single decision of this Court—no matter how flawed—could definitively resolve a contested issue for everyone and all time. Those who thought otherwise, he said, "aim[ed] a deadly blow to our whole Republican system of government." Speech at Springfield, Ill. (June 26, 1857), in 2 The Collected Works of Abraham Lincoln 401 (R. Basler ed. 1953) (Lincoln Speech). But Lincoln knew better. While accepting that judicial decisions "absolutely determine" the rights of the parties to a court's judgment, he refused to accept that any single judicial decision could "fully settl[e]" an issue, particularly when that decision departs from the Constitution. *Id.*, at 400–401. In cases such as these, Lincoln explained, "it is not resistance, it is not factious, it is not even disrespectful, to treat [the decision] as not having yet quite established a settled doctrine for the country." *Id.*, at 401.

After the Civil War, the Court echoed some of these same points. It stressed that every statement in a judicial opin-

ion "must be taken in connection with its immediate context," *In re Ayers*, 123 U. S. 443, 488 (1887), and stray "remarks" must not be elevated above the written law, see *The Belfast*, 7 Wall. 624, 641 (1869); see also, *e.g.*, *Trebilcock* v. *Wilson*, 12 Wall. 687, 692–693 (1872); *Mason* v. *Eldred*, 6 Wall. 231, 236–238 (1868). During Chief Justice Chase's tenure, it seems a Justice writing the Court's majority opinion would generally work alone and present his work orally and in summary form to his colleagues at conference, which meant that other Justices often did not even review the opinion prior to publication. 6 C. Fairman, History of the Supreme Court of the United States 69–70 (1971). The Court could proceed in this way because it understood that a single judicial opinion may resolve a "case or controversy," and in so doing it may make "effective law" for the parties, but it does not legislate for the whole of the country and is not to be confused with laws that do.

C

From all this, I see at least three lessons about the doctrine of *stare decisis* relevant to the decision before us today. Each concerns a form of judicial humility.

First, a past decision may bind the parties to a dispute, but it provides this Court no authority in future cases to depart from what the Constitution or laws of the United States ordain. Instead, the Constitution promises, the American people are sovereign and they alone may, through democratically responsive processes, amend our foundational charter or revise federal legislation. Unelected judges enjoy no such power. Part I–B, *supra*.

Recognizing as much, this Court has often said that *stare decisis* is not an "'inexorable command.'" *State Oil Co.* v. *Khan*, 522 U. S. 3, 20 (1997). And from time to time it has found it necessary to correct its past mistakes. When it comes to correcting errors of constitutional interpretation, the Court has stressed the importance of doing so, for they

can be corrected otherwise only through the amendment process. See, *e.g.*, *Franchise Tax Bd. of Cal.* v. *Hyatt*, 587 U. S. 230, 248 (2019). When it comes to fixing errors of statutory interpretation, the Court has proceeded perhaps more circumspectly. But in that field, too, it has overruled even longstanding but "flawed" decisions. See, *e.g.*, *Leegin Creative Leather Products, Inc.* v. *PSKS, Inc.*, 551 U. S. 877, 904, 907 (2007).

Recent history illustrates all this. During the tenures of Chief Justices Warren and Burger, it seems this Court overruled an average of around three cases per Term, including roughly 50 statutory precedents between the 1960s and 1980s alone. See W. Eskridge, Overruling Statutory Precedents, 76 Geo. L. J. 1361, 1427–1434 (1988) (collecting cases). Many of these decisions came in settings no less consequential than today's. In recent years, we have not approached the pace set by our predecessors, overruling an average of just one or two prior decisions each Term.[1] But the point remains: Judicial decisions inconsistent with the written law do not inexorably control.

Second, another lesson tempers the first. While judicial decisions may not supersede or revise the Constitution or federal statutory law, they merit our "respect as embodying the considered views of those who have come before." *Ramos* v. *Louisiana*, 590 U. S. 83, 105 (2020). As a matter of professional responsibility, a judge must not only avoid confusing his writings with the law. When a case comes before him, he must also weigh his view of what the law demands against the thoughtful views of his predecessors. After all, "[p]recedent is a way of accumulating and passing down the learning of past generations, a font of established wisdom

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[1] For relevant databases of decisions, see Congressional Research Service, Table of Supreme Court Decisions Overruled by Subsequent Decisions, Constitution Annotated, https://constitution.congress.gov/resources/decisions-overruled/; see also H. Spaeth et al., 2023 Supreme Court Database, http://supremecourtdatabase.org.

richer than what can be found in any single judge or panel of judges." Precedent 9.

Doubtless, past judicial decisions may, as they always have, command "greater or less authority as precedents, according to circumstances." Lincoln Speech 401. But, like English judges before us, we have long turned to familiar considerations to guide our assessment of the weight due a past decision. So, for example, as this Court has put it, the weight due a precedent may depend on the quality of its reasoning, its consistency with related decisions, its workability, and reliance interests that have formed around it. See *Ramos*, 590 U. S., at 106. The first factor recognizes that the primary power of any precedent lies in its power to persuade—and poorly reasoned decisions may not provide reliable evidence of the law's meaning. The second factor reflects the fact that a precedent is more likely to be correct and worthy of respect when it reflects the time-tested wisdom of generations than when it sits "unmoored" from surrounding law. *Ibid.* The remaining factors, like workability and reliance, do not often supply reason enough on their own to abide a flawed decision, for almost any past decision is likely to benefit some group eager to keep things as they are and content with how things work. See, *e.g.*, *id.*, at 108. But these factors can sometimes serve functions similar to the others, by pointing to clues that may suggest a past decision is right in ways not immediately obvious to the individual judge.

When asking whether to follow or depart from a precedent, some judges deploy adverbs. They speak of whether or not a precedent qualifies as "demonstrably erroneous," *Gamble* v. *United States*, 587 U. S. 678, 711 (2019) (THOMAS, J., concurring), or "egregiously wrong," *Ramos*, 590 U. S., at 121 (KAVANAUGH, J., concurring in part). But the emphasis the adverb imparts is not meant for dramatic effect. It seeks to serve instead as a reminder of a more substantive lesson. The lesson that, in assessing the weight

due a past decision, a judge is not to be guided by his own impression alone, but must self-consciously test his views against those who have come before, open to the possibility that a precedent might be correct in ways not initially apparent to him.

Third, it would be a mistake to read judicial opinions like statutes. Adopted through a robust and democratic process, statutes often apply in all their particulars to all persons. By contrast, when judges reach a decision in our adversarial system, they render a judgment based only on the factual record and legal arguments the parties at hand have chosen to develop. A later court assessing a past decision must therefore appreciate the possibility that different facts and different legal arguments may dictate a different outcome. They must appreciate, too, that, like anyone else, judges are "innately digressive," and their opinions may sometimes offer stray asides about a wider topic that may sound nearly like legislative commands. Duxbury 4. Often, enterprising counsel seek to exploit such statements to maximum effect. See *id.*, at 25. But while these digressions may sometimes contain valuable counsel, they remain "vapours and fumes of law," Bacon 478, and cannot "control the judgment in a subsequent suit," *Cohens*, 6 Wheat., at 399.

These principles, too, have long guided this Court and others. As Judge Easterbrook has put it, an "opinion is not a comprehensive code; it is just an explanation for the Court's disposition. Judicial opinions must not be confused with statutes, and general expressions must be read in light of the subject under consideration." *United States* v. *Skoien*, 614 F. 3d 638, 640 (CA7 2010) (en banc); see also *Reiter* v. *Sonotone Corp.*, 442 U. S. 330, 341 (1979) (stressing that an opinion is not "a statute," and its language should not "be parsed" as if it were); *Nevada* v. *Hicks*, 533 U. S. 353, 372 (2001) (same). If *stare decisis* counsels respect for the thinking of those who have come before, it also counsels against doing an "injustice to [their] memory" by

overreliance on their every word. *Steel*, 1 Bl. H., at 53, 126 Eng. Rep., at 33. As judges, "[w]e neither expect nor hope that our successors will comb" through our opinions, searching for delphic answers to matters we never fully explored. *Brown* v. *Davenport*, 596 U. S. 118, 141 (2022). To proceed otherwise risks "turn[ing] *stare decisis* from a tool of judicial humility into one of judicial hubris." *Ibid.*

II

Turning now directly to the question what *stare decisis* effect *Chevron* deference warrants, each of these lessons seem to me to weigh firmly in favor of the course the Court charts today: Lesson 1, because *Chevron* deference contravenes the law Congress prescribed in the Administrative Procedure Act. Lesson 2, because *Chevron* deference runs against mainstream currents in our law regarding the separation of powers, due process, and centuries-old interpretive rules that fortify those constitutional commitments. And Lesson 3, because to hold otherwise would effectively require us to endow stray statements in *Chevron* with the authority of statutory language, all while ignoring more considered language in that same decision and the teachings of experience.

A

Start with Lesson 1. The Administrative Procedure Act of 1946 (APA) directs a "reviewing court" to "decide all relevant questions of law" and "interpret" relevant "constitutional and statutory provisions." 5 U. S. C. §706. When applying *Chevron* deference, reviewing courts do not interpret all relevant statutory provisions and decide all relevant questions of law. Instead, judges abdicate a large measure of that responsibility in favor of agency officials. Their interpretations of "ambiguous" laws control even when those interpretations are at odds with the fairest reading of the law an independent "reviewing court" can muster. Agency

officials, too, may change their minds about the law's meaning at any time, even when Congress has not amended the relevant statutory language in any way. *National Cable & Telecommunications Assn.* v. *Brand X Internet Services*, 545 U. S. 967, 982–983 (2005). And those officials may even disagree with and effectively overrule not only their own past interpretations of a law but a court's past interpretation as well. *Ibid.* None of that is consistent with the APA's clear mandate.

The hard fact is *Chevron* "did not even bother to cite" the APA, let alone seek to apply its terms. *United States* v. *Mead Corp.*, 533 U. S. 218, 241 (2001) (Scalia, J., dissenting). Instead, as even its most ardent defenders have conceded, *Chevron* deference rests upon a "*fictionalized* statement of legislative desire," namely, a judicial supposition that Congress implicitly wishes judges to defer to executive agencies' interpretations of the law even when it has said nothing of the kind. D. Barron & E. Kagan, Chevron's Nondelegation Doctrine, 2001 S. Ct. Rev. 201, 212 (Kagan) (emphasis added). As proponents see it, that fiction represents a "policy judgmen[t] about what . . . make[s] for good government." *Ibid.*[2] But in our democracy unelected judges possess no authority to elevate their own fictions over the laws adopted by the Nation's elected representatives. Some might think the legal directive Congress provided in the APA unwise; some might think a different arrangement preferable. See, *e.g.*, *post*, at 9–11 (KAGAN, J., dissenting). But it is Congress's view of "good government," not ours, that controls.

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[2] See also A. Scalia, Judicial Deference to Administrative Interpretations of Law, 1989 Duke L. J. 511, 516–517 (1989) (describing *Chevron*'s theory that Congress "delegat[ed]" interpretive authority to agencies as "fictional"); S. Breyer, Judicial Review of Questions of Law and Policy, 38 Admin. L. Rev. 363, 370 (1986) (describing the notion that there exists a "'legislative intent to delegate the law-interpreting function' as a kind of legal fiction").

Much more could be said about *Chevron*'s inconsistency with the APA. But I have said it in the past. See *Buffington* v. *McDonough*, 598 U. S. ___, ___–___ (2022) (opinion dissenting from denial of certiorari) (slip op., at 5–6); *Gutierrez-Brizuela* v. *Lynch*, 834 F. 3d 1142, 1151–1153 (CA10 2016) (concurring opinion). And the Court makes many of the same points at length today. See *ante*, at 18–22. For present purposes, the short of it is that continuing to abide *Chevron* deference would require us to transgress the first lesson of *stare decisis*—the humility required of judges to recognize that our decisions must yield to the laws adopted by the people's elected representatives.[3]

B

Lesson 2 cannot rescue *Chevron* deference. If *stare decisis* calls for judicial humility in the face of the written law, it also cautions us to test our present conclusions carefully against the work of our predecessors. At the same time and as we have seen, this second form of humility counsels us to remember that precedents that have won the endorsement of judges across many generations, demonstrated coherence with our broader law, and weathered the tests of time and experience are entitled to greater consideration than those that have not. See Part I, *supra*. Viewed by each of these lights, the case for *Chevron* deference only grows weaker still.

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[3]The dissent suggests that we need not take the APA's directions quite so seriously because the "finest administrative law scholars" from Harvard claim to see in them some wiggle room. *Post*, at 18 (opinion of KAGAN, J.). But nothing in the APA commands deference to the views of professors any more than it does the government. Nor is the dissent's list of Harvard's finest administrative law scholars entirely complete. See S. Breyer et al., Administrative Law and Regulatory Policy 288 (7th ed. 2011) (acknowledging that *Chevron* deference "seems in conflict with . . . the apparently contrary language of 706"); Kagan 212 (likewise acknowledging *Chevron* deference rests upon a "fictionalized statement of legislative desire").

1

Start with a look to how our predecessors traditionally understood the judicial role in disputes over a law's meaning. From the Nation's founding, they considered "[t]he interpretation of the laws" in cases and controversies "the proper and peculiar province of the courts." The Federalist No. 78, p. 467 (C. Rossiter ed. 1961) (A. Hamilton). Perhaps the Court's most famous early decision reflected exactly that view. There, Chief Justice Marshall declared it "emphatically the province and duty of the judicial department to say what the law is." *Marbury*, 1 Cranch, at 177. For judges "have neither FORCE nor WILL but merely judgment"—and an obligation to exercise that judgment independently. The Federalist No. 78, at 465. No matter how "disagreeable that duty may be," this Court has said, a judge "is not at liberty to surrender, or to waive it." *United States* v. *Dickson*, 15 Pet. 141, 162 (1841) (Story, J.). This duty of independent judgment is perhaps "the defining characteristi[c] of Article III judges." *Stern* v. *Marshall*, 564 U. S. 462, 483 (2011).

To be sure, this Court has also long extended "great respect" to the "contemporaneous" and consistent views of the coordinate branches about the meaning of a statute's terms. *Edwards' Lessee* v. *Darby*, 12 Wheat. 206, 210 (1827); see also *McCulloch* v. *Maryland*, 4 Wheat. 316, 401 (1819); *Stuart* v. *Laird*, 1 Cranch 299, 309 (1803).[4] But traditionally, that did not mean a court had to "defer" to any "reasonable"

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[4] Accord, *National Lead Co.* v. *United States*, 252 U. S. 140, 145–146 (1920) (affording "great weight" to a "contemporaneous construction" by the executive that had "been long continued"); *Jacobs* v. *Prichard*, 223 U. S. 200, 214 (1912) ("find[ing] no ambiguity in the act" but also finding "strength" for the Court's interpretation in the executive's "immediate and continued construction of the act"); *Schell's Executors* v. *Fauché*, 138 U. S. 562, 572 (1891) (treating as "controlling" a "contemporaneous construction" of a law endorsed "not only [by] the courts but [also by] the departments").

construction of an "ambiguous" law that an executive agency might offer. It did not mean that the government could propound a "reasonable" view of the law's meaning one day, a different one the next, and bind the judiciary always to its latest word. Nor did it mean the executive could displace a pre-existing judicial construction of a statute's terms, replace it with its own, and effectively overrule a judicial precedent in the process. Put simply, this Court was "not bound" by any and all reasonable "administrative construction[s]" of ambiguous statutes when resolving cases and controversies. *Burnet* v. *Chicago Portrait Co.*, 285 U. S. 1, 16 (1932). While the executive's consistent and contemporaneous views warranted respect, they "by no means control[led] the action or the opinion of this court in expounding the law with reference to the rights of parties litigant before them." *Irvine* v. *Marshall*, 20 How. 558, 567 (1858); see also A. Bamzai, The Origins of Judicial Deference to Executive Interpretation, 126 Yale L. J. 908, 987 (2017).

Sensing how jarringly inconsistent *Chevron* is with this Court's many longstanding precedents discussing the nature of the judicial role in disputes over the law's meaning, the government and dissent struggle for a response. The best they can muster is a handful of cases from the early 1940s in which, they say, this Court first "put [deference] principles into action." *Post*, at 21 (KAGAN, J., dissenting). And, admittedly, for a period this Court toyed with a form of deference akin to *Chevron*, at least for so-called mixed questions of law and fact. See, *e.g.*, *Gray* v. *Powell*, 314 U. S. 402, 411–412 (1941); *NLRB* v. *Hearst Publications, Inc.*, 322 U. S. 111, 131 (1944). But, as the Court details, even that limited experiment did not last. See *ante*, at 10–12. Justice Roberts, in his *Gray* dissent, decried these decisions for "abdicat[ing our] function as a court of review" and "complete[ly] revers[ing] . . . the normal and usual method of construing a statute." 314 U. S., at 420–421. And just a few years later, in *Skidmore* v. *Swift & Co.*, 323

U. S. 134 (1944), the Court returned to its time-worn path.

Echoing themes that had run throughout our law from its start, Justice Robert H. Jackson wrote for the Court in *Skidmore*. There, he said, courts may extend respectful consideration to another branch's interpretation of the law, but the weight due those interpretations must always "depend upon the[ir] thoroughness . . . , the validity of [their] reasoning, [their] consistency with earlier and later pronouncements, and all those factors which give [them] power to persuade." *Id.*, at 140. In another case the same year, and again writing for the Court, Justice Jackson expressly rejected a call for a judge-made doctrine of deference much like *Chevron*, offering that, "[i]f Congress had deemed it necessary or even appropriate" for courts to "defe[r] to administrative construction[,] . . . it would not have been at a loss for words to say so." *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144, 156 (1944).

To the extent proper respect for precedent demands, as it always has, special respect for longstanding and mainstream decisions, *Chevron* scores badly. It represented not a continuation of a long line of decisions but a break from them. Worse, it did not merely depart from our precedents. More nearly, *Chevron* defied them.

2

Consider next how uneasily *Chevron* deference sits alongside so many other settled aspects of our law. Having witnessed first-hand King George's efforts to gain influence and control over colonial judges, see Declaration of Independence ¶ 11, the framers made a considered judgment to build judicial independence into the Constitution's design. They vested the judicial power in decisionmakers with life tenure. Art. III, §1. They placed the judicial salary beyond political control during a judge's tenure. *Ibid.* And they rejected any proposal that would subject judicial decisions to review by political actors. The Federalist No. 81, at 482;

United States v. *Hansen*, 599 U. S. 762, 786–791 (2023) (THOMAS, J., concurring). All of this served to ensure the same thing: "A fair trial in a fair tribunal." *In re Murchison*, 349 U. S. 133, 136 (1955). One in which impartial judges, not those currently wielding power in the political branches, would "say what the law is" in cases coming to court. *Marbury*, 1 Cranch, at 177.

Chevron deference undermines all that. It precludes courts from exercising the judicial power vested in them by Article III to say what the law is. It forces judges to abandon the best reading of the law in favor of views of those presently holding the reins of the Executive Branch. It requires judges to change, and change again, their interpretations of the law as and when the government demands. And that transfer of power has exactly the sort of consequences one might expect. Rather than insulate adjudication from power and politics to ensure a fair hearing "without respect to persons" as the federal judicial oath demands, 28 U. S. C. §453, *Chevron* deference requires courts to "place a finger on the scales of justice in favor of the most powerful of litigants, the federal government." *Buffington*, 598 U. S., at ___ (slip op., at 9). Along the way, *Chevron* deference guarantees "systematic bias" in favor of whichever political party currently holds the levers of executive power. P. Hamburger, *Chevron* Bias, 84 Geo. Wash. L. Rev. 1187, 1212 (2016).

Chevron deference undermines other aspects of our settled law, too. In this country, we often boast that the Constitution's promise of due process of law, see Amdts. 5, 14, means that "'no man can be a judge in his own case.'" *Williams* v. *Pennsylvania*, 579 U. S. 1, 8–9 (2016); *Calder* v. *Bull*, 3 Dall. 386, 388 (1798) (opinion of Chase, J.). That principle, of course, has even deeper roots, tracing far back into the common law where it was known by the Latin maxim *nemo iudex in causa sua*. See 1 E. Coke, Institutes

of the Laws of England §212, *141a. Yet, under the *Chevron* regime, all that means little, for executive agencies may effectively judge the scope of their own lawful powers. See, *e.g., Arlington* v. *FCC*, 569 U. S. 290, 296–297 (2013).

Traditionally, as well, courts have sought to construe statutes as a reasonable reader would "when the law was made." Blackstone 59; see *United States* v. *Fisher*, 2 Cranch 358, 386 (1805). Today, some call this "textualism." But really it's a very old idea, one that constrains judges to a lawfinding rather than lawmaking role by focusing their work on the statutory text, its linguistic context, and various canons of construction. In that way, textualism serves as an essential guardian of the due process promise of fair notice. If a judge could discard an old meaning and assign a new one to a law's terms, all without any legislative revision, how could people ever be sure of the rules that bind them? *New Prime Inc.* v. *Oliveira*, 586 U. S. 105, 113 (2019). Were the rules otherwise, Blackstone warned, the people would be rendered "slaves to their magistrates." 4 Blackstone 371.

Yet, replace "magistrates" with "bureaucrats," and Blackstone's fear becomes reality when courts employ *Chevron* deference. Whenever we confront an ambiguity in the law, judges do not seek to resolve it impartially according to the best evidence of the law's original meaning. Instead, we resort to a far cruder heuristic: "The reasonable bureaucrat always wins." And because the reasonable bureaucrat may change his mind year-to-year and election-to-election, the people can never know with certainty what new "interpretations" might be used against them. This "fluid" approach to statutory interpretation is "as much a trap for the innocent as the ancient laws of Caligula," which were posted so high up on the walls and in print so small that ordinary people could never be sure what they required. *United States* v. *Cardiff*, 344 U. S. 174, 176 (1952).

The ancient rule of lenity is still another of *Chevron*'s victims. Since the founding, American courts have construed ambiguities in penal laws against the government and with lenity toward affected persons. *Wooden* v. *United States*, 595 U. S. 360, 388–390 (2022) (GORSUCH, J., concurring in judgment). That principle upholds due process by safeguarding individual liberty in the face of ambiguous laws. *Ibid.* And it fortifies the separation of powers by keeping the power of punishment firmly "'in the legislative, not in the judicial department.'" *Id.*, at 391 (quoting *United States* v. *Wiltberger*, 5 Wheat. 76, 95 (1820)). But power begets power. And pressing *Chevron* deference as far as it can go, the government has sometimes managed to leverage "ambiguities" in the written law to penalize conduct Congress never clearly proscribed. Compare *Guedes* v. *ATF*, 920 F. 3d 1, 27–28, 31 (CADC 2019), with *Garland* v. *Cargill*, 602 U. S. 604 (2024).

In all these ways, *Chevron*'s fiction has led us to a strange place. One where authorities long thought reserved for Article III are transferred to Article II, where the scales of justice are tilted systematically in favor of the most powerful, where legal demands can change with every election even though the laws do not, and where the people are left to guess about their legal rights and responsibilities. So much tension with so many foundational features of our legal order is surely one more sign that we have "taken a wrong turn along the way." *Kisor* v. *Wilkie*, 588 U. S. 558, 607 (2019) (GORSUCH, J., concurring in judgment).[5]

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[5] The dissent suggests that *Chevron* deference bears at least something in common with surrounding law because it resembles a presumption or traditional canon of construction, and both "are common." *Post*, at 8, n. 1, 28–29 (opinion of KAGAN, J.). But even that thin reed wavers at a glance. Many of the presumptions and interpretive canons the dissent cites—including lenity, *contra proferentem*, and others besides—"'embod[y] . . . legal doctrine[s] centuries older than our Republic.'" *Opati* v. *Republic of Sudan*, 590 U. S. 418, 425 (2020). *Chevron* deference can make no such boast. Many of the presumptions and canons the dissent cites also

Finally, consider workability and reliance. If, as I have sought to suggest, these factors may sometimes serve as useful proxies for the question whether a precedent comports with the historic tide of judicial practice or represents an aberrational mistake, see Part I–C, *supra*, they certainly do here.

Take *Chevron*'s "workability." Throughout its short life, this Court has been forced to supplement and revise *Chevron* so many times that no one can agree on how many "steps" it requires, nor even what each of those "steps" entails. Some suggest that the analysis begins with "step zero" (perhaps itself a tell), an innovation that traces to *United States* v. *Mead Corp.*, 533 U. S. 218. *Mead* held that, before even considering whether *Chevron* applies, a court must determine whether Congress meant to delegate to the agency authority to interpret the law in a given field. 533 U. S., at 226–227. But that exercise faces an immediate challenge: Because *Chevron* depends on a judicially implied, rather than a legislatively expressed, delegation of interpretive authority to an executive agency, Part II–A, *supra*, when should the fiction apply and when not? *Mead* fashioned a multifactor test for judges to use. 533 U. S., at

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serve the Constitution, protecting the lines of authority it draws. Take just two examples: The federalism canon tells courts to presume federal statutes do not preempt state laws because of the sovereignty States enjoy under the Constitution. *Bond* v. *United States*, 572 U. S. 844, 858 (2014). The presumption against retroactivity serves as guardian of the Constitution's promise of due process and its ban on *ex post facto* laws, *Landgraf* v. *USI Film Products*, 511 U. S. 244, 265 (1994). Once more, however, *Chevron* deference can make no similar claim. Rather than serve the Constitution's usual rule that litigants are entitled to have an independent judge interpret disputed legal terms, *Chevron* deference works to undermine that promise. As explored above, too, *Chevron* deference sits in tension with many traditional legal presumptions and interpretive principles, representing nearly the *inverse* of the rules of lenity, *nemo iudex*, and *contra proferentem*.

229–231. But that test has proved as indeterminate in application as it was contrived in origin. Perhaps for these reasons, perhaps for others, this Court has sometimes applied *Mead* and often ignored it. See *Brand X*, 545 U. S., at 1014, n. 8 (Scalia, J., dissenting).

Things do not improve as we move up the *Chevron* ladder. At "step one," a judge must defer to an executive official's interpretation when the statute at hand is "ambiguous." But even today, *Chevron*'s principal beneficiary—the federal government—still cannot say when a statute is sufficiently ambiguous to trigger deference. See, *e.g.*, Tr. of Oral Arg. in *American Hospital Assn.* v. *Becerra*, O. T. 2021, No. 20–1114, pp. 71–72. Perhaps thanks to this particular confusion, the search for ambiguity has devolved into a sort of Snark hunt: Some judges claim to spot it almost everywhere, while other equally fine judges claim never to have seen it. Compare L. Silberman, *Chevron*—The Intersection of Law & Policy, 58 Geo. Wash. L. Rev. 821, 826 (1990), with R. Kethledge, Ambiguities and Agency Cases: Reflections After (Almost) Ten Years on the Bench, 70 Vand. L. Rev. En Banc 315, 323 (2017).

Nor do courts agree when it comes to "step two." There, a judge must assess whether an executive agency's interpretation of an ambiguous statute is "reasonable." But what does that inquiry demand? Some courts engage in a comparatively searching review; others almost reflexively defer to an agency's views. Here again, courts have pursued "wildly different" approaches and reached wildly different conclusions in similar cases. See B. Kavanaugh, Fixing Statutory Interpretation, 129 Harv. L. Rev. 2118, 2152 (2016) (Kavanaugh).

Today's cases exemplify some of these problems. We have before us two circuit decisions, three opinions, and at least as many interpretive options on the *Chevron* menu. On the one hand, we have the D. C. Circuit majority, which deemed the Magnuson-Stevens Act "ambiguous" and upheld the

agency's regulation as "'permissible.'" 45 F. 4th 359, 365 (2022). On the other hand, we have the D. C. Circuit dissent, which argues the statute is "unambiguou[s]" and that it plainly forecloses the agency's new rule. *Id.*, at 372 (opinion of Walker, J.). And on yet a third hand, we have the First Circuit, which claimed to have identified "clear textual support" for the regulation, yet refused to say whether it would "classify [its] conclusion as a product of *Chevron* step one or step two." 62 F. 4th 621, 631, 634 (2023). As these cases illustrate, *Chevron* has turned statutory interpretation into a game of bingo under blindfold, with parties guessing at how many boxes there are and which one their case might ultimately fall in.

Turn now from workability to reliance. Far from engendering reliance interests, the whole point of *Chevron* deference is to upset them. Under *Chevron*, executive officials can replace one "reasonable" interpretation with another at any time, all without any change in the law itself. The result: Affected individuals "can never be sure of their legal rights and duties." *Buffington*, 598 U. S., at ___ (slip op., at 12).

How bad is the problem? Take just one example. *Brand X* concerned a law regulating broadband internet services. There, the Court upheld an agency rule adopted by the administration of President George W. Bush because it was premised on a "reasonable" interpretation of the statute. Later, President Barack Obama's administration rescinded the rule and replaced it with another. Later still, during President Donald J. Trump's administration, officials replaced that rule with a different one, all before President Joseph R. Biden, Jr.'s administration declared its intention to reverse course for yet a fourth time. See Safeguarding and Securing the Open Internet, 88 Fed. Reg. 76048 (2023); *Brand X*, 545 U. S., at 981–982. Each time, the government claimed its new rule was just as "reasonable" as the last. Rather than promoting reliance by fixing the meaning of

the law, *Chevron* deference engenders constant uncertainty and convulsive change even when the statute at issue itself remains unchanged.

Nor are these antireliance harms distributed equally. Sophisticated entities and their lawyers may be able to keep pace with rule changes affecting their rights and responsibilities. They may be able to lobby for new "'reasonable'" agency interpretations and even capture the agencies that issue them. *Buffington*, 598 U. S., at ___, ___ (slip op., at 8, 13). But ordinary people can do none of those things. They are the ones who suffer the worst kind of regulatory whiplash *Chevron* invites.

Consider a couple of examples. Thomas Buffington, a veteran of the U. S. Air Force, was injured in the line of duty. For a time after he left the Air Force, the Department of Veterans Affairs (VA) paid disability benefits due him by law. But later the government called on Mr. Buffington to reenter active service. During that period, everyone agreed, the VA could (as it did) suspend his disability payments. After he left active service for a second time, however, the VA turned his patriotism against him. By law, Congress permitted the VA to suspend disability pay only "for any period for which [a servicemember] receives active service pay." 38 U. S. C. §5304(c). But the VA had adopted a self-serving regulation requiring veterans to file a form asking for the resumption of their disability pay after a second (or subsequent) stint in active service. 38 CFR §3.654(b)(2) (2021). Unaware of the regulation, Mr. Buffington failed to reapply immediately. When he finally figured out what had happened and reapplied, the VA agreed to resume payments going forward but refused to give Mr. Buffington all of the past disability payments it had withheld. *Buffington*, 598 U. S., at ___–___ (slip op., at 1–4).

Mr. Buffington challenged the agency's action as inconsistent with Congress's direction that the VA may suspend disability payments only for those periods when a veteran

returns to active service. But armed with *Chevron*, the agency defeated Mr. Buffington's claim. Maybe the self-serving regulation the VA cited as justification for its action was not premised on the best reading of the law, courts said, but it represented a "'permissible'" one. 598 U. S., at ___ (slip op., at 7). In that way, the Executive Branch was able to evade Congress's promises to someone who took the field repeatedly in the Nation's defense.

In another case, one which I heard as a court of appeals judge, *De Niz Robles* v. *Lynch*, 803 F. 3d 1165 (CA10 2015), the Board of Immigration Appeals invoked *Chevron* to overrule a judicial precedent on which many immigrants had relied, see *In re Briones*, 24 I. & N. Dec. 355, 370 (BIA 2007) (purporting to overrule *Padilla–Caldera* v. *Gonzales*, 426 F. 3d 1294 (CA10 2005)). The agency then sought to apply its new interpretation retroactively to punish those immigrants—including Alfonzo De Niz Robles, who had relied on that judicial precedent as authority to remain in this country with his U. S. wife and four children. See 803 F. 3d, at 1168–1169. Our court ruled that this retrospective application of the BIA's new interpretation of the law violated Mr. De Niz Robles's due process rights. *Id.*, at 1172. But as a lower court, we could treat only the symptom, not the disease. So *Chevron* permitted the agency going forward to overrule a judicial decision about the best reading of the law with its own different "reasonable" one and in that way deny relief to countless future immigrants.

Those are just two stories among so many that federal judges could tell (and have told) about what *Chevron* deference has meant for ordinary people interacting with the federal government. See, *e.g.*, *Lambert* v. *Saul*, 980 F. 3d 1266, 1268–1276 (CA9 2020); *Valent* v. *Commissioner of Social Security*, 918 F. 3d 516, 525–527 (CA6 2019) (Kethledge, J., dissenting); *Gonzalez* v. *United States Atty. Gen.*, 820 F. 3d 399, 402–405 (CA11 2016) (*per curiam*).

What does the federal government have to say about this?

It acknowledges that *Chevron* sits as a heavy weight on the scale in favor of the government, "oppositional" to many "categories of individuals." Tr. of Oral Arg. in No. 22–1219, p. 133 (Relentless Tr.). But, according to the government, *Chevron* deference is too important an innovation to undo. In its brief reign, the government says, it has become a "fundamenta[l] . . . ground rul[e] for how all three branches of the government are operating together." Relentless Tr. 102. But, in truth, the Constitution, the APA, and our longstanding precedents set those ground rules some time ago. And under them, agencies cannot invoke a judge-made fiction to unsettle our Nation's promise to individuals that they are entitled to make their arguments about the law's demands on them in a fair hearing, one in which they stand on equal footing with the government before an independent judge.

C

How could a Court, guided for 200 years by Chief Justice Marshall's example, come to embrace a counter-*Marbury* revolution, one at war with the APA, time honored precedents, and so much surrounding law? To answer these questions, turn to Lesson 3 and witness the temptation to endow a stray passage in a judicial decision with extraordinary authority. Call it "power quoting."

Chevron was an unlikely place for a revolution to begin. The case concerned the Clean Air Act's requirement that States regulate "stationary sources" of air pollution in their borders. See 42 U. S. C. §7401 *et seq*. At the time, it was an open question whether entire industrial plants or their constituent polluting parts counted as "stationary sources." The Environmental Protection Agency had defined entire plants as sources, an approach that allowed companies to replace individual plant parts without automatically triggering the permitting requirements that apply to new sources. *Chevron*, 467 U. S., at 840.

This Court upheld the EPA's definition as consistent with the governing statute. *Id.*, at 866. The decision, issued by a bare quorum of the Court, without concurrence or dissent, purported to apply "well-settled principles." *Id.*, at 845. "If a court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue," *Chevron* provided, then "that intention is the law and must be given effect." *Id.*, at 843, n. 9. Many of the cases *Chevron* cited to support its judgment stood for the traditional proposition that courts afford respectful consideration, not deference, to executive interpretations of the law. See, *e.g.*, *Burnet*, 285 U. S., at 16; *United States* v. *Moore*, 95 U. S. 760, 763 (1878). And the decision's sole citation to legal scholarship was to Roscoe Pound, who long championed *de novo* judicial review. 467 U. S., at 843, n. 10; see R. Pound, The Place of the Judiciary in a Democratic Polity, 27 A. B. A. J. 133, 136–137 (1941).

At the same time, of course, the opinion contained bits and pieces that spoke differently. The decision also said that, "if [a] statute is silent or ambiguous with respect to [a] specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." 467 U. S., at 843. But it seems the government didn't advance this formulation in its brief, so there was no adversarial engagement on it. T. Merrill, The Story of *Chevron*: The Making of an Accidental Landmark, 66 Admin. L. Rev. 253, 268 (2014) (Merrill). As we have seen, too, the Court did not pause to consider (or even mention) the APA. See Part II–A, *supra*. It did not discuss contrary precedents issued by the Court since the founding, let alone purport to overrule any of them. See Part II–B–1, *supra*. Nor did the Court seek to address how its novel rule of deference might be squared with so much surrounding law. See Part II–B–2, *supra*. As even its defenders have acknowledged, "*Chevron* barely bothered to justify its rule of deference, and the few brief passages on this matter pointed in disparate

directions." Kagan 212–213. "[T]he quality of the reasoning," they acknowledge, "was not high," C. Sunstein, *Chevron* as Law, 107 Geo. L. J. 1613, 1669 (2019).

If *Chevron* meant to usher in a revolution in how judges interpret laws, no one appears to have realized it at the time. *Chevron*'s author, Justice Stevens, characterized the decision as a "simpl[e] . . . restatement of existing law, nothing more or less." Merrill 255, 275. In the "19 argued cases" in the following Term "that presented some kind of question about whether the Court should defer to an agency interpretation of statutory law," this Court cited *Chevron* just once. Merrill 276. By some accounts, the decision seemed "destined to obscurity." *Ibid.*

It was only three years later when Justice Scalia wrote a concurrence that a revolution began to take shape. *Buffington*, 598 U. S., at ___ (slip op., at 8). There, he argued for a new rule requiring courts to defer to executive agency interpretations of the law whenever a "'statute is silent or ambiguous.'" *NLRB* v. *Food & Commercial Workers*, 484 U. S. 112, 133–134 (1987) (opinion of Scalia, J.). Eventually, a majority of the Court followed his lead. *Buffington*, 598 U. S., at ___ (slip op., at 8). But from the start, Justice Scalia made no secret about the scope of his ambitions. See Judicial Deference to Administrative Interpretations of Law, 1989 Duke L. J. 511, 521 (1989) (Scalia). The rule he advocated for represented such a sharp break from prior practice, he explained, that many judges of his day didn't yet "understand" the "old criteria" were "no longer relevant." *Ibid.* Still, he said, overthrowing the past was worth it because a new deferential rule would be "easier to follow." *Ibid.*

Events proved otherwise. As the years wore on and the Court's new and aggressive reading of *Chevron* gradually exposed itself as unworkable, unfair, and at odds with our separation of powers, Justice Scalia could have doubled down on the project. But he didn't. He appreciated that

stare decisis is not a rule of "if I thought it yesterday, I must think it tomorrow." And rather than cling to the pride of personal precedent, the Justice began to express doubts over the very project that he had worked to build. See *Perez* v. *Mortgage Bankers Assn.*, 575 U. S. 92, 109–110 (2015) (opinion concurring in judgment); cf. *Decker* v. *Northwest Environmental Defense Center*, 568 U. S. 597, 617–618, 621 (2013) (opinion concurring in part and dissenting in part). If *Chevron*'s ascent is a testament to the Justice's ingenuity, its demise is an even greater tribute to his humility.[6]

Justice Scalia was not alone in his reconsideration. After years spent laboring under *Chevron*, trying to make sense of it and make it work, Member after Member of this Court came to question the project. See, *e.g.*, *Pereira* v. *Sessions*, 585 U. S. 198, 219–221 (2018) (Kennedy, J., concurring); *Michigan* v. *EPA*, 576 U. S. 743, 760–764 (2015) (THOMAS, J., concurring); *Kisor*, 588 U. S., at 591 (ROBERTS, C. J., concurring in part); *Gutierrez-Brizuela*, 834 F. 3d, at 1153; *Buffington*, 598 U. S., at ___–___ (slip op., at 14–15); Kavanaugh 2150–2154. Ultimately, the Court gave up. Despite repeated invitations, it has not applied *Chevron* deference since 2016. Relentless Tr. 81; App. to Brief for Respondents in No. 22–1219, p. 68a. So an experiment that began only in the mid-1980s effectively ended eight years ago. Along the way, an unusually large number of federal appellate judges voiced their own thoughtful and extensive

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[6] It should be recalled that, when Justice Scalia launched the *Chevron* revolution, there were many judges who "abhor[red] . . . 'plain meaning'" and preferred instead to elevate "legislative history" and their own curated accounts of a law's "purpose[s]" over enacted statutory text. Scalia 515, 521. *Chevron*, he predicted, would provide a new guardrail against that practice. Scalia 515, 521. As the Justice's later writings show, he had the right diagnosis, just the wrong cure. The answer for judges eliding statutory terms is not deference to agencies that may seek to do the same, but a demand that all return to a more faithful adherence to the written law. That was, of course, another project Justice Scalia championed. And as we like to say, "we're all textualists now."

criticisms of *Chevron*. *Buffington*, 598 U. S., at ___–___ (slip op., at 14–15) (collecting examples). A number of state courts did, too, refusing to import *Chevron* deference into their own administrative law jurisprudence. See 598 U. S., at ___ (slip op., at 15).

Even if all that and everything else laid out above is true, the government suggests we should retain *Chevron* deference because judges simply cannot live without it; some statutes are just too "technical" for courts to interpret "intelligently." *Post*, at 9, 32 (dissenting opinion). But that objection is no answer to *Chevron*'s inconsistency with Congress's directions in the APA, so much surrounding law, or the challenges its multistep regime have posed in practice. Nor does history counsel such defeatism. Surely, it would be a mistake to suggest our predecessors before *Chevron*'s rise in the mid-1980s were unable to make their way intelligently through technical statutory disputes. Following their lead, over the past eight years this Court has managed to resolve even highly complex cases without *Chevron* deference, and done so even when the government sought deference. Nor, as far as I am aware, did any Member of the Court suggest *Chevron* deference was necessary to an intelligent resolution of any of those matters.[7] If anything, by affording *Chevron* deference a period of repose before addressing whether it should be retained, the Court has enabled its Members to test the propriety of that precedent and reflect more deeply on how well it fits into the broader architecture of our law. Others may see things differently, see *post*, at 26–27 (dissenting opinion), but the caution the

[7] See, *e.g., Becerra* v. *Empire Health Foundation, for Valley Hospital Medical Center*, 597 U. S. 424, 434 (2022) (resolving intricate Medicare dispute by reference solely to "text," "context," and "structure"); see also *Sackett* v. *EPA*, 598 U. S. 651 (2023) (same in a complex Clean Water Act dispute); *Johnson* v. *Guzman Chavez*, 594 U. S. 523 (2021) (same in technical immigration case).

Court has exhibited before overruling *Chevron* may illustrate one of the reasons why the current Court has been slower to overrule precedents than some of its predecessors, see Part I–C, *supra*.

None of this, of course, discharges any Member of this Court from the task of deciding for himself or herself today whether *Chevron* deference itself warrants deference. But when so many past and current judicial colleagues in this Court and across the country tell us our doctrine is misguided, and when we ourselves managed without *Chevron* for centuries and manage to do so today, the humility at the core of *stare decisis* compels us to pause and reflect carefully on the wisdom embodied in that experience. And, in the end, to my mind the lessons of experience counsel wisely against continued reliance on *Chevron*'s stray and unconsidered digression. This Court's opinions fill over 500 volumes, and perhaps "some printed judicial word may be found to support almost any plausible proposition." R. Jackson, Decisional Law and Stare Decisis, 30 A. B. A. J. 334 (1944). It is not for us to pick and choose passages we happen to like and demand total obedience to them in perpetuity. That would turn *stare decisis* from a doctrine of humility into a tool for judicial opportunism. *Brown*, 596 U. S., at 141.

III

Proper respect for precedent helps "keep the scale of justice even and steady," by reinforcing decisional rules consistent with the law upon which all can rely. 1 Blackstone 69. But that respect does not require, nor does it readily tolerate, a steadfast refusal to correct mistakes. As early as 1810, this Court had already overruled one of its cases. See *Hudson* v. *Guestier*, 6 Cranch 281, 284 (overruling *Rose* v. *Himely*, 4 Cranch 241 (1808)). In recent years, the Court may have overruled precedents less frequently than it did during the Warren and Burger Courts. See Part I–C, *supra*.

But the job of reconsidering past decisions remains one every Member of this Court faces from time to time.[8]

Justice William O. Douglas served longer on this Court than any other person in the Nation's history. During his tenure, he observed how a new colleague might be inclined initially to "revere" every word written in an opinion issued before he arrived. W. Douglas, Stare Decisis, 49 Colum. L. Rev. 735, 736 (1949). But, over time, Justice Douglas reflected, his new colleague would "remembe[r] . . . that it is the Constitution which he swore to support and defend, not the gloss which his predecessors may have put on it." *Ibid.* And "[s]o he [would] com[e] to formulate his own views, rejecting some earlier ones as false and embracing others." *Ibid.* This process of reexamination, Justice Douglas explained, is a "necessary consequence of our system" in which each judge takes an oath—both "personal" and binding—to discern the law's meaning for himself and apply it faithfully in the cases that come before him. *Id.*, at 736–737.

Justice Douglas saw, too, how appeals to precedent could be overstated and sometimes even overwrought. Judges, he reflected, would sometimes first issue "new and startling decision[s]," and then later spin around and "acquire an acute conservatism" in their aggressive defense of "their

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[8] Today's dissenters are no exceptions. They have voted to overrule precedents that they consider "wrong," *Hurst* v. *Florida*, 577 U. S. 92, 101 (2016) (opinion for the Court by SOTOMAYOR, J., joined by, *inter alios*, KAGAN, J.); *Obergefell* v. *Hodges*, 576 U. S. 644, 665, 675 (2015) (opinion for the Court, joined by, *inter alios*, SOTOMAYOR and KAGAN, JJ.); that conflict with the Constitution's "original meaning," *Alleyne* v. *United States*, 570 U. S. 99, 118 (2013) (SOTOMAYOR, J., joined by, *inter alias*, KAGAN, J., concurring); and that have proved "unworkable," *Johnson* v. *United States*, 576 U. S. 591, 605 (2015) (opinion for the Court, joined by, *inter alios*, SOTOMAYOR and KAGAN, JJ.); see also *Erlinger* v. *United States*, 602 U. S. ___, ___ (2024) (JACKSON, J., dissenting) (slip op., at 1) (arguing *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000), and the many cases applying it were all "wrongly decided").

new *status quo*." *Id.*, at 737. In that way, even the most novel and unlikely decisions became "coveted anchorage[s]," defended heatedly, if ironically, under the banner of "*stare decisis*." *Ibid.*; see also *Edwards* v. *Vannoy*, 593 U. S. 255, 294, n. 7 (2021) (GORSUCH, J., concurring).

That is *Chevron*'s story: A revolution masquerading as the status quo. And the defense of it follows the same course Justice Douglas described. Though our dissenting colleagues have not hesitated to question other precedents in the past, they today manifest what Justice Douglas called an "acute conservatism" for *Chevron*'s "startling" development, insisting that if this "coveted anchorage" is abandoned the heavens will fall. But the Nation managed to live with busy executive agencies of all sorts long before the *Chevron* revolution began to take shape in the mid-1980s. And all today's decision means is that, going forward, federal courts will do exactly as this Court has since 2016, exactly as it did before the mid-1980s, and exactly as it had done since the founding: resolve cases and controversies without any systemic bias in the government's favor.

Proper respect for precedent does not begin to suggest otherwise. Instead, it counsels respect for the written law, adherence to consistent teachings over aberrations, and resistance to the temptation of treating our own stray remarks as if they were statutes. And each of those lessons points toward the same conclusion today: *Chevron* deference is inconsistent with the directions Congress gave us in the APA. It represents a grave anomaly when viewed against the sweep of historic judicial practice. The decision undermines core rule-of-law values ranging from the promise of fair notice to the promise of a fair hearing. Even on its own terms, it has proved unworkable and operated to undermine rather than advance reliance interests, often to the detriment of ordinary Americans. And from the start, the whole project has relied on the overaggressive use of snippets and stray remarks from an opinion that carried

mixed messages. *Stare decisis*'s true lesson today is not that we are bound to respect *Chevron*'s "startling development," but bound to inter it.

SUPREME COURT OF THE UNITED STATES

Nos. 22–451 and 22–1219

LOPER BRIGHT ENTERPRISES, ET AL.,
PETITIONERS
22–451 *v.*
GINA RAIMONDO, SECRETARY OF
COMMERCE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

RELENTLESS, INC., ET AL., PETITIONERS
22–1219 *v.*
DEPARTMENT OF COMMERCE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[June 28, 2024]

JUSTICE KAGAN, with whom JUSTICE SOTOMAYOR and JUSTICE JACKSON join,* dissenting.

For 40 years, *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), has served as a cornerstone of administrative law, allocating responsibility for statutory construction between courts and agencies. Under *Chevron*, a court uses all its normal interpretive tools to determine whether Congress has spoken to an issue. If the court finds Congress has done so, that is the end of the matter; the agency's views make no difference. But if the court finds, at the end of its interpretive work, that

*JUSTICE JACKSON did not participate in the consideration or decision of the case in No. 22–451 and joins this opinion only as it applies to the case in No. 22–1219.

Congress has left an ambiguity or gap, then a choice must be made. Who should give content to a statute when Congress's instructions have run out? Should it be a court? Or should it be the agency Congress has charged with administering the statute? The answer *Chevron* gives is that it should usually be the agency, within the bounds of reasonableness. That rule has formed the backdrop against which Congress, courts, and agencies—as well as regulated parties and the public—all have operated for decades. It has been applied in thousands of judicial decisions. It has become part of the warp and woof of modern government, supporting regulatory efforts of all kinds—to name a few, keeping air and water clean, food and drugs safe, and financial markets honest.

And the rule is right. This Court has long understood *Chevron* deference to reflect what Congress would want, and so to be rooted in a presumption of legislative intent. Congress knows that it does not—in fact cannot—write perfectly complete regulatory statutes. It knows that those statutes will inevitably contain ambiguities that some other actor will have to resolve, and gaps that some other actor will have to fill. And it would usually prefer that actor to be the responsible agency, not a court. Some interpretive issues arising in the regulatory context involve scientific or technical subject matter. Agencies have expertise in those areas; courts do not. Some demand a detailed understanding of complex and interdependent regulatory programs. Agencies know those programs inside-out; again, courts do not. And some present policy choices, including trade-offs between competing goods. Agencies report to a President, who in turn answers to the public for his policy calls; courts have no such accountability and no proper basis for making policy. And of course Congress has conferred on that expert, experienced, and politically accountable agency the authority to administer—to make rules about and otherwise implement—the statute giving rise to the ambiguity or

gap. Put all that together and deference to the agency is the almost obvious choice, based on an implicit congressional delegation of interpretive authority. We defer, the Court has explained, "because of a presumption that Congress" would have "desired the agency (rather than the courts)" to exercise "whatever degree of discretion" the statute allows. *Smiley* v. *Citibank (South Dakota), N. A.*, 517 U. S. 735, 740–741 (1996).

Today, the Court flips the script: It is now "the courts (rather than the agency)" that will wield power when Congress has left an area of interpretive discretion. A rule of judicial humility gives way to a rule of judicial hubris. In recent years, this Court has too often taken for itself decision-making authority Congress assigned to agencies. The Court has substituted its own judgment on workplace health for that of the Occupational Safety and Health Administration; its own judgment on climate change for that of the Environmental Protection Agency; and its own judgment on student loans for that of the Department of Education. See, *e.g.*, *National Federation of Independent Business* v. *OSHA*, 595 U. S. 109 (2022); *West Virginia* v. *EPA*, 597 U. S. 697 (2022); *Biden* v. *Nebraska*, 600 U. S. 477 (2023). But evidently that was, for this Court, all too piecemeal. In one fell swoop, the majority today gives itself exclusive power over every open issue—no matter how expertise-driven or policy-laden—involving the meaning of regulatory law. As if it did not have enough on its plate, the majority turns itself into the country's administrative czar. It defends that move as one (suddenly) required by the (nearly 80-year-old) Administrative Procedure Act. But the Act makes no such demand. Today's decision is not one Congress directed. It is entirely the majority's choice.

And the majority cannot destroy one doctrine of judicial humility without making a laughing-stock of a second. (If opinions had titles, a good candidate for today's would be Hubris Squared.) *Stare decisis* is, among other things, a

way to remind judges that wisdom often lies in what prior judges have done. It is a brake on the urge to convert "every new judge's opinion" into a new legal rule or regime. *Dobbs* v. *Jackson Women's Health Organization*, 597 U. S. 215, 388 (2022) (joint opinion of Breyer, SOTOMAYOR, and KAGAN, JJ., dissenting) (quoting 1 W. Blackstone, Commentaries on the Laws of England 69 (7th ed. 1775)). *Chevron* is entrenched precedent, entitled to the protection of *stare decisis*, as even the majority acknowledges. In fact, *Chevron* is entitled to the supercharged version of that doctrine because Congress could always overrule the decision, and because so many governmental and private actors have relied on it for so long. Because that is so, the majority needs a "particularly special justification" for its action. *Kisor* v. *Wilkie*, 588 U. S. 558, 588 (2019) (opinion of the Court). But the majority has nothing that would qualify. It barely tries to advance the usual factors this Court invokes for overruling precedent. Its justification comes down, in the end, to this: Courts must have more say over regulation—over the provision of health care, the protection of the environment, the safety of consumer products, the efficacy of transportation systems, and so on. A longstanding precedent at the crux of administrative governance thus falls victim to a bald assertion of judicial authority. The majority disdains restraint, and grasps for power.

I

Begin with the problem that gave rise to *Chevron* (and also to its older precursors): The regulatory statutes Congress passes often contain ambiguities and gaps. Sometimes they are intentional. Perhaps Congress "consciously desired" the administering agency to fill in aspects of the legislative scheme, believing that regulatory experts would be "in a better position" than legislators to do so. *Chevron*, 467 U. S., at 865. Or "perhaps Congress was unable to forge a coalition on either side" of a question, and the contending

parties "decided to take their chances with" the agency's resolution. *Ibid.* Sometimes, though, the gaps or ambiguities are what might be thought of as predictable accidents. They may be the result of sloppy drafting, a not infrequent legislative occurrence. Or they may arise from the well-known limits of language or foresight. Accord, *ante*, at 7, 22. "The subject matter" of a statutory provision may be too "specialized and varying" to "capture in its every detail." *Kisor*, 588 U. S., at 566 (plurality opinion). Or the provision may give rise, years or decades down the road, to an issue the enacting Congress could not have anticipated. Whichever the case—whatever the reason—the result is to create uncertainty about some aspect of a provision's meaning.

Consider a few examples from the caselaw. They will help show what a typical *Chevron* question looks like—or really, what a typical *Chevron* question *is*. Because when choosing whether to send some class of questions mainly to a court, or mainly to an agency, abstract analysis can only go so far; indeed, it may obscure what matters most. So I begin with the concrete:

- Under the Public Health Service Act, the Food and Drug Administration (FDA) regulates "biological product[s]," including "protein[s]." 42 U. S. C. §262(i)(1). When does an alpha amino acid polymer qualify as such a "protein"? Must it have a specific, defined sequence of amino acids? See *Teva Pharmaceuticals USA, Inc.* v. *FDA*, 514 F. Supp. 3d 66, 79–80, 93–106 (DC 2020).
- Under the Endangered Species Act, the Fish and Wildlife Service must designate endangered "vertebrate fish or wildlife" species, including "distinct population segment[s]" of those species. 16 U. S. C. §1532(16); see §1533. What makes one population segment "distinct" from another? Must the Service treat the Washington State population of western gray squirrels as "distinct"

because it is geographically separated from other western gray squirrels? Or can the Service take into account that the genetic makeup of the Washington population does not differ markedly from the rest? See *Northwest Ecosystem Alliance* v. *United States Fish and Wildlife Serv.*, 475 F. 3d 1136, 1140–1145, 1149 (CA9 2007).

- Under the Medicare program, reimbursements to hospitals are adjusted to reflect "differences in hospital wage levels" across "geographic area[s]." 42 U. S. C. §1395ww(d)(3)(E)(i). How should the Department of Health and Human Services measure a "geographic area"? By city? By county? By metropolitan area? See *Bellevue Hospital Center* v. *Leavitt*, 443 F. 3d 163, 174–176 (CA2 2006).
- Congress directed the Department of the Interior and the Federal Aviation Administration to reduce noise from aircraft flying over Grand Canyon National Park—specifically, to "provide for substantial restoration of the natural quiet." §3(b)(1), 101 Stat. 676; see §3(b)(2). How much noise is consistent with "the natural quiet"? And how much of the park, for how many hours a day, must be that quiet for the "substantial restoration" requirement to be met? See *Grand Canyon Air Tour Coalition* v. *FAA*, 154 F. 3d 455, 466–467, 474–475 (CADC 1998).
- Or take *Chevron* itself. In amendments to the Clean Air Act, Congress told States to require permits for modifying or constructing "stationary sources" of air pollution. 42 U. S. C. §7502(c)(5). Does the term "stationary source[]" refer to each pollution-emitting piece of equipment within a plant? Or does it refer to the entire plant, and thus allow escape from the permitting requirement when increased emissions from one piece of equipment are offset by reductions from another? See 467 U. S., at 857, 859.

In each case, a statutory phrase has more than one reasonable reading. And Congress has not chosen among them: It has not, in any real-world sense, "fixed" the "single, best meaning" at "the time of enactment" (to use the majority's phrase). *Ante*, at 22. A question thus arises: Who decides which of the possible readings should govern?

This Court has long thought that the choice should usually fall to agencies, with courts broadly deferring to their judgments. For the last 40 years, that doctrine has gone by the name of *Chevron* deference, after the 1984 decision that formalized and canonized it. In *Chevron*, the Court set out a simple two-part framework for reviewing an agency's interpretation of a statute that it administers. First, the reviewing court must determine whether Congress has "directly spoken to the precise question at issue." 467 U. S., at 842. That inquiry is rigorous: A court must exhaust all the "traditional tools of statutory construction" to divine statutory meaning. *Id.*, at 843, n. 9. And when it can find that meaning—a "single right answer"—that is "the end of the matter": The court cannot defer because it "must give effect to the unambiguously expressed intent of Congress." *Kisor*, 588 U. S., at 575 (opinion of the Court); *Chevron*, 467 U. S., at 842–843. But if the court, after using its whole legal toolkit, concludes that "the statute is silent or ambiguous with respect to the specific issue" in dispute—for any of the not-uncommon reasons discussed above—then the court must cede the primary interpretive role. *Ibid.*; see *supra*, at 4–5. At that second step, the court asks only whether the agency construction is within the sphere of "reasonable" readings. *Chevron*, 467 U. S., at 844. If it is, the agency's interpretation of the statute that it every day implements will control.

That rule, the Court has long explained, rests on a presumption about legislative intent—about what Congress wants when a statute it has charged an agency with implementing contains an ambiguity or a gap. See *id.*, at 843–

845; *Smiley*, 517 U. S., at 740–741. An enacting Congress, as noted above, knows those uncertainties will arise, even if it does not know what they will turn out to be. See *supra*, at 4–5. And every once in a while, Congress provides an explicit instruction for dealing with that contingency—assigning primary responsibility to the courts, or else to an agency. But much more often, Congress does not say. Thus arises the need for a presumption—really, a default rule—for what should happen in that event. Does a statutory silence or ambiguity then go to a court for resolution? Or to an agency? This Court has long thought Congress would choose an agency, with courts serving only as a backstop to make sure the agency makes a reasonable choice among the possible readings. Or said otherwise, Congress would select the agency it has put in control of a regulatory scheme to exercise the "degree of discretion" that the statute's lack of clarity or completeness allows. *Smiley*, 517 U. S., at 741. Of course, Congress can always refute that presumptive choice—can say that, really, it would prefer courts to wield that discretionary power. But until then, the presumption cuts in the agency's favor.[1] The next question is why.

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[1] Note that presumptions of this kind are common in the law. In other contexts, too, the Court responds to a congressional lack of direction by adopting a presumption about what Congress wants, rather than trying to figure that out in every case. And then Congress can legislate, with "predictable effects," against that "stable background" rule. *Morrison* v. *National Australia Bank Ltd.*, 561 U. S. 247, 261 (2010). Take the presumption against extraterritoriality: The Court assumes Congress means for its statutes to apply only within the United States, absent a "clear indication" to the contrary. *Id.*, at 255. Or the presumption against retroactivity: The Court assumes Congress wants its laws to apply only prospectively, unless it "unambiguously instruct[s]" something different. *Vartelas* v. *Holder*, 566 U. S. 257, 266 (2012). Or the presumption against repeal of statutes by implication: The Court assumes Congress does not intend a later statute to displace an earlier one unless it makes that intention "clear and manifest." *Epic Systems Corp.* v. *Lewis*, 584 U. S. 497, 510 (2018). Or the (so far unnamed) presumption against treating a procedural requirement as "jurisdictional" unless "Congress

For one, because agencies often know things about a statute's subject matter that courts could not hope to. The point is especially stark when the statute is of a "scientific or technical nature." *Kisor*, 588 U. S., at 571 (plurality opinion). Agencies are staffed with "experts in the field" who can bring their training and knowledge to bear on open statutory questions. *Chevron*, 467 U. S., at 865. Consider, for example, the first bulleted case above. When does an alpha amino acid polymer qualify as a "protein"? See *supra*, at 5. I don't know many judges who would feel confident resolving that issue. (First question: What even *is* an alpha amino acid polymer?) But the FDA likely has scores of scientists on staff who can think intelligently about it, maybe collaborate with each other on its finer points, and arrive at a sensible answer. Or take the perhaps more accessible-sounding second case, involving the Endangered Species Act. See *supra*, at 5–6. Deciding when one squirrel population is "distinct" from another (and thus warrants protection) requires knowing about species more than it does consulting a dictionary. How much variation of what kind—geographic, genetic, morphological, or behavioral—should be required? A court could, if forced to, muddle through that issue and announce a result. But wouldn't the Fish and Wildlife Service, with all its specialized expertise, do a better job of the task—of saying what, in the context of species protection, the open-ended term "distinct" means? One idea behind the *Chevron* presumption is that Congress—

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clearly states that it is." *Boechler* v. *Commissioner*, 596 U. S. 199, 203 (2022). I could continue, except that this footnote is long enough. The *Chevron* deference rule is to the same effect: The Court generally assumes that Congress intends to confer discretion on agencies to handle statutory ambiguities or gaps, absent a direction to the contrary. The majority calls that presumption a "fiction," *ante*, at 26, but it is no more so than any of the presumptions listed above. They all are best guesses—and usually quite good guesses—by courts about congressional intent.

the same Congress that charged the Service with implementing the Act—would answer that question with a resounding "yes."

A second idea is that Congress would value the agency's experience with how a complex regulatory regime functions, and with what is needed to make it effective. Let's stick with squirrels for a moment, except broaden the lens. In construing a term like "distinct" in a case about squirrels, the Service likely would benefit from its "historical familiarity" with how the term has covered the population segments of other species. *Martin* v. *Occupational Safety and Health Review Comm'n*, 499 U. S. 144, 153 (1991); see, *e.g.*, *Center for Biological Diversity* v. *Zinke*, 900 F. 3d 1053, 1060–1062 (CA9 2018) (arctic grayling); *Center for Biological Diversity* v. *Zinke*, 868 F. 3d 1054, 1056 (CA9 2017) (desert eagle). Just as a common-law court makes better decisions as it sees multiple variations on a theme, an agency's construction of a statutory term benefits from its unique exposure to all the related ways the term comes into play. Or consider, for another way regulatory familiarity matters, the example about adjusting Medicare reimbursement for geographic wage differences. See *supra*, at 6. According to a dictionary, the term "geographic area" could be as large as a multi-state region or as small as a census tract. How to choose? It would make sense to gather hard information about what reimbursement levels each approach will produce, to explore the ease of administering each on a nationwide basis, to survey how regulators have dealt with similar questions in the past, and to confer with the hospitals themselves about what makes sense. See *Kisor*, 588 U. S., at 571 (plurality opinion) (noting that agencies are able to "conduct factual investigations" and "consult with affected parties"). Congress knows the Department of Health and Human Services can do all those things—and that courts cannot.

Still more, *Chevron*'s presumption reflects that resolving

statutory ambiguities, as Congress well knows, is "often more a question of policy than of law." *Pauley* v. *BethEnergy Mines, Inc.*, 501 U. S. 680, 696 (1991). The task is less one of construing a text than of balancing competing goals and values. Consider the statutory directive to achieve "substantial restoration of the [Grand Canyon's] natural quiet." See *supra*, at 6. Someone is going to have to decide exactly what that statute means for air traffic over the canyon. How many flights, in what places and at what times, are consistent with restoring enough natural quiet on the ground? That is a policy trade-off of a kind familiar to agencies—but peculiarly unsuited to judges. Or consider *Chevron* itself. As the Court there understood, the choice between defining a "stationary source" as a whole plant or as a pollution-emitting device is a choice about how to "reconcile" two "manifestly competing interests." 467 U. S., at 865. The plantwide definition relaxes the permitting requirement in the interest of promoting economic growth; the device-specific definition strengthens that requirement to better reduce air pollution. See *id.*, at 851, 863, 866. Again, that is a choice a judge should not be making, but one an agency properly can. Agencies are "subject to the supervision of the President, who in turn answers to the public." *Kisor*, 588 U. S., at 571–572 (plurality opinion). So when faced with a statutory ambiguity, "an agency to which Congress has delegated policymaking responsibilities" may rely on an accountable actor's "views of wise policy to inform its judgments." *Chevron*, 467 U. S., at 865.

None of this is to say that deference to agencies is always appropriate. The Court over time has fine-tuned the *Chevron* regime to deny deference in classes of cases in which Congress has no reason to prefer an agency to a court. The majority treats those "refinements" as a flaw in the scheme, *ante*, at 27, but they are anything but. Consider the rule that an agency gets no deference when construing a statute it is not responsible for administering. See *Epic Systems*

Corp. v. *Lewis*, 584 U. S. 497, 519–520 (2018). Well, of course not—if Congress has not put an agency in charge of implementing a statute, Congress would not have given the agency a special role in its construction. Or take the rule that an agency will not receive deference if it has reached its decision without using—or without using properly—its rulemaking or adjudicatory authority. See *United States* v. *Mead Corp.*, 533 U. S. 218, 226–227 (2001); *Encino Motorcars, LLC* v. *Navarro*, 579 U. S. 211, 220 (2016). Again, that should not be surprising: Congress expects that authoritative pronouncements on a law's meaning will come from the procedures it has enacted to foster "fairness and deliberation" in agency decision-making. *Mead*, 533 U. S., at 230. Or finally, think of the "extraordinary cases" involving questions of vast "economic and political significance" in which the Court has declined to defer. *King* v. *Burwell*, 576 U. S. 473, 485–486 (2015). The theory is that Congress would not have left matters of such import to an agency, but would instead have insisted on maintaining control. So the *Chevron* refinements proceed from the same place as the original doctrine. Taken together, they give interpretive primacy to the agency when—but only when—it is acting, as Congress specified, in the heartland of its delegated authority.

That carefully calibrated framework "reflects a sensitivity to the proper roles of the political and judicial branches." *Pauley*, 501 U. S., at 696. Where Congress has spoken, Congress has spoken; only its judgments matter. And courts alone determine when that has happened: Using all their normal interpretive tools, they decide whether Congress has addressed a given issue. But when courts have decided that Congress has not done so, a choice arises. Absent a legislative directive, either the administering agency or a court must take the lead. And the matter is more fit for the agency. The decision is likely to involve the agency's subject-matter expertise; to fall within its sphere of regulatory

experience; and to involve policy choices, including cost-benefit assessments and trade-offs between conflicting values. So a court without relevant expertise or experience, and without warrant to make policy calls, appropriately steps back. The court still has a role to play: It polices the agency to ensure that it acts within the zone of reasonable options. But the court does not insert itself into an agency's expertise-driven, policy-laden functions. That is the arrangement best suited to keep every actor in its proper lane. And it is the one best suited to ensure that Congress's statutes work in the way Congress intended.

The majority makes two points in reply, neither convincing. First, it insists that "agencies have no special competence" in filling gaps or resolving ambiguities in regulatory statutes; rather, "[c]ourts do." *Ante*, at 23. Score one for self-confidence; maybe not so high for self-reflection or -knowledge. Of course courts often construe legal texts, hopefully well. And *Chevron*'s first step takes full advantage of that talent: There, a court tries to divine what Congress meant, even in the most complicated or abstruse statutory schemes. The deference comes in only if the court cannot do so—if the court must admit that standard legal tools will not avail to fill a statutory silence or give content to an ambiguous term. That is when the issues look like the ones I started off with: When does an alpha amino acid polymer qualify as a "protein"? How distinct is "distinct" for squirrel populations? What size "geographic area" will ensure appropriate hospital reimbursement? As between two equally feasible understandings of "stationary source," should one choose the one more protective of the environment or the one more favorable to economic growth? The idea that courts have "special competence" in deciding such questions whereas agencies have "no[ne]" is, if I may say, malarkey. Answering those questions right does not mainly demand the interpretive skills courts possess. Instead, it demands one or more of: subject-matter expertise,

long engagement with a regulatory scheme, and policy choice. It is courts (not agencies) that "have no special competence"—or even legitimacy—when those are the things a decision calls for.

Second, the majority complains that an ambiguity or gap does not "necessarily reflect a congressional intent that an agency" should have primary interpretive authority. *Ante*, at 22. On that score, I'll agree with the premise: It doesn't "necessarily" do so. *Chevron* is built on a *presumption*. The decision does not maintain that Congress in every case wants the agency, rather than a court, to fill in gaps. The decision maintains that when Congress does not expressly pick one or the other, we need a default rule; and the best default rule—agency or court?—is the one we think Congress would generally want. As to *why* Congress would generally want the agency: The answer lies in everything said above about Congress's delegation of regulatory power to the agency and the agency's special competencies. See *supra*, at 9–11. The majority appears to think it is a showstopping rejoinder to note that many statutory gaps and ambiguities are "unintentional." *Ante*, at 22. But to begin, many are not; the ratio between the two is uncertain. See *supra*, at 4–5. And to end, why should that matter in any event? Congress may not have deliberately introduced a gap or ambiguity into the statute; but it knows that pretty much everything it drafts will someday be found to contain such a "flaw." Given that knowledge, *Chevron* asks, what would Congress want? The presumed answer is again the same (for the same reasons): The agency. And as with any default rule, if Congress decides otherwise, all it need do is say.

In that respect, the proof really is in the pudding: Congress basically never says otherwise, suggesting that *Chevron* chose the presumption aligning with legislative intent (or, in the majority's words, "approximat[ing] reality," *ante*, at 22). Over the last four decades, Congress has authorized

or reauthorized hundreds of statutes. The drafters of those statutes knew all about *Chevron*. See A. Gluck & L. Bressman, Statutory Interpretation From the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part I, 65 Stan. L. Rev. 901, 928 (fig. 2), 994 (2013). So if they had wanted a different assignment of interpretive responsibility, they would have inserted a provision to that effect. With just a pair of exceptions I know of, they did not. See 12 U. S. C. §25b(b)(5)(A) (exception #1); 15 U. S. C. §8302(c)(3)(A) (exception #2). Similarly, Congress has declined to enact proposed legislation that would abolish *Chevron* across the board. See S. 909, 116th Cong., 1st Sess., §2 (2019) (still a bill, not a law); H. R. 5, 115th Cong., 1st Sess., §202 (2017) (same). So to the extent the majority is worried that the *Chevron* presumption is "fiction[al]," *ante*, at 26—as all legal presumptions in some sense are—it has gotten less and less so every day for 40 years. The congressional reaction shows as well as anything could that the *Chevron* Court read Congress right.

II

The majority's principal arguments are in a different vein. Around 80 years after the APA was enacted and 40 years after *Chevron*, the majority has decided that the former precludes the latter. The APA's Section 706, the majority says, "makes clear" that agency interpretations of statutes "are *not* entitled to deference." *Ante*, at 14–15 (emphasis in original). And that provision, the majority continues, codified the contemporaneous law, which likewise did not allow for deference. See *ante,* at 9–13, 15–16. But neither the APA nor the pre-APA state of the law does the work that the majority claims. Both are perfectly compatible with *Chevron* deference.

Section 706, enacted with the rest of the APA in 1946, provides for judicial review of agency action. It states: "To the extent necessary to decision and when presented, the

reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." 5 U. S. C. §706.

That text, contra the majority, "does not resolve the *Chevron* question." C. Sunstein, *Chevron* As Law, 107 Geo. L. J. 1613, 1642 (2019) (Sunstein). Or said a bit differently, Section 706 is "generally indeterminate" on the matter of deference. A. Vermeule, Judging Under Uncertainty 207 (2006) (Vermeule). The majority highlights the phrase "decide all relevant questions of law" (italicizing the "all"), and notes that the provision "prescribes no deferential standard" for answering those questions. *Ante*, at 14. But just as the provision does not prescribe a deferential standard of review, so too it does not prescribe a *de novo* standard of review (in which the court starts from scratch, without giving deference). In point of fact, Section 706 does not specify *any* standard of review for construing statutes. See *Kisor*, 588 U. S., at 581 (plurality opinion). And when a court uses a deferential standard—here, by deciding whether an agency reading is reasonable—it just as much "decide[s]" a "relevant question[] of law" as when it uses a *de novo* standard. §706. The deferring court then conforms to Section 706 "by determining whether the agency has stayed within the bounds of its assigned discretion—that is, whether the agency has construed [the statute it administers] reasonably." J. Manning, *Chevron* and the Reasonable Legislator, 128 Harv. L. Rev. 457, 459 (2014); see *Arlington* v. *FCC*, 569 U. S. 290, 317 (2013) (ROBERTS, C. J., dissenting) ("We do not ignore [Section 706's] command when we afford an agency's statutory interpretation *Chevron* deference; we respect it").[2]

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[2]The majority tries to buttress its argument with a stray sentence or two from the APA's legislative history, but the same response holds. As the majority notes, see *ante*, at 15, the House and Senate Reports each stated that Section 706 "provid[ed] that questions of law are for courts

Section 706's references to standards of review in other contexts only further undercut the majority's argument. The majority notes that Section 706 requires deferential review for agency fact-finding and policy-making (under, respectively, a substantial-evidence standard and an arbitrary-and-capricious standard). See *ante*, at 14. Congress, the majority claims, "surely would have articulated a similarly deferential standard applicable to questions of law had it intended to depart" from *de novo* review. *Ibid.* Surely? In another part of Section 706, Congress explicitly referred to *de novo* review. §706(2)(F). With all those references to standards of review—both deferential and not—running around Section 706, what is "telling" (*ante*, at 14) is the absence of any standard for reviewing an agency's statutory constructions. That silence left the matter, as noted above, "generally indeterminate": Section 706 neither mandates nor forbids *Chevron*-style deference. Vermeule 207.[3]

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rather than agencies to decide in the last analysis." H. R. Rep. No. 1980, 79th Cong., 2d Sess., 44 (1946); S. Rep. No. 752, 79th Cong., 1st Sess., 28 (1945). But that statement also does not address the standard of review that courts should then use. When a court defers under *Chevron*, it reviews the agency's construction for reasonableness "in the last analysis." The views of Representative Walter, which the majority also cites, further demonstrate my point. He stated that the APA would require courts to "determine independently all relevant questions of law," but he also stated that courts would be required to "exercise . . . independent judgment" in applying the substantial-evidence standard (a deferential standard if ever there were one). 92 Cong. Rec. 5654 (1946). He therefore did not equate "independent" review with *de novo* review; he thought that a court could conduct independent review of agency action using a deferential standard.

[3] In a footnote responding to the last two paragraphs, the majority raises the white flag on Section 706's text. See *ante*, at 15, n. 4. Yes, it finally concedes, Section 706 does not *say* that *de novo* review is required for an agency's statutory construction. Rather, the majority says, "some things go without saying," and *de novo* review is such a thing. See *ibid.* But why? What extra-textual considerations force us to read Section 706 the majority's way? In its footnote, the majority repairs only to history.

And contra the majority, most "respected commentators" understood Section 706 in that way—as allowing, even if not requiring, deference. *Ante*, at 16. The finest administrative law scholars of the time (call them that generation's Manning, Sunstein, and Vermeule) certainly did. Professor Louis Jaffe described something very like the *Chevron* two-step as the preferred method of reviewing agency interpretations under the APA. A court, he said, first "must decide as a 'question of law' whether there is 'discretion' in the premises." Judicial Control of Administrative Action 570 (1965). That is akin to step 1: Did Congress speak to the issue, or did it leave openness? And if the latter, Jaffe continued, the agency's view "if 'reasonable' is free of control." *Ibid.* That of course looks like step 2: defer if reasonable. And just in case that description was too complicated, Jaffe conveyed his main point this way: The argument that courts "must decide all questions of law"—as if there were no agency in the picture—"is, in my opinion, unsound." *Id.*, at 569. Similarly, Professor Kenneth Culp Davis, author of the then-preeminent treatise on administrative law, noted with approval that "reasonableness" review of agency interpretations—in which courts "refused to substitute judgment"—had "survived the APA." Administrative Law 880, 883, 885 (1951) (Davis). Other contemporaneous scholars and experts agreed. See R. Levin, The APA and the Assault on Deference, 106 Minn. L. Rev. 125, 181–183 (2021) (Levin) (listing many of them). They did not see in their own time what the majority finds there today.[4]

But as I will explain below, the majority also gets wrong the most relevant history, pertaining to how judicial review of agency interpretations operated in the years before the APA was enacted. See *infra*, at 19–23.

[4] I concede one exception (whose view was "almost completely isolated," Levin 181), but his comments on Section 706 refute a different aspect of the majority's argument. Professor John Dickinson, as the majority notes, thought that Section 706 precluded courts from deferring to agency interpretations. See Administrative Procedure Act: Scope and Grounds of Broadened Judicial Review, 33 A. B. A. J. 434, 516 (1947)

Nor, evidently, did the Supreme Court. In the years after the APA was enacted, the Court "never indicated that section 706 rejected the idea that courts might defer to agency interpretations of law." Sunstein 1654. Indeed, not a single Justice so much as floated that view of the APA. To the contrary, the Court issued a number of decisions in those years deferring to an agency's statutory interpretation. See, *e.g.*, *Unemployment Compensation Comm'n of Alaska* v. *Aragon*, 329 U. S. 143, 153–154 (1946); *NLRB* v. *E. C. Atkins & Co.*, 331 U. S. 398, 403 (1947); *Cardillo* v. *Liberty Mut. Ins. Co.*, 330 U. S. 469, 478–479 (1947). And that continued right up until *Chevron*. See, *e.g.*, *Mitchell* v. *Budd*, 350 U. S. 473, 480 (1956); *Zenith Radio Corp.* v. *United States*, 437 U. S. 443, 450 (1978). To be clear: Deference in those years was not always given to interpretations that would receive it under *Chevron*. The practice then was more inconsistent and less fully elaborated than it later became. The point here is only that the Court came nowhere close to accepting the majority's view of the APA. Take the language from Section 706 that the majority most relies on: "decide all relevant questions of law." See *ante*, at 14. In the decade after the APA's enactment, those words were used only four times in Supreme Court opinions (all in footnotes)—and never to suggest that courts could not defer to agency interpretations. See Sunstein 1656.

The majority's view of Section 706 likewise gets no support from how judicial review operated in the years leading up to the APA. That prior history matters: As the majority recognizes, Section 706 was generally understood to "restate[] the present law as to the scope of judicial review."

(Dickinson); *ante*, at 16. But unlike the majority, he viewed that bar as "a change" to, not a restatement of, pre-APA law. Compare Dickinson 516 with *ante*, at 15–16. So if the majority really wants to rely on Professor Dickinson, it will have to give up the claim, which I address below, that the law before the APA forbade deference. See *infra*, at 19–23.

Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act 108 (1947); *ante*, at 15–16. The problem for the majority is that in the years preceding the APA, courts became ever more deferential to agencies. New Deal administrative programs had by that point come into their own. And this Court and others, in a fairly short time, had abandoned their initial resistance and gotten on board. Justice Breyer, wearing his administrative-law-scholar hat, characterized the pre-APA period this way: "[J]udicial review of administrative action was curtailed, and particular agency decisions were frequently sustained with judicial obeisance to the mysteries of administrative expertise." S. Breyer et al., Administrative Law and Regulatory Policy 21 (7th ed. 2011). And that description extends to review of an agency's statutory constructions. An influential study of administrative practice, published five years before the APA's enactment, described the state of play: Judicial "review may, in some instances at least, be limited to the inquiry whether the administrative construction is a permissible one." Final Report of Attorney General's Committee on Administrative Procedure (1941), reprinted in Administrative Procedure in Government Agencies, S. Doc. No. 8, 77th Cong., 1st Sess., 78 (1941). Or again: "[W]here the statute is reasonably susceptible of more than one interpretation, the court may accept that of the administrative body." *Id.*, at 90–91.[5]

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[5] Because the APA was meant to "restate[] the present law," the judicial review practices of the 1940s are more important to understanding the statute than is any earlier tradition (such as the majority dwells on). But before I expand on those APA-contemporaneous practices, I pause to note that they were "not built on sand." *Kisor* v. *Wilkie*, 588 U. S. 558, 568–569 (2019) (plurality opinion). Since the early days of the Republic, this Court has given significant weight to official interpretations of "ambiguous law[s]." *Edwards' Lessee* v. *Darby*, 12 Wheat. 206, 210 (1827). With the passage of time—and the growth of the administrative sphere—those "judicial expressions of deference increased." H. Monaghan, *Marbury* and the Administrative State, 83 Colum. L. Rev. 1, 15 (1983). By

Two prominent Supreme Court decisions of the 1940s put those principles into action. *Gray* v. *Powell*, 314 U. S. 402 (1941), was then widely understood as "the leading case" on review of agency interpretations. Davis 882; see *ibid.* (noting that it "establish[ed] what is known as 'the doctrine of Gray v. Powell'"). There, the Court deferred to an agency construction of the term "producer" as used in a statutory exemption from price controls. Congress, the Court explained, had committed the scope of the exemption to the agency because its "experience in [the] field gave promise of a better informed, more equitable, adjustment of the conflicting interests." *Gray*, 314 U. S., at 412. Accordingly, the Court concluded that it was "not the province of a court" to "substitute its judgment" for the agency's. *Ibid.* Three years later, the Court decided *NLRB* v. *Hearst Publications, Inc.*, 322 U. S. 111 (1944), another acknowledged "leading case." Davis 882; see *id.*, at 884. The Court again deferred, this time to an agency's construction of the term "employee" in the National Labor Relations Act. The scope of that term, the Court explained, "belong[ed] to" the agency to answer based on its "[e]veryday experience in the administration of the statute." *Hearst*, 322 U. S., at 130. The Court therefore "limited" its review to whether the agency's reading had "warrant in the record and a reasonable basis in

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the early 20th century, the Court stated that it would afford "great weight" to an agency construction in the face of statutory "uncertainty or ambiguity." *National Lead Co.* v. *United States*, 252 U. S. 140, 145 (1920); see *Schell's Executors* v. *Fauché*, 138 U. S. 562, 572 (1891) ("controlling" weight in "all cases of ambiguity"); *United States* v. *Alabama Great Southern R. Co.*, 142 U. S. 615, 621 (1892) ("decisive" weight "in case of ambiguity"); *Jacobs* v. *Prichard*, 223 U. S. 200, 214 (1912) (referring to the "rule which gives strength" to official interpretations if "ambiguity exist[s]"). So even before the New Deal, a strand of this Court's cases exemplified deference to executive constructions of ambiguous statutes. And then, as I show in the text, the New Deal arrived and deference surged—creating the "present law" that the APA "restated."

law." *Id.*, at 131.[6] Recall here that even the majority accepts that Section 706 was meant to "restate[] the present law" as to judicial review. See *ante*, at 15–16; *supra*, at 19–20. Well then? It sure would seem that the provision allows a deference regime.

The majority has no way around those two noteworthy decisions. It first appears to distinguish between "pure legal question[s]" and the so-called mixed questions in *Gray* and *Hearst*, involving the application of a legal standard to a set of facts. *Ante*, at 11. If in drawing that distinction, the majority intends to confine its holding to the pure type of legal issue—thus enabling courts to defer when law and facts are entwined—I'd be glad. But I suspect the majority has no such intent, because that approach would preserve *Chevron* in a substantial part of its current domain. Cf. *Wilkinson* v. *Garland*, 601 U. S. 209, 230 (2024) (ALITO, J., dissenting) (noting, in the immigration context, that the universe of mixed questions swamps that of pure legal ones). It is frequently in the consideration of mixed questions that the scope of statutory terms is established and their meaning defined. See H. Monaghan, *Marbury* and the

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[6]The majority says that I have "pluck[ed] out" *Gray* and *Hearst*, impliedly from a vast number of not-so-helpful cases. *Ante*, at 13, n. 3. It would make as much sense to say that a judge "plucked out" *Universal Camera Corp.* v. *NLRB*, 340 U. S. 474 (1951), to discuss substantial-evidence review or "plucked out" *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29 (1983), to discuss arbitrary-and-capricious review. *Gray* and *Hearst*, as noted above, were the leading cases about agency interpretations in the years before the APA's enactment. But just to gild the lily, here are a number of other Supreme Court decisions from the five years prior to the APA's enactment that were of a piece: *United States* v. *Pierce Auto Freight Lines, Inc.*, 327 U. S. 515, 536 (1946); *ICC* v. *Parker*, 326 U. S. 60, 65 (1945); *Federal Security Administrator* v. *Quaker Oats Co.*, 318 U. S. 218, 227–228 (1943). The real "pluck[ing]" offense is the majority's—for taking a stray sentence from *Hearst* (*ante*, at 13, n. 3) to suggest that both *Hearst* and *Gray* stand for the opposite of what they actually do.

Administrative State, 83 Colum. L. Rev. 1, 29 (1983) ("Administrative application of law is administrative formulation of law whenever it involves elaboration of the statutory norm"). How does a statutory interpreter decide, as in *Hearst*, what an "employee" is? In large part through cases asking whether the term covers people performing specific jobs, like (in that case) "newsboys." 322 U. S., at 120. Or consider one of the examples I offered above. How does an interpreter decide when one population segment of a species is "distinct" from another? Often by considering that requirement with respect to particular species, like western gray squirrels. So the distinction the majority offers makes no real-world (or even theoretical) sense. If the *Hearst* Court was deferring to an agency on whether the term "employee" covered newsboys, it was deferring to the agency on the scope and meaning of the term "employee."

The majority's next rejoinder—that "the Court was far from consistent" in deferring—falls equally flat. *Ante*, at 12. I am perfectly ready to acknowledge that in the pre-APA period, a deference regime had not yet taken complete hold. I'll go even further: Let's assume that deference was then an on-again, off-again function (as the majority seems to suggest, see *ante*, at 11–12, and 13, n. 3). Even on that assumption, the majority's main argument—that Section 706 *prohibited* deferential review—collapses. Once again, the majority agrees that Section 706 was not meant to change the then-prevailing law. See *ante*, at 15–16. And even if inconsistent, that law cannot possibly be thought to have *prohibited* deference. Or otherwise said: "If Section 706 did not change the law of judicial review (as we have long recognized), then it did not proscribe a deferential standard then known and in use." *Kisor*, 588 U. S., at 583 (plurality opinion).

The majority's whole argument for overturning *Chevron* relies on Section 706. But the text of Section 706 does not support that result. And neither does the contemporaneous

practice, which that text was supposed to reflect. So today's decision has no basis in the only law the majority deems relevant. It is grounded on air.

III

And still there is worse, because abandoning *Chevron* subverts every known principle of *stare decisis*. Of course, respecting precedent is not an "inexorable command." *Payne* v. *Tennessee*, 501 U. S. 808, 828 (1991). But overthrowing it requires far more than the majority has offered up here. *Chevron* is entitled to *stare decisis*'s strongest form of protection. The majority thus needs an exceptionally strong reason to overturn the decision, above and beyond thinking it wrong. And it has nothing approaching such a justification, proposing only a bewildering theory about *Chevron*'s "unworkability." *Ante*, at 32. Just five years ago, this Court in *Kisor* rejected a plea to overrule *Auer* v. *Robbins*, 519 U. S. 452 (1997), which requires judicial deference to agencies' interpretations of their own regulations. See 588 U. S., at 586–589 (opinion of the Court). The case against overruling *Chevron* is at least as strong. In particular, the majority's decision today will cause a massive shock to the legal system, "cast[ing] doubt on many settled constructions" of statutes and threatening the interests of many parties who have relied on them for years. 588 U. S., at 587 (opinion of the Court).

Adherence to precedent is "a foundation stone of the rule of law." *Michigan* v. *Bay Mills Indian Community*, 572 U. S. 782, 798 (2014). *Stare decisis* "promotes the evenhanded, predictable, and consistent development of legal principles." *Payne*, 501 U. S., at 827. It enables people to order their lives in reliance on judicial decisions. And it "contributes to the actual and perceived integrity of the judicial process," by ensuring that those decisions are founded in the law, and not in the "personal preferences" of judges. *Id.*, at 828; *Dobbs*, 597 U. S., at 388 (dissenting opinion).

Perhaps above all else, *stare decisis* is a "doctrine of judicial modesty." *Id.*, at 363. In that, it shares something important with *Chevron*. Both tell judges that they do not know everything, and would do well to attend to the views of others. So today, the majority rejects what judicial humility counsels not just once but twice over.

And *Chevron* is entitled to a particularly strong form of *stare decisis*, for two separate reasons. First, it matters that "Congress remains free to alter what we have done." *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 173 (1989); see *Kisor*, 588 U. S., at 587 (opinion of the Court) (making the same point for *Auer* deference). In a constitutional case, the Court alone can correct an error. But that is not so here. "Our deference decisions are balls tossed into Congress's court, for acceptance or not as that branch elects." 588 U. S., at 587–588 (opinion of the Court). And for generations now, Congress has chosen acceptance. Throughout those years, Congress could have abolished *Chevron* across the board, most easily by amending the APA. Or it could have eliminated deferential review in discrete areas, by amending old laws or drafting new laws to include an anti-*Chevron* provision. Instead, Congress has "spurned multiple opportunities" to do a comprehensive rejection of *Chevron*, and has hardly ever done a targeted one. *Kimble* v. *Marvel Entertainment, LLC*, 576 U. S. 446, 456 (2015); see *supra*, at 14–15. Or to put the point more affirmatively, Congress has kept *Chevron* as is for 40 years. It maintained that position even as Members of this Court began to call *Chevron* into question. See *ante*, at 30. From all it appears, Congress has not agreed with the view of some Justices that they and other judges should have more power.

Second, *Chevron* is by now much more than a single decision. This Court alone, acting as *Chevron* allows, has upheld an agency's reasonable interpretation of a statute at least 70 times. See Brief for United States in No. 22–1219,

p. 27; App. to *id.*, at 68a–72a (collecting cases). Lower courts have applied the *Chevron* framework on thousands upon thousands of occasions. See K. Barnett & C. Walker, *Chevron* and Stare Decisis, 31 Geo. Mason L. Rev. 475, 477, and n. 11 (2024) (noting that at last count, *Chevron* was cited in more than 18,000 federal-court decisions). The *Kisor* Court observed, when upholding *Auer*, that "[d]eference to reasonable agency interpretations of ambiguous rules pervades the whole corpus of administrative law." 588 U. S., at 587 (opinion of the Court). So too does deference to reasonable agency interpretations of ambiguous statutes—except more so. *Chevron* is as embedded as embedded gets in the law.

The majority says differently, because this Court has ignored *Chevron* lately; all that is left of the decision is a "decaying husk with bold pretensions." *Ante*, at 33. Tell that to the D. C. Circuit, the court that reviews a large share of agency interpretations, where *Chevron* remains alive and well. See, *e.g.*, *Lissack* v. *Commissioner*, 68 F. 4th 1312, 1321–1322 (2023); *Solar Energy Industries Assn.* v. *FERC*, 59 F. 4th 1287, 1291–1294 (2023). But more to the point: The majority's argument is a bootstrap. This Court has "avoided deferring under *Chevron* since 2016" (*ante*, at 32) because it has been preparing to overrule *Chevron* since around that time. That kind of self-help on the way to reversing precedent has become almost routine at this Court. Stop applying a decision where one should; "throw some gratuitous criticisms into a couple of opinions"; issue a few separate writings "question[ing the decision's] premises" (*ante*, at 30); give the whole process a few years . . . and voila!—you have a justification for overruling the decision. *Janus* v. *State, County, and Municipal Employees*, 585 U. S. 878, 950 (2018) (KAGAN, J., dissenting) (discussing the overruling of *Abood* v. *Detroit Bd. of Ed.*, 431 U. S. 209 (1977)); see also, *e.g.*, *Kennedy* v. *Bremerton School Dist.*, 597 U. S. 507, 571–572 (2022) (SOTOMAYOR, J., dissenting) (similar

for *Lemon* v. *Kurtzman*, 403 U. S. 602 (1971)); *Shelby County* v. *Holder*, 570 U. S. 529, 587–588 (2013) (Ginsburg, J., dissenting) (similar for *South Carolina* v. *Katzenbach*, 383 U. S. 301 (1966)). I once remarked that this overruling-through-enfeeblement technique "mock[ed] *stare decisis*." *Janus*, 585 U. S., at 950 (dissenting opinion). I have seen no reason to change my mind.

The majority does no better in its main justification for overruling *Chevron*—that the decision is "unworkable." *Ante*, at 30. The majority's first theory on that score is that there is no single "answer" about what "ambiguity" means: Some judges turn out to see more of it than others do, leading to "different results." *Ante*, at 30–31. But even if so, the legal system has for many years, in many contexts, dealt perfectly well with that variation. Take contract law. It is hornbook stuff that when (but only when) a contract is ambiguous, a court interpreting it can consult extrinsic evidence. See *CNH Industrial N.V.* v. *Reese*, 583 U. S. 133, 139 (2018) (*per curiam*). And when all interpretive tools still leave ambiguity, the contract is construed against the drafter. See *Lamps Plus, Inc.* v. *Varela*, 587 U. S. 176, 186–187 (2019). So I guess the contract rules of the 50 States are unworkable now. Or look closer to home, to doctrines this Court regularly applies. In deciding whether a government has waived sovereign immunity, we construe "[a]ny ambiguities in the statutory language" in "favor of immunity." *FAA* v. *Cooper*, 566 U. S. 284, 290 (2012). Similarly, the rule of lenity tells us to construe ambiguous statutes in favor of criminal defendants. See *United States* v. *Castleman*, 572 U. S. 157, 172–173 (2014). And the canon of constitutional avoidance instructs us to construe ambiguous laws to avoid difficult constitutional questions. See *United States* v. *Oakland Cannabis Buyers' Cooperative*, 532 U. S. 483, 494 (2001). I could go on, but the point is made. There are ambiguity triggers all over the law. Somehow everyone seems to get by.

And *Chevron* is an especially puzzling decision to criticize on the ground of generating too much judicial divergence. There's good empirical—meaning, non-impressionistic—evidence on exactly that subject. And it shows that, as compared with *de novo* review, use of the *Chevron* two-step framework fosters *agreement* among judges. See K. Barnett, C. Boyd, & C. Walker, Administrative Law's Political Dynamics, 71 Vand. L. Rev. 1463, 1502 (2018) (Barnett). More particularly, *Chevron* has a "powerful constraining effect on partisanship in judicial decisionmaking." Barnett 1463 (italics deleted); see Sunstein 1672 ("[A] predictable effect of overruling *Chevron* would be to ensure a far greater role for judicial policy preferences in statutory interpretation and far more common splits along ideological lines"). So if consistency among judges is the majority's lodestar, then the Court should not overrule *Chevron*, but return to using it.

The majority's second theory on workability is likewise a makeweight. *Chevron*, the majority complains, has some exceptions, which (so the majority says) are "difficult" and "complicate[d]" to apply. *Ante*, at 32. Recall that courts are not supposed to defer when the agency construing a statute (1) has not been charged with administering that law; (2) has not used deliberative procedures—*i.e.,* notice-and-comment rulemaking or adjudication; or (3) is intervening in a "major question," of great economic and political significance. See *supra*, at 11–12; *ante*, at 27–28. As I've explained, those exceptions—the majority also aptly calls them "refinements"—fit with *Chevron*'s rationale: They define circumstances in which Congress is unlikely to have wanted agency views to govern. *Ante*, at 27; see *supra*, at 11–12. And on the difficulty scale, they are nothing much. Has Congress put the agency in charge of administering the statute? In 99 of 100 cases, everyone will agree on the answer with scarcely a moment's thought. Did the agency use notice-and-comment or an adjudication before rendering an

interpretation? Once again, I could stretch my mind and think up a few edge cases, but for the most part, the answer is an easy yes or no. The major questions exception is, I acknowledge, different: There, many judges have indeed disputed its nature and scope. Compare, *e.g.*, *West Virginia*, 597 U. S., at 721–724, with *id.*, at 764–770 (KAGAN, J., dissenting). But that disagreement concerns, on everyone's view, a tiny subset of all agency interpretations. For the most part, the exceptions that so upset the majority require merely a rote, check-the-box inquiry. If that is the majority's idea of a "dizzying breakdance," *ante*, at 32, the majority needs to get out more.

And anyway, difficult as compared to what? The majority's prescribed way of proceeding is no walk in the park. First, the majority makes clear that what is usually called *Skidmore* deference continues to apply. See *ante*, at 16–17. Under that decision, agency interpretations "constitute a body of experience and informed judgment" that may be "entitled to respect." *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 140 (1944). If the majority thinks that the same judges who argue today about where "ambiguity" resides (see *ante*, at 30) are not going to argue tomorrow about what "respect" requires, I fear it will be gravely disappointed. Second, the majority directs courts to comply with the varied ways in which Congress in fact "delegates discretionary authority" to agencies. *Ante*, at 17–18. For example, Congress may authorize an agency to "define[]" or "delimit[]" statutory terms or concepts, or to "fill up the details" of a statutory scheme. *Ante*, at 17, and n. 5. Or Congress may use, in describing an agency's regulatory authority, inherently "flexib[le]" language like "appropriate" or "reasonable." *Ante*, at 17, and n. 6. Attending to every such delegation, as the majority says, is necessary in a world without *Chevron*. But that task involves complexities of its own. Indeed, one reason Justice Scalia supported *Chevron* was that it re-

placed such a "statute-by-statute evaluation (which was assuredly a font of uncertainty and litigation) with an across-the-board presumption." A. Scalia, Judicial Deference to Administrative Interpretations of Law, 1989 Duke L. J. 511, 516. As a lover of the predictability that rules create, Justice Scalia thought the latter "unquestionably better." *Id.*, at 517.

On the other side of the balance, the most important *stare decisis* factor—call it the "jolt to the legal system" issue—weighs heavily against overruling *Chevron*. *Dobbs*, 597 U. S., at 357 (ROBERTS, C. J., concurring in judgment). Congress and agencies alike have relied on *Chevron*—have assumed its existence—in much of their work for the last 40 years. Statutes passed during that time reflect the expectation that *Chevron* would allocate interpretive authority between agencies and courts. Rules issued during the period likewise presuppose that statutory ambiguities were the agencies' to (reasonably) resolve. Those agency interpretations may have benefited regulated entities; or they may have protected members of the broader public. Either way, private parties have ordered their affairs—their business and financial decisions, their health-care decisions, their educational decisions—around agency actions that are suddenly now subject to challenge. In *Kisor*, this Court refused to overrule *Auer* because doing so would "cast doubt on" many longstanding constructions of rules, and thereby upset settled expectations. 588 U. S., at 587 (opinion of the Court). Overruling *Chevron*, and thus raising new doubts about agency constructions of statutes, will be far more disruptive.

The majority tries to alleviate concerns about a piece of that problem: It states that judicial decisions that have upheld agency action as reasonable under *Chevron* should not be overruled on that account alone. See *ante*, at 34–35. That is all to the good: There are thousands of such decisions, many settled for decades. See *supra*, at 26. But first,

reasonable reliance need not be predicated on a prior judicial decision. Some agency interpretations never challenged under *Chevron* now will be; expectations formed around those constructions thus could be upset, in a way the majority's assurance does not touch. And anyway, how good is that assurance, really? The majority says that a decision's "[m]ere reliance on *Chevron*" is not enough to counter the force of *stare decisis*; a challenger will need an additional "special justification." *Ante*, at 34. The majority is sanguine; I am not so much. Courts motivated to overrule an old *Chevron*-based decision can always come up with something to label a "special justification." Maybe a court will say "the quality of [the precedent's] reasoning" was poor. *Ante*, at 29. Or maybe the court will discover something "unworkable" in the decision—like some exception that has to be applied. *Ante*, at 30. All a court need do is look to today's opinion to see how it is done.

IV

> Judges are not experts in the field, and are not part of either political branch of the Government.
>
> —*Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 865 (1984)

Those were the days, when we knew what we are not. When we knew that as between courts and agencies, Congress would usually think agencies the better choice to resolve the ambiguities and fill the gaps in regulatory statutes. Because agencies *are* "experts in the field." And because they *are* part of a political branch, with a claim to making interstitial policy. And because Congress has charged them, not us, with administering the statutes containing the open questions. At its core, *Chevron* is about respecting that allocation of responsibility—the conferral of primary authority over regulatory matters to agencies, not courts.

Today, the majority does not respect that judgment. It gives courts the power to make all manner of scientific and technical judgments. It gives courts the power to make all manner of policy calls, including about how to weigh competing goods and values. (See *Chevron* itself.) It puts courts at the apex of the administrative process as to every conceivable subject—because there are always gaps and ambiguities in regulatory statutes, and often of great import. What actions can be taken to address climate change or other environmental challenges? What will the Nation's health-care system look like in the coming decades? Or the financial or transportation systems? What rules are going to constrain the development of A.I.? In every sphere of current or future federal regulation, expect courts from now on to play a commanding role. It is not a role Congress has given to them, in the APA or any other statute. It is a role this Court has now claimed for itself, as well as for other judges.

And that claim requires disrespecting, too, this Court's precedent. There are no special reasons, of the kind usually invoked for overturning precedent, to eliminate *Chevron* deference. And given *Chevron*'s pervasiveness, the decision to do so is likely to produce large-scale disruption. All that backs today's decision is the majority's belief that *Chevron* was wrong—that it gave agencies too much power and courts not enough. But shifting views about the worth of regulatory actors and their work do not justify overhauling a cornerstone of administrative law. In that sense too, today's majority has lost sight of its proper role.

And it is impossible to pretend that today's decision is a one-off, in either its treatment of agencies or its treatment of precedent. As to the first, this very Term presents yet another example of the Court's resolve to roll back agency authority, despite congressional direction to the contrary. See *SEC* v. *Jarkesy*, 603 U. S. ___ (2024); see also *supra*, at 3. As to the second, just my own defenses of *stare decisis*—

my own dissents to this Court's reversals of settled law—by now fill a small volume. See *Dobbs*, 597 U. S., at 363–364 (joint opinion of Breyer, SOTOMAYOR, and KAGAN, JJ.); *Edwards* v. *Vannoy*, 593 U. S. 255, 296–297 (2021); *Knick* v. *Township of Scott*, 588 U. S. 180, 207–208 (2019); *Janus*, 585 U. S., at 931–932. Once again, with respect, I dissent.

CASE NOTES

Loper Bright Enterprises v. Raimondo, 144 S. Ct. 2244 (2024)

- Decided under the Administrative Procedure Act, 5 U.S.C. § 551 et seq.
- Overruled *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc*., 467 U.S. 837 (1984)
- The APA specifies that courts, not agencies, will decide "all relevant questions of law" arising on review of agency action, § 706 (emphasis added)—even those involving ambiguous laws—and set aside any such action inconsistent with the law as they interpret it. And it prescribes no deferential standard for courts to employ in answering those legal questions.
- Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires. Careful attention to the judgment of the Executive Branch may help inform that inquiry. And when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it. But courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.
- Section 706 does mandate that judicial review of agency policymaking and factfinding be deferential. See § 706(2)(A) (agency action to be set aside if "arbitrary, capricious, [or] an abuse of discretion"); § 706(2)(E) (agency factfinding in formal proceedings to be set aside if "unsupported by substantial evidence").
- Section 706 makes clear that agency interpretations of statutes—like agency interpretations of the Constitution—are not entitled to deference.
- Courts understand that such statutes, no matter how impenetrable, do—in fact, must—have a single, best meaning. Instead of declaring a particular party's reading "permissible" in such a case, courts use every tool at their disposal to determine the best reading of the statute and resolve the ambiguity. In the business of statutory interpretation, if it is not the best, it is not permissible.
- We do not call into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are lawful—including the Clean Air Act holding of *Chevron* itself—are still subject to statutory *stare decisis* despite our change in interpretive methodology. Mere reliance on *Chevron* cannot constitute a "'special justification'" for overruling such a holding, because to say a precedent relied on *Chevron* is, at best, "just an argument that the precedent was wrongly decided." That is not enough to justify overruling a statutory precedent.
- The most relevant *stare decisis* considerations are the quality of the precedent's reasoning, the workability of the rule it established, and reliance on the decision.

Skidmore v. Swift & Co., 323 U.S. 134 (1944)

- Predated the Administrative Procedure Act
- Referred to as "*Skidmore* deference"
- Survived *Loper Bright*
- We consider that the rulings, interpretations and opinions of the Administrator made pursuant to official duty under this [Fair Labor Standards] Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.
- [Insert Scalia's view]

***Kisor v. Wilkie*, 588 U.S. 558 (2019)**

- Upheld *Auer* deference (sometimes known as *Seminole Rock* deference) as modified
- *Auer* deference is a general rule – it does not apply in all cases
- A court should not afford *Auer* deference unless the regulation is genuinely ambiguous.
- Before concluding that a rule is genuinely ambiguous, a court must exhaust all the "traditional tools" of construction.
- When it applies, *Auer* deference gives an agency significant leeway to say what its own rules mean. In so doing, the doctrine enables the agency to fill out the regulatory scheme Congress has placed under its supervision.
- If genuine ambiguity remains, the agency's reading must still be "reasonable."
- Not every reasonable agency reading of a genuinely ambiguous rule should receive *Auer* deference. We have recognized in applying *Auer* that a court must make an independent inquiry into whether the character and context of the agency interpretation entitles it to controlling weight.
- The regulatory interpretation must be one actually made by the agency. In other words, it must be the agency's "authoritative" or "official position," rather than any more ad hoc statement not reflecting the agency's views. That constraint follows from the logic of *Auer* deference—because Congress has delegated rulemaking power, and all that typically goes with it, to the agency alone. Of course, the requirement of "authoritative" action must recognize a reality of bureaucratic life: Not everything the agency does comes from, or is even in the name of, the Secretary or his chief advisers.
- The agency's interpretation must in some way implicate its substantive expertise. Administrative knowledge and experience largely "account [for] the presumption that Congress delegates interpretive lawmaking power to the agency."
- The agency's reading of a rule must reflect "fair and considered judgment" to receive *Auer* deference. That means, we have stated, that a court should decline to defer to a merely "convenient litigating position" or "*post hoc* rationalizatio[n] advanced" to "defend past agency action against attack."

- A court may not defer to a new interpretation, whether or not introduced in litigation, that creates "unfair surprise" to regulated parties.
- The Court has denied *Auer* deference when an agency interprets a rule that parrots the statutory text.
- If uncertainty does not exist, there is no plausible reason for deference. The regulation then just means what it means—and the court must give it effect, as the court would any law. Otherwise said, the core theory of *Auer* deference is that sometimes the law runs out, and policy-laden choice is what is left over. But if the law gives an answer—if there is only one reasonable construction of a regulation—then a court has no business deferring to any other reading, no matter how much the agency insists it would make more sense. Deference in that circumstance would "permit the agency, under the guise of interpreting a regulation, to create de facto a new regulation." *Auer* does not, and indeed could not, go that far.

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

- Since passage of the Clean Air Act in 1970, EPA has 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.
- EPA relied on 42 U.S.C. § 7411(d) (Clean Air Act § 111(d)) to justify the new rule. Under a second new rule adopted in 2015, EPA established federal carbon emissions limits for new power plants. Because EPA was now regulating carbon dioxide from new coal and gas plants, Section 111(d) required EPA to also address carbon emissions from existing coal and gas plants.
- Controls for existing plants included among its 'building blocks" one requiring a shift in electricity production from existing coal-fired power plants to natural-gas-fired plants. Another required a shift from both coal- and gas-fired plants to "new low- or zero-carbon generating capacity," mainly wind and solar.
- Coal plants, whether by reducing their own production, subsidizing an increase in production by cleaner sources, or both, would cause a shift toward wind, solar, and natural gas.
- The Supreme Court stayed the new rule and it never became effective.
- The new administration repealed and replaced the rule, declaring that the interpretative question it raised fell under the "major question doctrine."
- The Supreme Court explained that there are "extraordinary cases" in which the "history and the breadth of the authority that [the agency] has asserted," and the "economic and political significance" of that assertion, provide a "reason to hesitate before concluding that Congress" meant to confer such authority.
- Extraordinary grants of regulatory authority are rarely accomplished through "modest words," "vague terms," or "subtle device[s]." Nor does Congress typically use oblique or elliptical language to empower an agency to make a "radical or fundamental change" to a

statutory scheme. Agencies have only those powers given to them by Congress, and "enabling legislation" is generally not an "open book to which the agency [may] add pages and change the plot line." We presume that "Congress intends to make major policy decisions itself, not leave those decisions to agencies."

- The Court held that this is a major question doctrine case.
- The Court found it "highly unlikely that Congress would leave" to "agency discretion" the decision of how much coal-based generation there should be over the coming decades. The basic and consequential tradeoffs involved in such a choice are ones that Congress would likely have intended for itself.
- The only interpretive question before us, and the only one we answer, is whether the "best system of emission reduction" identified by EPA in the Clean Power Plan was within the authority granted to the Agency in Section 111(d) of the Clean Air Act. For the reasons given, the answer is no.
- Capping carbon dioxide emissions at a level that will force a nationwide transition away from the use of coal to generate electricity may be a sensible "solution to the crisis of the day." But it is not plausible that Congress gave EPA the authority to adopt on its own such a regulatory scheme in Section 111(d). A decision of such magnitude and consequence rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body.

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

- Action brought under the Administrative Procedure Act
- The Clean Water Act prohibits the discharge of pollutants into "navigable waters" and to "waters of the contiguous zone of the ocean." 33 U.S.C. §§ 1311(a), 1362(12). "Navigable waters" "means the waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).
- EPA and the Corps of Engineers promulgated a rule that classified traditional navigable waters, interstate waters, and the territorial seas, as well as their tributaries and adjacent wetlands, as waters of the United States. So are any "[i]ntrastate lakes and ponds, streams, or wetlands" that either have a continuous surface connection to categorically included waters or have a significant nexus to interstate or traditional navigable waters.
- The actual term the Court was asked to interpret was "waters of the United States."
- The Court ruled that the Act's use of "waters" encompasses "only those relatively permanent, standing or continuously flowing bodies of water 'forming geographic[al] features' that are described in ordinary parlance as 'streams, oceans, rivers, and lakes.'"
- The Act extends to more than traditional navigable waters.
- 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)**

- Suit under the Administrative Procedure Act
- Plaintiffs assert that Defendant United States Army Corps of Engineers ("Corps") has failed to show Clean Water Act jurisdiction over the property in dispute under the governing law as clarified in Sackett v. EPA, 598 U.S. 651, 143 S.Ct. 1322, 215 L.Ed.2d 579 (2023). Plaintiffs further argue that summary judgment rather than remand is appropriate on this point since, they claim, the Corps cannot show Clean Water Act jurisdiction under the facts in evidence.
- The Court finds that the Corps' actions are not in accordance with law as clarified in Sackett and are therefore not consistent with the APA standard of review. Furthermore, Defendants have repeatedly been instructed to file the full administrative record with the Court. However, only portions have thus far been submitted to the Court. Based on the facts as contained in the portions of the administrative record currently in evidence, the Court finds that no application of Sackett and guiding regulations can lead to a finding of Clean Water Act jurisdiction over the property at issue.
- Neither party in the instant case has argued that the agency decision here is arbitrary and capricious. The Court will therefore limit its analysis to whether or not the agency's action is consistent with the statutory text and therefore in accordance with the law, as required by the APA.
- Although the Court employs a deferential standard of review of agency policymaking and factfinding, it does not do so with respect to agency interpretations of statute. In reviewing the Corps' determination, the Court will use the legal standard set forth by Sackett, guided by the Rapanos plurality: a tributary must be "relatively permanent, standing or continuously flowing" rather than intermittent or ephemeral.
- At no point in the Approved Jurisdictional Determination, or in Defs. Opposition, do Defendants allege that Switch Cane Bayou flows either year-round or continuously during a three-month period. Instead, in the Approved Jurisdictional Determination, the Corps identifies Switch Cane Bayou as an intermittent tributary, with "intermittent flow in a typical year." The Corps stated that "Switchcane [sic] Bayou was observed on multiple site visits to have intermittent flow."
- The Court treats the Corps' factfinding and its determinations with deference. Here, the Corps found Switch Cane Bayou to have intermittent flow and to be subject to Clean Water Act jurisdiction. These cannot both hold true under Sackett. The Corps argues that it might be able to find facts to support a more-than-intermittent flow. However, those facts are not in the record before the Court at present. The Corps has not provided the Court with the data sources upon which it relied in reaching the conclusions of the Approved Jurisdictional Determination. As part of the Approved Jurisdictional Determination, the Corps lists "all resources that were used to aid in this determination" and is instructed to "attach data/maps to this document and/or references/citations in the administrative record, as appropriate." It lists information submitted by Plaintiffs, "[d]ata sheets prepared by the Corps", "[a]erials and other site photos", site visits, previous Approved and Preliminary Jurisdictional Determinations, a precipitation tool, a soil survey, a "NWI Mapper", "USGS topographic maps" dating back to 1934, as well as multiple other USGS maps and precipitation data

sources during site visits. Defendants have filed only small portions of this material with the Court. The Court is therefore unable to rely on any of the unsubmitted factfinding from the Corps in its review of the Approved Jurisdictional Determination.

- The Approved Jurisdictional Determination also states that the "observed and documented flow in both Switchcane [sic] Bayou and the Unnamed tributary were flowing within a typical year, and not because of extreme precipitation." At no point does the Approved Jurisdictional Determination indicate that Switch Cane Bayou has continuous flow, even seasonally.
- The Court is deferential in its review of agency factfinding. At issue here, though, is not the agency's factfinding but whether the agency's determination, based on its interpretation of the facts, is in accordance with the law. Upon the facts before it, only some of which the Court possesses, the Corps found that Switch Cane Bayou had an intermittent flow. In accordance with the regulations in effect at the time, the Corps could assert jurisdiction not only over those tributaries that were "relatively permanent, standing or continuously flowing bodies of water" but also over "not relatively permanent tributaries and their adjacent wetlands where such tributaries and wetlands have a significant nexus to a traditional navigable water." It did so, without needing to find that Switch Cane Bayou had a continuous flow.
- Now that Sackett has overturned the "significant nexus" test, a tributary must be relatively permanent to be a water of the United States. Sackett, 598 U.S. at 678–79, 143 S.Ct. 1322; 328 CFR 328(a)(3). Defendants have had multiple opportunities to provide the Court with additional factual findings—from the 70,000 pages of discovery materials provided to Plaintiffs, for example—to support their assertion that Switch Cane Bayou may in fact have continuous flow. But the Corps does not argue that its previous factfinding supports such a conclusion. Instead, it implies that if it were permitted to go back and redo its factfinding with this new test in mind, it could feasibly come to a conclusion tailored to the new test rather than the old one. Despite its own repeated pattern of failing to file the Administrative Record with the Court, Defendants argue that they should be allowed another bite at the apple due to the current "insufficient record support to allow the Court to make a de novo finding of no 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. The Corps 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. The Approved Jurisdictional Determination is inconsistent with 33 CFR § 328.3(a)(3) and with Sackett. Its determination is unsupported by the evidence presented by the Approved Jurisdictional Determination and the record taken as a whole. As such, the Approved Jurisdictional Determination is not in accordance with the law and is in violation of the APA.
- The Corps' attempted interpretation, that an intermittent flow—even one that is both seasonal and intermittent—suffices for Clean Water Act jurisdiction, is not consistent with

the statute. While the Court defers to the Corps with respect to factfinding and policymaking, it does not defer with respect to statutory questions.

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

- Reviewed under *Chevron*. *Chevron* directs courts to accept an agency's reasonable resolution of an ambiguity in a statute that the agency administers. Even under this deferential standard, however, "agencies must operate within the bounds of reasonable interpretation." EPA strayed far beyond those bounds when it read 42 U.S.C. § 7412(n)(1) to mean that it could ignore cost when deciding whether to regulate power plants.
- *Chevron* allows agencies to choose among competing reasonable interpretations of a statute; it does not license interpretive gerrymanders under which an agency keeps parts of statutory context it likes while throwing away parts it does not.
- When it deemed regulation of power plants appropriate, EPA said that cost was irrelevant to that determination—not that cost-benefit analysis would be deferred until later. Much less did it say (what the dissent now concludes) that the consideration of cost at subsequent stages will ensure that the costs are not disproportionate to the benefits. What it said is that cost is irrelevant to the decision to regulate.
- It was unreasonable for EPA to read § 7412(n)(1)(A) to mean that cost is irrelevant to the initial decision to regulate power plants. The Agency must consider cost—including, most importantly, cost of compliance—before deciding whether regulation is appropriate and necessary. We need not and do not hold that the law unambiguously required the Agency, when making this preliminary estimate, to conduct a formal cost-benefit analysis in which each advantage and disadvantage is assigned a monetary value. It will be up to the Agency to decide (as always, within the limits of reasonable interpretation) how to account for cost.

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

- Applies *Chevron*
- On October 20, 1999, a group of private organizations filed a rulemaking petition asking EPA to regulate "greenhouse gas emissions from new motor vehicles under § 202 of the Clean Air Act."
- On September 8, 2003, EPA entered an order denying the rulemaking petition. The Agency gave two reasons for its decision: (1) that contrary to the opinions of its former general counsels, the Clean Air Act does not authorize EPA to issue mandatory regulations to address global climate change; and (2) that even if the Agency had the authority to set greenhouse gas emission standards, it would be unwise to do so at this time.
- In essence, EPA concluded that climate change was so important that unless Congress spoke with exacting specificity, it could not have meant the Agency to address it.
- The parties' dispute turns on the proper construction of a congressional statute, a question eminently suitable to resolution in federal court.
- On the merits, the first question is whether § 202(a)(1) of the Clean Air Act authorizes EPA to regulate greenhouse gas emissions from new motor vehicles in the event that it forms a "judgment" that such emissions contribute to climate change. We have little trouble concluding that it does.

- Because EPA believes that Congress did not intend it to regulate substances that contribute to climate change, the agency maintains that carbon dioxide is not an "air pollutant" within the meaning of the provision.
- The statutory text forecloses EPA's reading. The Clean Air Act's sweeping definition of "air pollutant" includes "*any* air pollution agent or combination of such agents, including *any* physical, chemical ... substance or matter which is emitted into or otherwise enters the ambient air ... ." § 7602(g) (emphasis added). On its face, the definition embraces all airborne compounds of whatever stripe, and underscores that intent through the repeated use of the word "any." Carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons are without a doubt "physical [and] chemical ... substance [s] which [are] emitted into ... the ambient air." The statute is unambiguous.
- While the Congresses that drafted § 202(a)(1) might not have appreciated the possibility that burning fossil fuels could lead to global warming, they did understand that without regulatory flexibility, changing circumstances and scientific developments would soon render the Clean Air Act obsolete. The broad language of § 202(a)(1) reflects an intentional effort to confer the flexibility necessary to forestall such obsolescence. Because greenhouse gases fit well within the Clean Air Act's capacious definition of "air pollutant," we hold that EPA has the statutory authority to regulate the emission of such gases from new motor vehicles.

***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. For convenience, we will call such provisions "end-result" requirements.
- The permittee in this case is a wastewater treatment facility owned by San Francisco. For the past five years, the facility's permit has included two end-result requirements, and if those provisions are upheld, the City could be heavily penalized even though it was never put on notice that it was obligated to take any specific step other than those it undertook. San Francisco argues that the end-result provisions in its permit are not authorized by the CWA.
- The EPA contends that Congress authorized the use of end-result requirements when it codified the Agency's Combined Sewer Overflow (CSO) Policy in 1994. And in support of that argument, it cites language in the policy that pertains to phase I permits. But the permit in question here is a phase II permit, and the EPA does not claim that its interpretation is supported by any CSO Policy provision relating to such permits.
- In any event, the phase I language to which the EPA points does not authorize the imposition of end-result requirements. The policy states that a phase I permit should require a permittee to "[c]omply with applicable [water quality standards] ... expressed in the form of a narrative limitation." Our decision does not rule out "narrative limitations."

"Limitations," as we understand the term, are permitted under § 1311(b)(1)(C), and limitations may be expressed in both numerical and non-numerical (i.e., "narrative") form.

- Attempting to read more into the phase I language, the EPA cites guidance it issued in 1995, but Congress did not codify that guidance, and we are not obligated to accept administrative guidance that conflicts with the statutory language it purports to implement, citing *Loper Bright*.
- We hold that 33 U.S.C. § 1311(b)(1)(C) does not authorize the EPA to include "end-result" provisions in 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. If the EPA does what the CWA demands, water quality will not suffer.

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

- Suit under the Administrative Procedure Act
- The U. S. Surface Transportation Board considered 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.
- In December 2021, a few months after issuing the final EIS, the Board approved the construction and operation of the Uinta Basin Railway.
- We think it important to reiterate and clarify the fundamental principles of judicial review applicable in those cases. As we will explain, the central principle of judicial review in NEPA cases is deference.
- As a general matter, when an agency interprets a statute, judicial review of the agency's interpretation is de novo. See Loper Bright Enterprises v. Raimondo, 603 U.S. 369, 391–392, 144 S.Ct. 2244, 219 L.Ed.2d 832 (2024). But when an agency exercises discretion granted by a statute, judicial review is typically conducted under the Administrative Procedure Act's deferential arbitrary-and-capricious standard. Under that standard, a court asks not whether it agrees with the agency decision, but rather only whether the agency action was reasonable and reasonably explained.
- NEPA imposes no substantive constraints on the agency's ultimate decision to build, fund, or approve a proposed project. So when reviewing an agency's EIS, "the only role for a court" is to confirm that the agency has addressed environmental consequences and feasible alternatives as to the relevant project. Because an EIS is only one input into an agency's decision and does not itself require any particular substantive outcome, the adequacy of an EIS is relevant only to the question of whether an agency's final decision (here, to approve the railroad) was reasonably explained.
- In short, 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." 42 U.S.C. § 4332(2)(C). Of course, the meaning of "detailed" is a question of law to be decided by a court. Loper Bright, 603 U.S. at 391–

392, 144 S.Ct. 2244. 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 agency is better equipped to assess what facts are relevant to the agency's own decision than a court is. As a result, "agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process." So 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. A relatively brief agency explanation can be reasoned and detailed; an EIS need not meander on for hundreds or thousands of pages. So courts should not insist on length as a prerequisite for finding an EIS to be detailed.

- 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"?). As this Court has said, "the term 'alternatives' is not self-defining," and "[c]ommon sense" should be brought to bear. Black-letter administrative law instructs that 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. 42 U.S.C. § 4332(2)(C) (2018). The agency therefore will obviously seek to assess significant effects from the project at issue. But how far will the agency go in considering the indirect effects that might occur outside the area of the immediate project—for example, due to emissions or run off from the project carried elsewhere by air or water? And will the agency evaluate the environmental effects from other future or geographically separate projects that may be initiated (or expanded) as a result of or in the wake of the current project? And what if another agency also possesses regulatory authority over a related project?
- In analyzing those scope questions, it is critical to disaggregate the agency's role from the court's role. 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. On those kinds of questions, as this Court has often said, agencies possess discretion and must have broad latitude to draw a "manageable line."
- 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. As the Court has emphasized on several occasions, and we doubly

underscore again today, "inherent in NEPA ... is a 'rule of reason,' which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process." A reviewing court may not "substitute its judgment for that of the agency as to the environmental consequences of its actions."

- The bedrock principle of judicial review in NEPA cases can be stated in a word: Deference.

Parker v. Tenneco Inc., 2024 WL 5004326 (E.D. Mich. Dec. 6, 2024)

- Defendants suggest that Loper Bright "indicates that judge-made rules are being scaled back," so the Supreme Court is likely to jettison the "effective vindication" doctrine now that Chevron deference has been eliminated. Loper Bright, however, rejected Chevron deference as requiring the judiciary to be overly deferential to the executive branch in violation of its "statutory duties" under the Administrative Procedure Act. It is not about whether "judge-made rules" are, in general, too pervasive.

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

- Plaintiffs seek relief from the State's enforcement against them of the State Ivory Law and a licensing restriction thereunder, which prohibits licensees from "physically display[ing] for sale within New York State any [ivory] item that is not authorized for Intrastate sale" (the "Display Restriction").
- Plaintiffs contend that they are entitled to this relief on two grounds: First, because pertinent portions of the State Ivory Law are preempted by the federal Endangered Species Act ("ESA"), 16 U.S.C. § 1531 et seq., and its implementing regulations, and, second, because the Display Restriction violates their free speech rights under the First Amendment.
- An administrative agency does not have authority to pass regulations that are inconsistent with the meaning of a statute. The fact that the implementing regulations at times fail to observe the distinction drawn by the Act between "exception" and "exemption" does not mean that the statute uses these words interchangeably.
- In the post-Chevron era, regardless of whether a statute is deemed to be ambiguous or unambiguous, interpretation of the statute is a question of law, and accordingly, it is the court, and not the administrative agency, that determines its meaning. While the court may of course be persuaded by the correctness of the agency's interpretation, see Skidmore v. Swift & Co., 323 U.S. 134, 139–40, 65 S.Ct. 161, 89 L.Ed. 124 (1944), the court is not required to defer to the agency's interpretation. The court makes its own determination of the meaning of ambiguous provisions.
- "[F]ederal law does not preempt state law under [conflict] preemption analysis unless the repugnance or conflict is so direct and positive that the two acts cannot be reconciled or consistently stand together." 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 DEC 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 accordingly conclude that, by virtue of their adversaries' concessions that the Display Restriction affects speech that is protected by the First Amendment, Plaintiffs are relieved of the responsibility of demonstrating that point. We can therefore assume for the resolution of this case that the restriction affects speech and implicates the First Amendment without establishing a precedent to that effect.
- 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.

***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.
- On November 25, 2022, 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.
- Plaintiffs challenge the 4(d) Rule.
- With Chevron overturned, the Court can now conduct straight ahead statutory interpretation. And Plaintiffs offer the correct reading. Sentence One and Two depend on one another. The first sentence requires a necessary and advisable determination for each prohibition. The second provides a list of regulations made available by Congress, suggestions of the outer bounds of the authority granted in the first sentence. Under this reading, both sentences require a necessary and advisable determination before issuing a 4(d) Rule.
- That leaves one final question—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.
- Plaintiffs offer other theories as backstops. They range from major questions and non-delegation doctrines to whether the Regulatory Flexibility Act should have triggered cost benefit analysis. For the most part, the Court does not reach these additional theories. The record is too spare and the briefing does not reveal the kind of impact one expects to find in a successful major questions challenge. The non-delegation doctrine is an argument dead on arrival until further notice from the higher courts that its test has returned to its original formulation.
- Section 4 of the ESA directs the Secretary of the Interior, acting through Fish and Wildlife,37 to determine whether any species should be listed as endangered or threatened. Whether a listing decision is prohibited from taking in economic considerations is not at issue. On the one hand, both parties seem to agree that the Secretary cannot account for

such costs in a listing decision. On the other, Plaintiffs challenge only the 4(d) Rule, not its underlying listing.

- Once a species is determined threatened, the Secretary must issue a 4(d) Rule.42 This means, other than to locate a 4(d) Rule in the greater statutory context, the listing mechanism's only relevance here comes from Fish and Wildlife's dragging it in.
- Fish and Wildlife issued its final 4(d) Rule concurrent to its listing decision. It now seems to believe (1) its choice to do so permissibly collapses the two agency actions into one, and (2) the 4(d) Rule therefore suffers the same constraints against considering economic costs that the listing decision does. This first point may well be efficiency of the proverbial sort. But the second creates a foundational disagreement between the parties. The first hurdle is therefore whether a 4(d) Rule suffers the same constraints. It does not.
- Congress intended that a threatened species may be given the same prohibitions as an endangered species provided an extra step occurs. The Secretary first deems the regulation necessary and advisable under sentence one. He may then select from Section 9's prohibition menu or develop a prohibition off-menu. Sentence two then serves as (1) a reminder that a threatened species can enjoy the same protections as an endangered one after such a determination, and (2) suggests that a threatened species cannot enjoy protections greater than those automatically afforded to an endangered species, though in perhaps near infinite permutations.
- Despite Fish and Wildlife's protest that each sentence provides separate grants of power, the 4(d) Rule here did not issue through sentence two. Rather, it declares on its face that the Secretary made a necessary and advisable determination.
- 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.
- Fish and Wildlife argues that a 4(d) Rule cannot consider costs because listing decisions cannot consider costs; therefore, the Regulatory Flexibility Act is inapplicable. As Plaintiffs correctly highlight, because Fish and Wildlife is required to consider costs, it must also comply with the RFA. Because the Court vacates the 4(d) Rule for the reasons stated in the first section, remand or deferring enforcement of the rule is unnecessary.

***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.
- In August 2022, a USDA employee emailed Conlan regarding several things. The employee noted, in part, that "any logging or widespread tree removal could potentially create a wetland violation situation" and a wetland violation "would jeopardize all financial benefits associated to the farm, including those of any tenants associated to the farm, and possibly their other farming interests." The employee's point, it seems, was to explain that

plaintiff would be wise to request a wetland determination for the land which previously had not had a wetland determination.

- On October 7, 2022, Conlan signaled in an email that he wanted to remove the trees (but not the stumps) from the existing wetland, and remove the trees and stumps from the rest of the forested land (upon which no wetland determination had been made) to make that land ready for farming.
- On October 11 and 12, 2022, several USDA representatives told Conlan in emails that, because plaintiff planned on removing trees and stumps in the undetermined land (i.e., the land upon which no wetland determination had been made), plaintiff would need to submit a form AD-1026 to get a wetland determination completed on the then-undetermined land.
- On January 23, 2023, the Natural Resources Conservation Service (NRCS) field office—specifically, wetland specialist Russ Wolf—sent plaintiff a letter which included a "Wetland Preliminary Technical Determination." This wetland determination was in regard to the forested area on the land which previously did not have any wetland determination. The NRCS determined that all of the previously non-certified land was not wetland. That is, all of the forested land, other than the nine acres which were determined to be wetland in 2010, was determined not wetland.
- Here, plaintiff brings its action under the general review provisions of the APA, 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. It is not. Plaintiff did not ask defendants to review the previous determination that the nine acres were wetlands. In fact, plaintiff had signaled that it would cut the trees down in the wetlands area but leave the stumps. In this, plaintiff showed its compliance with Swampbuster and with defendants' prior determination, not a desire to challenge the prior determination. Plaintiff argues that it requested review of the 2010 determination by submitting the form AD-1026. Nothing in the filled out form AD-1026 backs this argument up. So, plaintiff's emails signal that plaintiff was not requesting review of the 2010 wetlands determination, and the form AD-1026 says nothing about reviewing the 2010 wetlands determination. If plaintiff's intention was to request a review of the 2010 wetlands determination, nobody else in the world could possibly have known it. Most importantly, plaintiff did not request review of the 2010 wetlands determination in any communication to defendants. Defendants, therefore, did not deny plaintiff's request for review, as there was no request for review. 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.

- Under Article I, Section 8, clause 1 of the Constitution, Congress "shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States[.]" (emphasis added). The Supreme Court has held that "[i]ncident to this power, Congress may attach conditions on the receipt of federal funds," and the Court has noted that Congress "has repeatedly employed the power to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives." The Dole Court further explained that "objectives not thought to be within Article I's enumerated legislative fields may nevertheless be attained through the use of the spending power and the conditional grant of federal funds." Swampbuster fits squarely into this category.
- In sum, 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.
- But the Loper Bright Court did not instruct courts to "decide such questions blindly." Instead, courts should take into account the agency's perspective, which "may be especially informative to the extent it rests on factual premises within the agency's expertise." 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."

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

- Seventeen states sued claiming that a recently adopted DOL regulation illegally provided collective bargaining rights to agricultural migrant workers employed in the United States under the H-2A visa program.
- The states argue that, if the Final Rule were enacted, alien agricultural workers would receive rights that American citizens working agricultural jobs do not enjoy.
- The National Labor Relations Act (NLRA) defines the term "employee" to include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment." § 152(a)(3). This definition is ostensibly broad, but Congress explicitly excludes certain laborers from its definition of "employee," including agricultural workers. Id. ("The term 'employee' ... shall not include any individual employed as an agricultural laborer."). Put plainly, the NLRA establishes the right to collectively bargain for

employees, but specifically excludes agricultural laborers from the group of employees entitled to such rights.

- The Court finds that the Final Rule falls within the DOL's rulemaking authority under § 1188.
- The issue before the Court is whether the Final Rule creates a right not previously bestowed by Congress. The Court finds it does so. Regardless of the terminology used in the Final Rule—be it collective bargaining or otherwise—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. And Defendants have not provided any source indicating that Congress intended to create such a right.
- The Court does not hold, nor could it, that the DOL is barred from issuing any labor regulations governing agricultural workers. Indeed, the IRCA delegates rulemaking authority to the DOL to issue labor regulations governing H-2A workers, which are, by definition, agricultural workers. But rulemaking authority alone, absent Congressional intent otherwise, does not allow the DOL to create law or protect newly-created rights of agricultural workers. And the DOL aims to do just that through the Final Rule.
- The Court finds no evidence of federal Congressional intent to create a right to collective bargaining for agricultural workers. The Final Rule does just that. The Court therefore finds that the Final Rule exceeds the DOL's constitutional authority because it creates a right. This is not in "accordance with law" as required by the APA. "From the beginning of the Government various acts have been passed conferring upon executive officers power to make rules and regulations—not for the government of their departments, but for administering the laws which did govern. None of these statutes could confer legislative power." Administrative agencies, including the DOL, cannot create law, and the DOL cannot create rights that Congress has not. The DOL cannot make both executive rules and congressional laws. The Court finds that the Final Rule violates federal law and that Plaintiffs are likely to succeed on the merits of their claim.
- A party-specific preliminary injunction offers complete relief to Plaintiffs. A tailored preliminary injunction would be no broader than necessary to address the harms that have been demonstrated by Plaintiffs. A preliminary injunction would also be a more workable form of relief than a stay, which both parties agree could have the same effect as a nationwide injunction. The Court, therefore, finds that Plaintiffs are entitled to a narrowly tailored, party-specific preliminary injunction.
- The court explained at some length why it declined to enter the requested nationwide injunction.

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

- Farmers across the country rely on H-2A visa workers to perform temporary or seasonal agricultural work. And while the program is vital to the success of American farmers, it can be complicated and expensive for employers to meet its requirements.
- On April 29, 2024, the DOL issued a Final Rule that substantially altered the requirements for employers seeking to hire workers under the H-2A temporary agricultural visa program.

It includes provisions such as worker protections and employer-mandated seatbelt requirements, which raised numerous objections from states and private parties.

- The *Kansas* Court found that, although the DOL had the requisite authority to promulgate the Final Rule under the Immigration and Nationality Act ("INA"), it violated the National Labor Relations Act ("NLRA"). The DOL chose not to seek review through an interlocutory appeal.
- The DOL's decision to continue enforcing the Final Rule in other states not subject to the *Kansas* Court's injunction has led to other lawsuits across the country. The plaintiffs before this Court 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.
- Under the facts presented in this case, the Court finds multiple portions of the Final Rule being challenged unlawful under the Administrative Procedure Act. More specifically, the Final Rule contains provisions that contravene the National Labor Relations Act and the Takings Clause of the Fifth Amendment. Further, the Final Rule includes other provisions that are arbitrary and capricious. As a result, the undersigned will issue injunctive relief preventing the DOL from enforcing the provisions discussed herein.
- In perhaps its most blatant arrogation of authority, the Final Rule seeks to extend numerous rights to H-2A workers which they did not previously enjoy through its worker voice and empowerment provisions. The DOL justifies this attempted regulatory expansion as an effort to prevent the alleged "unfair treatment" of H-2A workers by employers and to protect similarly situated American workers.
- To achieve these ends, the Final Rule requires employers to provide assurances that they will not intimidate, threaten, or otherwise discriminate against certain workers or others for engaging in "activities related to self-organization," including "concerted activities for the purpose of mutual aid or protection relating to wages or working conditions," or refusing to engage in such activities. Under the NLRA, H-2A workers had not previously enjoyed these protections, and the DOL has not cited any statutory authority for the change in policy extending these protections to workers. The petitioners in this suit have claimed these new protections amount to "collective bargaining rights," which contravene the NLRA because agricultural workers are excluded from the Act.
- To enforce these provisions, the Final Rule mandates that State Workforce Agencies (SWAs) "initiate procedures for discontinuation of [employment] services to employers" who do not comply with the new provisions of the Final Rule. Those challenging this Final Rule oppose these requirements, not only because of the burden they impose on them in their efforts to comply, but also because they did not agree to them when they applied for H-2A employees under the regulatory framework established before the Final Rule.
- Despite the *Kansas* Court's thoughtful and well-reasoned opinion, the DOL reissued the Final Rule on September 10, 2024. As a result, the current regulatory landscape has become increasingly complex and now encapsulates different schemes for applicants to navigate, depending on where the applicant is located. If an employer operates in a state covered by

the injunction, the party is bound by the requirements of the H-2A regulatory provisions and application processes that were in effect before the Final Rule was promulgated. However, at the same time, if a party is located in a state not covered by the injunction, the party is bound by the new obligations and application processes set forth in the Final Rule. And if the party operates in a state covered by the injunction but also in a state not covered, the party must fill out multiple H-2A applications and will be simultaneously bound by both the "old" H-2A rules as well as the Final Rule. This new regulatory scheme has created obvious and understandable confusion among participating employers, farmers advocacy groups, and SWAs as different employees are subject to different rules depending on where they work. Additionally, different employers may be bound by different rules in the same state depending on whether they were party to the litigation in the Southern District of Georgia. As a result, employers and SWAs are struggling to adhere to the Final Rule and are incurring significant and additional compliance costs, while also remaining unsure if they are fully in compliance.

- The DOL cites 8 U.S.C. § 1188, of the Immigration and Nationality Act, (as amended by the IRCA) ("§ 1188") as its authority to promulgate the Final Rule.
- "Section 1188(a)(1) establishes the INA's general mission; Congress left it to the Department of Labor to implement that mission through the creation of specific substantive provisions." Ultimately, the DOL's mission under § 1188 is to ensure that the H-2A program's use of migrant workers "does not adversely affect the wages and working conditions of American workers similarly employed." Based on both the plain text of the statute and the broad authority recognized by other courts, this Court agrees that "the '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."
- Given this understanding of the DOL's statutory authority, the next question becomes whether the DOL exceeded that authority in the Final Rule. "[W]hen a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it." Loper Bright, 144 S. Ct. at 2273. This is an inquiry separate and distinct from whether the DOL adequately explains the need for certain provisions, or whether specific portions are arbitrary and capricious. As such, agency action can be unlawful if arbitrary, capricious, an abuse of discretion, or in excess of statutory jurisdiction.
- In sum, "§ 1188 affords the DOL considerable latitude to promulgate regulations that protect American workers from being adversely affected by the issuance of H-2A visas." Kansas, 749 F.Supp.3d at 1374. This Court sees no reason to depart from the statute's text and longstanding interpretation governing the DOL's jurisdiction. But even if the Final Rule's measures are conceivably authorized under the IRCA, this Court finds many of the provisions contrary to other law and are arbitrary and capricious.
- 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 defendants' contention that Congress' decision to unambiguously exclude agricultural workers from the NLRA means the field was "left alone" for agencies to regulate is

misguided. However, the DOL fails to provide any examples where an agency was permitted to alter or expand the scope of 29 U.S.C. § 152(3). It instead proffers cases where states did so, and two cases where labor-adjacent executive orders unrelated to § 152(3) were upheld. The APA requires courts to set aside agency action that is not in accordance with law. And the Court's "task is to give effect to the will of Congress[.]"Therefore, if the Final Rule grants collective bargaining protections on a group outside of the NLRA's purview, those provisions cannot stand.

- The DOL argues that these provisions "do not purport to bring any workers within the ambit of the NLRA and do not extend the enforcement powers of the National Labor Relations Board to agricultural workers." It adds that the Final Rule "does not provide for collective bargaining rights nor does the rule compel a worker to join a union. As finalized, the rule does not grant any rights to labor organizations" and "does not require collective bargaining, employer recognition, or any other action by the employer in response to worker organizing."
- However, the DOL cannot confer substantive rights on parties simply by saying it is not doing so. The Final Rule effectively prevents employers from taking action against an employee who attempts to "form, join, or assist a labor organization; or has engaged in other concerted activities for the purpose of mutual aid or protection." The NLRA allows employees to engage in "concerted activities for the purpose of collective bargaining or other mutual aid or protection." The DOL appears to have found significant inspiration for the Final Rule's worker voice and empowerment provisions in the NLRA's text, but it made sure to remove the words "collective bargaining" from the regulation wherever possible.
- he words are different, but the meaning is the same. The worker voice and empowerment provisions, unlike the NLRA, do not specifically self-reference their protections, but they substantively prohibit action taken in response to violations of federal law, which would include the Final Rule.
- The Final Rule not so sneakily 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 NLRA.
- Before the Final Rule, employers could choose whether to compensate their employees on a piece rate or hourly basis. But under the Final Rule, employers are required, at the end of every pay period, to recalculate and pay employees by whichever method the Department claims would have resulted in higher pay to the workers during that period.
- The DOL has failed to provide sufficient justification for their change in the Final Rule. The change to the Final Rule deviates from the DOL's longstanding practice recognizing 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.
- The DOL fails to adequately explain the requirements for additional employer information, including birth dates, and they are therefore arbitrary and capricious. On July 31, 2024, the

DOL issued new H-2A application forms which mandate the disclosure of personal information, including the birth dates of any owner, operator, manager or supervisor of H-2A workers and workers in corresponding employment.

- The DOL does not adequately connect the need for birth dates to its goals of ascertaining an employer's hiring needs or sanctioning individual employers. It mentions that certain bad actors exploit the current process by changing roles from employer to manager, thereby evading enforcement measures. But this does not justify the vast breadth and sensitivity of the information demanded. 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 is thus arbitrary and capricious because it lacks "a rational connection between the facts found and the choice made."
- The requirement that all H-2A workers wear seatbelts in employer owned vehicles is a significant deviation from longstanding DOL policy. Further, the rule imposes a strict liability penalty for employers if an employee is found to be non-compliant with the rule. Historically, the DOL only required employers to provide seatbelts to employees, and its stated rationale for the change is to "avoid degrading worker safety conditions." Yet, the DOL does not explain how holding employers liable for the failure of the employee to wear a seatbelt addresses the issue of avoiding degrading worker safety conditions. In fact, it fails to rationally connect the two. The DOL's failure to explain this departure from long-standing rules regarding the use of seatbelts and lack of an obvious connection between the rule and its stated objective means the department has engaged in arbitrary and capricious rulemaking in violation of the APA. The provision of the Final Rule that holds employers liable for the failure of an employee to use a seatbelt also has no rational relation to the authority of the secretary to issue regulations under the IRCA.
- Moreover, there is no federal law that requires all drivers and passengers in a vehicle to wear a seatbelt, and state laws vary as to who must wear one. Requiring an individual to use a seatbelt, that is already provided, does not alter the safety conditions for the worker, it simply mandates an employee use a tool that is already provided. In fact, requiring and actively monitoring the use of seatbelts by adults does nothing more than make the employee's working conditions degrading because they will now find themselves under greater levels of scrutiny and supervision.
- 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.
- The Final Rule amounts to a taking of the employer's property. An employer, like any other property owner, has a right to exclude individuals from his or her property and the Final Rule seeks to deprive the owner of that right. The Final Rule's creation of a public right of access to employer-provided housing deprives employers of their right to exclude individuals from their property, and as such, they are entitled to compensation, which is

not provided under the Final Rule. Therefore, the provision of the Final Rule which grants the public access to the employers' property is unconstitutional.

- While the plaintiffs (including members of the associations and non-profit corporate entities who are plaintiffs to the proceeding) will be granted preliminary injunctive relief to prevent enforcement of portions of the Final Rule which are discussed herein, the undersigned declines to award relief to any entities, States or Commonwealths that are not party to this suit.

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

- Plaintiffs ask the Court to stay the effective date of 89 Federal Regulation 33,898's amendments to 20 C.F.R. § 655.135(h)(2), (m), which strengthen the protections for agricultural migrant workers employed in the United States under the H-2A visa program.
- Plaintiffs argue that the Rule's amendments to 20 C.F.R. § 655.135(h)(2), (m) should be vacated because DOL exceeded its statutory authority in adopting them, and because they conflict with the National Labor Relation Act, 29 U.S.C. § 151, et seq.), by creating collective bargaining rights for agricultural workers. Plaintiffs further assert that the amendments violate the First Amendment by imposing content-based restrictions on employers' speech. Defendants respond that the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. ("INA"), specifically § 1188(a)(1), (c)(3)(A), affords DOL the authority to promulgate the Rule, that the amendments do not provide collective bargaining rights, and that they regulate conduct, not speech.
- Plaintiffs filed their Complaint [1] on October 8, 2024, arguing that the amendments to 20 C.F.R. § 655.135(h)(2), (m) exceed DOL's statutory authority, that they are not in accord with the NLRA (Count One), and that they violate the First Amendment to the United States Constitution (Count Two). The Complaint [1] seeks a declaratory judgment that the amendments are unlawful (Count Three). Id. at 23. On October 10, 2024, Plaintiffs filed the present Motion [17] for Preliminary Injunction and Section 705 Stay, asking the Court to issue a temporary vacatur of the amendments to 20 C.F.R. § 655.135(h)(2), (m) under 5 U.S.C. § 705, or alternatively that it enjoin their enforcement against Plaintiffs. Defendants and Amici oppose the Motion [17].
- Plaintiffs contend that the INA delegates limited authority to DOL which does not "have anything to do with workers' rights to 'engage[ ] in activities related to self-organization' or to 'refuse[ ] to attend' mandatory meetings." For this reason, 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[.]"Following § 1188(c)(3)(A)(i)'s use of "criteria for certification[,]" the section includes a parenthetical, where the words "as prescribed by the Secretary" follow "including the criteria for the recruitment of eligible individuals[.]"If Congress intended DOL to have the broad authority to determine certification requirements beyond what is explicitly stated in the statute, it could have instead placed or added "as prescribed by the Secretary" after "criteria for certification[,]" but that would render use of the phrase in the parenthetical surplusage.
- As written, the phrase "as prescribed by the Secretary" modifies only the language in the parenthetical, indicating it was not meant to apply to the phrase "criteria for certification."
- Reading § 1188(c)(3)(A) in the context of other provisions of the INA also reflects an intent that DOL play a limited role in effectuating the H-2A program.
- And § 1188(c)(3)(A) also appears to limit DOL's authority, stating that "[i]n considering the question of whether a specific qualification is appropriate in a job offer, the Secretary shall apply the normal and accepted qualifications required by non-H-2A-employers in the same or comparable occupations and crops." In other words, when reviewing the terms of H-2A employers' job offers, DOL's authority is limited to looking at what non-H-2A employers usually offer. But here, DOL seeks to confer upon H-2A agricultural workers NLRA-style rights that Congress specifically chose to not confer upon domestic agricultural workers. Considering this context, the Court does not see how the text of § 1188 affords DOL the broad delegation of authority it claims such as to allow it to provide collective rights to H-2A workers which would not otherwise be available to domestic agricultural workers. And the Court may not read such authority into the statute at Defendants' behest.
- 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.

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

- Plaintiffs sought to enjoin implementation of a final rule that would affect agricultural workers temporarily employed through the H-2A visa program, agricultural employees engaged in corresponding employment, and their employers.
- Although plaintiffs' complaint challenges the entirety of the Final Rule, they raise arguments only against the amendments to 20 C.F.R. § 655.135(h) (and the parallel provision at 29 C.F.R. § 501.4(a)) and 20 C.F.R. § 655.135(m) and (n), related to "Protections for Worker Voice and Empowerment."
- According to the court in *Int'l Fresh Produce*, Labor currently has no authority to enforce the Final Rule's amendments to 20 C.F.R. § 655.135(h)(2), (m), related to "Protections for

Worker Voice and Empowerment" against anyone, including plaintiffs here. All other portions of the Final Rule remain in effect against plaintiffs.

- Plaintiffs argue the Final Rule must be set aside because it violates the major questions doctrine, exceeds Labor's authority under the IRCA, is the result of arbitrary and capricious agency action, and conflicts with the National Labor Relations Act of 1935, 29 U.S.C. § 151 et seq. ("NLRA").
- Plaintiffs assert this case poses a major question "because it involves a matter of significant economic and political significance," pointing to the large impact of agriculture on the national and state economies. There is no doubt that agriculture is an economically and politically significant industry. However, 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.
- Here, the agency action in question, promulgation of the Final Rule, and in particular the challenged portions related to "Protections for Worker Voice and Empowerment," is not a sweeping overhaul of the entire agriculture industry. Instead, the Final Rule reforms a single government program through which some agricultural employers are permitted to employ some foreign workers on a temporary or seasonal basis. Although the parties agree the number of such workers is growing, plaintiffs have not demonstrated it is large enough to require classifying this issue as a major question.
- 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.

***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.
- The FMIA gives States concurrent authority with the FSIS to enforce the FMIA's misbranding provisions (i.e., that meat labels cannot be false or misleading). Defendants contend the FSIS's guidance approving Defendants' labels preempts any state law or action used to assert such labels are false or misleading. But 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.
- Plaintiffs' civil Racketeer Influenced and Corrupt Organizations Act ("RICO") claim, however, is prohibited by the Noerr-Pennington doctrine. As a result, it must be dismissed.
- Defendants point to the FSIS's Food Standards and Labeling Policy Book ("Policy Book"), which allows Defendants' practice of labeling meat processed in the United States as a "Product of the USA." In short, Defendants contend the FSIS's approval conclusively determines that Defendants' labels are neither false nor misleading.
- Plaintiffs argue the Policy Book Defendants rely on cannot be a basis for preemption because it lacks the force of law. Plaintiffs also maintain the FMIA expressly allows States to enforce its misbranding prohibitions even if the FSIS has already approved the labels in question.
- Given the FSIS's approval of the "Product of USA" label and their regulations prohibiting false or misleading labels, this Court must consider what weight to give the agency's interpretation of the statute and their view on whether the labels at issue are false or misleading.
- The Court must determine whether the FMIA gives authority to States to enforce its misbranding prohibition when the FSIS has already approved the label, which only occurs—per their own regulations—if the label is not "false or misleading." In answering this question, the Court must give the statute " 'the reading [it] would have reached' if no agency were involved."
- 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.

***Hallman v, Flagship Restaurant Group, LLC*, 762 F. Supp. 3d 830 (D. Neb. 2025)**

- Hallman alleges she was required to spend more than twenty percent of her time on non-tipped "side work." Specifically, Flagship required Hallman "to engage in non-tip-producing activities, such as rolling silverware, cleaning tables, and a variety of other side work for more than 20% of her time."
- Hallman alleges she was required to pool her tips with non-tipped employees.
- Flagship did not argue the sufficiency of the allegations on Hallman's federal claim or argue the law was unsettled by *Kisor* or *Loper Bright* in their first motion to dismiss.
- The 20% cutoff for related work is a longstanding feature of the Department of Labor's interpretation of the Dual Jobs Regulation. In Fast, the Eighth Circuit adopted the Department of Labor's interpretation of the Dual Jobs Regulation, including the 20% cutoff for related work. The Department of Labor codified this interpretation in the 80/20 Rule. The 80/20 Rule amending the Dual Jobs Regulation was vacated by the Fifth Circuit, returning the law to the status quo under the 1967 Dual Jobs Regulation. Therefore, the controlling law for this case is the 1967 Dual Jobs Regulation as interpreted by the Eighth Circuit in Fast.
- The Court notes its determination on the pleadings is narrow. It does not resolve what duties the 20% cutoff applies. Fast, 638 F.3d at 881. It may be, on a full record, that some duties are properly categorized as part of Hallman' core occupation. These questions are better answered at summary judgment or class certification on a record showing the nature, timing, and duration of the "side work" alleged in the Amended Complaint. The Court does not express any opinion on this issue and only determines that, construing all inferences in Hallman's favor, there are enough facts alleged to go forward.
- The Fifth Circuit's national vacatur of the 80/20 Rule has consequences for this litigation. Specifically, the 80/20 Rule is no longer a controlling source of authority from the agency. However, the practical impact of vacatur is to return the law to the pre-rulemaking status quo. Here, the Eighth Circuit interpreted the Dual Jobs Regulation to encompass the principles of the 80/20 Rule articulated in earlier sub-regulatory guidance, meaning Hallman's allegations are cognizable under the FLSA. Therefore, the Fifth Circuit's vacatur alone is not a basis for dismissal.
- Flagship argues because Restaurant Law Center found the legal interpretation underlying the 80/20 Rule unlawful and the decision had national impact, surely the interpretation is not lawful here. Not so. Decisions of other circuit courts, even ones with national impact, are not binding on this Court. Moreover, even if the Court were to find the Fifth Circuit's analysis in Restaurant Law Center more persuasive, Fast "is controlling until overruled by our court en banc, by the Supreme Court, or by Congress." The Court has no authority to leapfrog the Court of Appeals, even if it believes a decision was wrong or that the circuit en banc would consider the issue differently under the current law. At best, Restaurant Law Center creates a split in authority Flagship can point to in their en banc petition or petition for certiorari but does not get them to a dismissal on 12(b)(6).

- Certainly, the Court could revisit the issues settled by Fast if it was called into question by a subsequent decision of the Supreme Court. Flagship contends *Loper Bright* and *Kisor* meet that standard. The Court disagrees. Specifically, *Loper Bright* addressed a rule related to the payment of fishing monitors not the standard for tipped employees under the FLSA. Moreover, the Supreme Court indicated it did "not call into question prior cases that relied on the Chevron framework" because those decisions "are still subject to statutory stare decisis despite our change in interpretive methodology." "Mere reliance on Chevron cannot constitute a special justification for overruling such a holding, because to say a precedent relied on Chevron is, at best, just an argument that the precedent was wrongly decided." Likewise, the Supreme Court in *Kisor* did not destroy the foundations of Fast when it upheld Auer deference, the doctrine relied on by the Eighth Circuit.
- . Flagship argues that these decisions represent "seismic changes in administrative law." While true, the mere fact that the prevailing judicial mood is more hostile to agency interpretations does not give the Court the ability to ignore binding precedent. In sum, the Court cannot treat Fast as a nullity because it relied in part on Chevron or Auer because, a matter of vertical stare decisis, the Court must apply Fast's interpretation of the Dual Jobs Regulation, "even [if] the interpretive methods that led to those constructions f[e]ll out of favor."
- Hallman plausibly alleges Flagship operated an illegal tip pool. Specifically, the complaint alleges that Flagship took the tip credit rather than paying its tipped employees minimum wage and Hallman was a tipped employee. Hallman's tips were pooled through the Point of Sale System and distributed to other employees along a set formula. The tips were distributed to non-tipped employees including "Sushi Chefs, support staff, server assistants, and food runners." Finally, Hallman's allegations that she was told by management that she was required to tip share raises the inference that the tip sharing was not "mutually agreed upon" by employees but rather required by management. Therefore, Hallman alleges sufficient facts to plausibly allege a violation of the FLSA provisions and Department of Labor Regulations regarding tip pools.

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

- This action was filed under the Administrative Procedure Act.
- This case concerns the standards that the United States Environmental Protection Agency ("EPA") must follow when reviewing attainment recommendations by the States in relation to the National Ambient Air Quality Standards ("NAAQS"). Relying exclusively on data submitted by Intervenor Sierra Club, EPA, in late 2016, designated two counties in Texas as nonattainment for purposes of the 2010 sulfur dioxide NAAQS. Afterwards, EPA twice changed course, perhaps reflecting how quadrennial elections have consequences.
- Section 109 of the Clean Air Act ("CAA") 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"), exposure to which can cause respiratory and cardiovascular illnesses.

- 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.
- The State set out to make its initial attainment recommendations. One difficulty was that infrastructure had not yet developed to allow reliable monitoring or modeling of SO_2 emissions. EPA issued a guidance document explaining its expectation that most areas would be designated as unclassifiable for lack of clear data, explaining: "Given the current limited network of SO_2 monitors, and our expectation that states will not yet have completed appropriate modeling of all significant SO_2 sources, we anticipate that most areas of the country will be designated 'unclassifiable.'"
- Consistent with this expectation, in June 2011, the State recommended that most counties be designated as unclassifiable, including Rusk and Panola Counties. EPA was required by statute to make final designations within two years after the revision of the NAAQS. In July 2012, however, EPA extended this deadline to June 3, 2013, because there was "insufficient information to promulgate the designations" of the Counties. It further responded to the State's February 2013 recommendations and explained that its review "of the most recent monitored air quality data from 2009–2011 shows no violations of the 2010 SO_2 standard in any areas in Texas."
- EPA did not meet the June 3 deadline. In August 2013, EPA issued "Round 1" designations under the 2010 NAAQS, designating regions in 16 states. The Round 1 designations relied only on the available air quality monitoring data. EPA stated it would continue to make designations "in separate future actions."
- Sierra Club and the National Resources Defense Council sued EPA in the Northern District of California to compel EPA to complete designations for the rest of the country. They argued EPA failed to fulfill a nondiscretionary duty under the CAA. Texas and other States intervened to represent their interests in disputing any nonattainment designations, given that such a designation would create an obligation to develop a SIP. EPA did not contest liability. The district court granted summary judgment in favor of the plaintiffs and ordered the parties to confer on the proper remedy. Sierra Club and EPA entered into, and the district court approved, a consent decree that required EPA to issue final designations for regions with the largest sources of SO_2 by July 2, 2016. The States appealed, presenting essentially the same arguments raised in the district court. The Ninth Circuit affirmed the entry of the consent decree, holding that the settlement was consistent with the CAA.
- Texas submitted recommendations for area designations. 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 Sierra Club's modeling.
- EPA proposed that 68 areas in 24 states would be included in the "Round 2" designations. In this proposal, EPA designated Rusk and Panola Counties as nonattainment. Interested parties had 30 days to provide additional information before EPA made its final decision.

During the comment period, Luminant submitted its own modeling that purportedly showed Sierra Club's modeling overstated the impact of emissions for the three Texas areas due to errors and shortcomings.

- In July 2016, EPA delivered its final-rulemaking designations for 61 areas. Pursuant to an agreed modification to the consent decree, EPA delayed issuing the Round 2 designations for the four remaining areas in Texas.
- In December 2016, EPA issued a "Supplement to Round 2 for Four Areas in Texas" making designations for the areas surrounding the Big Brown, Martin Lake, Monticello, and Sandow power plants. Contrary to Texas's recommendations and after providing the required notice to Texas, EPA designated three of the areas as "nonattainment." Those areas included portions of: (1) Freestone and Anderson Counties; (2) Rusk and Panola Counties; and (3) Titus County. EPA acknowledged Petitioners' objections, but it explained that it relied upon the modeling submitted by Sierra Club in making these determinations, despite recognizing its "potential defects."
- The CAA identifies an "unclassifiable" area as "any area that cannot be classified on the basis of available information as meeting or not meeting the national primary or secondary ambient air quality standard for the pollutant." In 2015, EPA issued guidance as part of a consent decree in California litigation that was to be applied nationwide. Petitioners rely on that guidance to insist that this provision requires designation of an area as unclassifiable when "the information at the time of designation does not clearly demonstrate that the area is in attainment or nonattainment." "Clearly demonstrate" was part of the 2015 guidance, and no replacement guidance was entered relevant to the suit before us. Petitioners argue that due to the existence of conflicting data in the record, the information could not have clearly demonstrated nonattainment. They therefore contend EPA's nonattainment designation for portions of Panola and Rusk counties violated the statute.
- We examine the statute that needs interpreting — Section 7407(d)(1)(A)(iii). We "exercise independent judgment in construing statutes administered by agencies" and "in deciding whether an agency has acted within its statutory authority." Loper Bright Enters. v. Raimondo, 603 U.S. 369, 406, 412, 144 S.Ct. 2244, 219 L.Ed.2d 832 (2024). This requires the use of " 'all relevant interpretive tools' to determine the 'best' reading of a statute; a merely 'permissible' reading is not enough."
- To be clear, discarding Chevron deference does not mean ignoring agency interpretations. The Supreme Court discussed in considerable detail its 1944 precedent that to a large but not complete extent Chevron displaced in 1984. Loper Bright, 603 U.S. at 388, 144 S.Ct. 2244 (discussing Skidmore v. Swift & Co., 323 U.S. 134, 65 S.Ct. 161, 89 L.Ed. 124 (1944)). The Loper Bright Court agreed with Skidmore that an agency's "expertise has always been one of the factors which may give an Executive Branch interpretation particular 'power to persuade, if lacking power to control.' " It is not necessary to give Chevron deference in order "to ensure that the resolution of statutory ambiguities is well informed by [an agency's] subject matter expertise.... Congress expects courts to do their ordinary job of interpreting statutes, with due respect for the views of the Executive Branch." The degree of respect, i.e., the weight to be given an agency's interpretation, will "depend upon the thoroughness evident in its consideration, the validity of its reasoning,

its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control."

- If "the best reading of a statute is that it delegates discretionary authority to an agency," then our role under the APA is "to independently identify and respect such delegations of authority, police the outer statutory boundaries of those delegations, and ensure that agencies exercise their discretion consistent with the APA."
- We conclude that the best reading of this language 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. The mere presence of competing evidence does not bar factfinding, of course. Among the ways for EPA to know that an area should be unclassifiable is when there is not much evidence, when the competing evidence is too closely balanced, or when the evidence is dubious. To put it more generally, EPA is obligated to designate an area as "unclassifiable" if the available evidence does not allow for a meaningfully reliable determination of attainment or nonattainment. Does that mean that the evidence must "clearly demonstrate" attainment or nonattainment, a descriptive phrase EPA no longer endorses? We do not see much daylight between our interpretation and that phrase. Consequently, we need not explore questions about whether the guidance was improperly abandoned without notice to affected parties or other issues related to an agency's changing its position.
- EPA has an obligation to "examine the relevant data and articulate a satisfactory explanation for its action." It must weigh evidence and determine if some evidence is reliable while other evidence is not. It is not possible to interpret Loper Bright as discarding deferential review of agency factfinding. The Supreme Court relied extensively on the provisions of the APA in its Loper Bright opinion. The Court distinguished a court's deferential standard for reviewing findings of fact under the APA from the absence of deference for legal conclusions.
- EPA explained the distance from the monitor to the power plant was too great to rule out the possibility that Rusk and Panola Counties were in nonattainment. Even so, that does not explain why the model and the monitor showed vastly different results for the same location — the area around the Longview airport. If the model could not accurately predict SO2 concentrations in that location, we have no basis to believe it could accurately predict SO2 concentrations at the Martin Lake power plant. EPA needed to account for this limitation, but it failed to do so. EPA's failure to reconcile the inconsistencies between Sierra Club's modeling and the monitoring data created an unexplained inconsistency. See Sierra Club, 939 F.3d at 668.
- EPA's argument that it relied on the 2016 instead of the 2015 modeling does not change the result. Sierra Club's 2016 model used actual emissions instead of allowable emissions and predicted a concentration at the Longview airport monitor less than the value predicted by the 2015 model. As previously stated, however, EPA did not investigate or explain the reason for the disparity between the 2015 model and the monitoring data. We therefore cannot assess whether a switch to actual emissions resolved the problem that originally caused the deviation. Because we "cannot excuse the EPA's reliance upon a methodology

that generates apparently arbitrary results," we remand for EPA to "fulfill its obligation to engage in reasoned decisionmaking."

- We interpret Section 7407(d)(1)(A)(iii) as requiring EPA to designate an area as "unclassifiable" if the available evidence does not allow for a meaningfully reliable determination of attainment or nonattainment. We also explained that EPA can know an area should be designated "unclassifiable" when there is not much evidence, the competing evidence is too closely balanced, or the evidence is dubious. Here, the evidence before EPA implicated all three categories — EPA relied solely on Sierra Club's modeling that had conceded limitations and that was further called into question by conflicting monitoring data. Given this, 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. We remand for EPA to engage in reasoned decision-making in accordance with our interpretation of "unclassifiable" under 42 U.S.C. § 7407(d)(1)(A)(iii).

***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"). But 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.
- Prior to Loper Bright, courts might have owed deference to the EPA's interpretation of the statutory term "misbranding," but no more. Nonetheless, while Loper Bright requires courts, not agencies, to determine the meaning of statutory terms such as "misbranding," we do not read the decision to undermine the EPA's authority to promulgate the regulations that implement FIFRA. As the Court explained in Loper Bright, while courts alone must ascertain a statute's meaning, "the statute's meaning may well be that the agency is

authorized to exercise a degree of discretion." And one way for statutes to express that meaning is when they "empower an agency to prescribe rules to 'fill up the details' of a statutory scheme." FIFRA is such a statute: it expressly authorizes the EPA Administrator "to prescribe regulations to carry out the provisions" of the statute. We therefore conclude that Loper Bright does not undermine the validity of the EPA regulations that govern pesticide labeling and that we consider in analyzing preemption under FIFRA in this opinion.

- Section 152.46 does not itself directly permit the modification by notification of a registered pesticide in any manner that has "no potential to cause unreasonable adverse effects to the environment." Rather, it merely authorizes the EPA, at its discretion, to permit registrants to modify pesticides by notification in some such circumstance.
- Section 152.46(a) does not of its own force permit Monsanto to add the Cancer Warning to the Roundup label by notification. At most, it could authorize the EPA to permit that modification to be made by notification. Whether Monsanto in fact could have added the Cancer Warning by notification depends on how the EPA has exercised the authority conferred upon it by section 152.46(a).
- We do not believe that courts may avoid the task of interpreting sources of law such as section 152.46 and PRN 98-10 based on the reasoning that actions must be permissible if the agency that administers that law has permitted them. As the Supreme Court has recently reminded us, "[i]t is emphatically the province and duty of the judicial department to say what the law is." And while courts may sometimes defer to an agency's interpretation of its own regulations, the Court has "cabined" the scope of that deference "in varied and critical ways." Kisor v. Wilkie, 588 U.S. 558, 580, 139 S.Ct. 2400, 204 L.Ed.2d 841 (2019). Agency interpretations are not entitled to deference unless they emanate "from those actors, using those vehicles, understood to make authoritative policy in the relevant context." Similarly, "an agency's reading of a rule must reflect 'fair and considered judgment' to receive ... deference" from courts.
- The EPA letter cited in Hardeman II satisfies neither condition. Rather than being a statement of "authoritative policy," it merely condones a single registrant's modification by notification of the label of a single pesticide. See Letter from Jennifer Gaines. And rather than reflecting the EPA's "fair and considered judgment," it consists entirely of a single, boilerplate, three-sentence paragraph that omits any substantive analysis of PRN 98-10 or the relevant regulations. Such a letter is not entitled to deference in the face of our conclusion, based on our own substantive legal analysis, that the Cancer Warning could not have been added to the Roundup label via modification by notification.
- Because the EPA does not approve label contents added through modification by notification, that procedure cannot be used to add contents, such as the Cancer Warning, that "must be approved by the Agency." Section 156.70 therefore provides an additional basis, besides the express terms of PRN 98-10 itself, for our conclusion that the Cancer Warning could not have been added to the Roundup label through modification by notification.
- Because the addition of the Cancer Warning to Roundup's label would involve a change in the precautionary statements on its Preapproved Label, modification by notification was

unavailable under section 152.46 and PRN 98-10. The Preapproval Regulation therefore prohibited the addition of the Cancer Warning to the Roundup label without further EPA approval.

- We hold that under both Bates and section 136v(b) itself federal requirements must be articulated at the more specific level when identifying the Federal Comparator in applying the parallel-requirements test. If EPA regulations specifically identify the contents required to be included on a pesticide label, a state-law requirement is preempted unless it is equivalent to that specific regulatory requirement. The state-law duty cannot survive preemption simply because its standard of liability is equivalent to the broad statutory definition of misbranding. We therefore apply the parallel-requirements test in this case by comparing the Pa. Duty to Warn with a Federal Comparator that incorporates the Preapproval Regulation.
- 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.
- We hold that the Preapproval Regulation prohibits modifying the health warnings on a pesticide's Preapproved Label, including by adding the Cancer Warning; that this prohibition constitutes a "requirement" for the purposes of section 136v(b); and that when we apply the parallel-requirements test the Federal Comparator must incorporate this regulatory requirement rather than incorporating only the statutory definition of misbranding. This approach best achieves Congress's stated aim of uniformity in pesticide labeling. And the parallel-requirements test is not satisfied when the Pa. Duty to Warn and the Federal Comparator are compared under this approach: they are not equivalent because Monsanto's alleged violation of the Pa. Duty to Warn does not constitute a violation of the Preapproval Regulation. We thus conclude that the Schaffners' failure-to-warn claim is preempted under section 136v(b).

***Restaurant Law Center v. U.S. Dep't of Labor*, 120 F.4th 163 (5th Cir. 2024)**

- Suit filed under Administrative Procedure Act
- The Restaurant Law Center and the Texas Restaurant Association challenge a final rule promulgated by the Department of Labor that restricts when employers may claim a "tip credit" for "tipped employees" under the Fair Labor Standards Act.
- The Final Rule fails under the Administrative Procedure Act twice over. Because the Final Rule is contrary to the Fair Labor Standards Act's clear statutory text, it is not in accordance with law. And because it imposes a line-drawing regime that Congress did not countenance, it is arbitrary and capricious.
- The 80/20 guidance provided that a maximum of 20 percent of an employee's time could be spent on non-tipped activities related to the tipped occupation—for example, a waitress setting tables or making coffee—for the employer to claim the full tip credit.
- DOL's 80/20 guidance persisted uninterrupted until 2009, when DOL's interpretation of the dual-jobs regulation began to oscillate with every change in presidential administration.
- In December 2021, DOL issued a different final rule after notice and comment that effectively codified its longstanding 80/20 guidance. The Final Rule added a new

subsection (f) to 29 C.F.R. § 531.56, explaining what it means to be "engaged in a tipped occupation" under 29 U.S.C. § 203(t). Notably, "tipped occupation" is not a term used in § 203(t) of the FLSA. According to the Final Rule, an employee is "engaged in a tipped occupation when the employee performs work that is part of the tipped occupation." Therefore, "[a]n employer may only take a tip credit for work performed by a tipped employee that is part of the employee's tipped occupation."

- The Final Rule then proceeds to define three categories of work: (1) directly tip-producing work (e.g., a server "providing table service"); (2) directly supporting work (e.g., a server "setting and bussing tables"); and (3) work not part of the tipped occupation (e.g., a server "preparing food"). An employer may take the tip credit for tip-producing work. But if more than 20 percent of an employee's workweek is spent on directly supporting work, the employer cannot claim the tip credit for that excess. Nor can directly supporting work be performed for more than 30 minutes at any given time. An employer may not take the tip credit for any time spent on work not part of the tipped occupation. In addition, the Final Rule amended the 1967 dual-jobs regulation to omit the counterexample of a waitress engaging in duties related to her occupation.
- "Chevron is overruled." In its place, the Court has instructed that we are to return to the APA's basic textual command: "independently interpret[ing] the statute and effectuat[ing] the will of Congress." Courts are constantly faced with statutory ambiguities and genuinely hard cases. But "instead of declaring a particular party's reading 'permissible' in such a case, courts use every tool at their disposal to determine the best reading of the statute and resolve the ambiguity."
- Following the Supreme Court's instructions, and without the guidance of Chevron, we turn now to our task. While the district court was of course correct to apply the Chevron framework at the time of its decision, the Supreme Court's intervening opinion in Loper Bright requires us to depart from the district court's analysis at the very start. We must parse the text of the FLSA using the traditional tools of statutory interpretation. As the district court correctly put it, "[t]he dispute in this case turns on the meaning of the statutory phrase 'engaged in an occupation' and the term 'occupation,' both of which are used in the definition of 'tipped employee' but are undefined in the FLSA."
- DOL's interpretation sits uncomfortably with the operative statutory term: "tipped employee." Under the Final Rule, if an employee is not engaged in her occupation at a given moment, then she is not a "tipped employee" at that moment. The Final Rule necessarily means, therefore, that when an employee is not engaged in her "tipped occupation," as the regulatory language puts it, she is engaged in some other occupation. Because the Final Rule is so granular in divvying up component tasks, a single occupation could quickly break apart, implausibly, into many.
- The Final Rule is attempting to answer a question that DOL itself, not the FLSA, has posed. The FLSA is clear: an employer may claim the tip credit for any employee who, when "engaged in" her given "occupation ... customarily and regularly receives more than $30 a month in tips." The FLSA does not ask whether duties composing that given occupation are themselves each individually tip-producing.

- It is DOL's interpretation that threatens to turn the $30-threshold requirement into a nullity by focusing instead on individual tasks. DOL's interpretation functionally turns § 203(t) into: " 'tipped employee' means any employee who, in a given moment, is engaged in tip-producing work." We conclude that our interpretation of the statutory language is the best one because it gives full effect to the entirety of the provision.
- We pause to note that, even in the absence of Chevron, courts are well-advised to consider agency "interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time." As DOL points out, the 80/20 standard (but not the 30-minute requirement) is indeed of some vintage, having been applied with brief interregna since at least 1988. But while longstanding agency practice might have the "power to persuade," it has never had the "power to control." See Skidmore v. Swift & Co., 323 U.S. 134, 140, 65 S.Ct. 161, 89 L.Ed. 124 (1944). Nor can we permit agency practice to "defeat a statute's text by 'adverse possession.' " We are not persuaded that the 80/20 standard, however longstanding, can defeat the FLSA's plain text.
- In no way does our holding bear on the validity of the dual-jobs regulation, which is not challenged here. The dual-jobs regulation, unlike the Final Rule, does not countenance a percentage-based—much less a 30-minute-increment-cutoff-based—approach to identifying how much untipped work is too much. Indeed, it focusses on "whether the employee performs tasks unrelated to his or her tipped occupation," not the "amount of time" spent on untipped tasks. It therefore suffers from none of the infirmities that we have identified with the Final Rule.
- "Dual" really means dual. The 1967 regulation envisioned two unrelated and separate occupations: maintenance work and waitressing. By contrast, the Final Rule applies the dual-jobs framework to disaggregate the component tasks of a single occupation.
- Even without Chevron, we understand that courts are still to conduct a similar arbitrary-and-capricious analysis in "fix[ing] the boundaries of ... delegated authority and ensuring the agency has engaged in reasoned decisionmaking within those boundaries."
- DOL's basic premise is that § 203(t) presents a line-drawing problem. Assuming that the provision's use of "engaged in an occupation" refers to engaging in some identifiable set of duties that compose that occupation, there is admittedly the potential for ambiguity. If the dual-jobs regulation is permissible under the FLSA, as the parties in large part agree, then there is at least some line drawing that must occur in identifying which duties make up any given occupation qualifying for the tip credit. DOL argues that the Final Rule's focus on those duties' tip-producing nexus, and on the time an employee spends on supporting duties, is a permissible line to draw.
- The "line" that DOL has drawn discounts many core duties of an occupation when those duties do not themselves produce tips. This is not what § 203(t) directs DOL to consider. If a core duty of a server is bussing and setting up tables, the server is undoubtedly engaged in his occupation. It does not matter whether he is tipped or not for those duties. DOL must introduce the independent concept of a "tipped occupation." But that term appears nowhere in the statute.
- Another fundamental problem with the Final Rule is its inconsistent treatment of supporting work based only on the work's duration. We cannot think of any occupation for

which every duty is directly tip-producing, as the Final Rule demands. The Final Rule ties the tip credit not to the character of these various duties as integral to their respective occupations, but to the amount of time that these duties take. Like the tipping nexus, this temporality requirement can be found nowhere in the statute.

- In short, as to supporting work, the Final Rule replaces the Congressionally chosen touchstone of the tip-credit analysis—the occupation—with one of DOL's making—the timesheet. And as to untipped work, the Final Rule again ignores such work's clear connection to the occupation itself and instead elevates its lack of connection to tipping.
- We hold that the Final Rule is arbitrary and capricious because it draws a line for application of the tip credit based on impermissible considerations and contrary to the statutory scheme enacted by Congress.

***Green v. Perry's Restaurants Ltd*., 758 F. Supp. 3d 1312 (D. Colo. 2024)**

- Plaintiffs are current and former servers asserting claims under the Fair Labor Standards Act.
- Plaintiffs allege that Defendants compensated them at a subminimum hourly wage and claimed an improper "tip credit" to offset their obligation to pay Plaintiffs the full minimum wage required under state and federal law. Among other reasons, Plaintiffs assert Defendants were not entitled to claim a tip credit because Plaintiffs were regularly required to perform "non-tipped work that, although related to [their] tipped occupation, exceeded twenty percent (20%) of their time worked during each workweek." This "related" "non-tipped work" included "wiping down tables, stocking and setting tables, running food, rolling silverware, and other 'side-work.'"
- Plaintiffs assert that their minimum wage claims in this regard are based on the United States Department of Labor's ("DOL") long-standing subregulatory guidance setting forth a 20% threshold for tipped employee time spent performing "related" non-tipped duties, beyond which the employer becomes ineligible to claim a tip credit (the "80/20 Rule"), as well as relevant case law applying that guidance.
- In response to Congress's amendment of the FLSA to include the tip-credit provision, the DOL promulgated a regulation to clarify when a tipped employee is "engaged in an occupation in which he customarily and regularly receives ... tips."
- The 2021 Final Rule permitted an employer to take a tip credit, not only for an employee's tip-producing work, but also for other "[w]ork that directly supports the tip-producing work, if the directly supporting work is not performed for a substantial amount of time." It further defined a "substantial amount of time" as "directly supporting work exceed[ing] a 20 percent workweek tolerance" and, as newly incorporated, "directly supporting work for a continuous period of time that exceeds 30 minutes." The 2021 Final Rule went into effect in December 2021.
- Two special interest groups—the Restaurant Law Center and the Texas Restaurant Association (collectively, the "Associations")—sued the DOL in the Western District of Texas seeking to enjoin its enforcement. Addressing the parties' cross summary judgment motions, the district court granted the DOL's motion, concluding that the 2021 Final Rule

was a permissible interpretation of the ambiguous statutory term, "engaged in an occupation," and was thus entitled to deference under Chevron.

- While the Associations' appeal of the district court's order was pending, the United States Supreme Court overruled Chevron. See Loper Bright Enters. v. Raimondo, 603 U.S. 369, 144 S. Ct. 2244, 2273, 219 L.Ed.2d 832 (2024). Thus, rather than affording Chevron deference to the DOL's 2021 Final Rule, the Fifth Circuit opined that it must "return to the [Administrative Procedures Act's ("APA")] basic textual command: 'independently interpret[ing] the statute and effectuat[ing] the will of Congress.' " Rest. L. Ctr. v. U.S. Dep't of Lab., 115 F.4th 396, 404 (5th Cir. 2024) (quoting Loper Bright, 144 S. Ct. at 2263). In so doing, the Circuit rejected the DOL's interpretation of when a tipped employee is "engaged in [their] occupation," reasoning instead that the FLSA's definition of "[t]ipped employee" is clear on its face and "does not ask whether duties composing that given occupation are themselves each individually tip-producing."
- The Fifth Circuit continued: "Having concluded the [2021] Final Rule is contrary to the FLSA's text, we could stop here." It did not. Instead, it went on to find "the [2021] Final Rule is arbitrary and capricious [under the APA] because it draws a line for application of the tip credit based on impermissible considerations and contrary to the statutory scheme enacted by Congress." As for the remedy, the Fifth Circuit concluded that vacatur without remand was appropriate, because in its view the 2021 Final Rule "suffer[ed] from a fundamental substantive defect that the DOL could not rectify on remand." Nonetheless, the Circuit's opinion made clear that its holding "in no way ... bear[s] on the validity of the dual-jobs regulation, which is not challenged here."
- The central issue presented by the Motion is whether the Restaurant Law Center decision invalidated the entire concept of "related side work" and the corresponding 80/20 Rule, such that Defendants are entitled to summary judgment on Plaintiffs' claims predicated on the same. Here, the Court must specifically determine (1) the effect, if any, of Restaurant Law Center's vacatur of the 2021 Final Rule on Plaintiffs' claims in this case, and (2) the effect, if any, of Restaurant Law Center's vacatur of the 2021 Final Rule on earlier subregulatory guidance (i.e., the 1988 FOH Guidance) embodying the 80/20 Rule, and upon which Plaintiffs rely in this case.
- As to the former inquiry, the Court acknowledges that precedent in other circuits—including the D.C. Circuit—supports the proposition that vacatur of an agency action pursuant to the APA renders the action void as to any regulated person or entity, whether a party to the immediate case or not.
- Still, based on the Court's review, the Tenth Circuit has not expressly addressed the scope of the vacatur remedy. Furthermore, some justices of the Supreme Court have recently expressed disagreement over whether the APA is properly interpreted as authorizing such a global remedy. See United States v. Texas, 599 U.S. 670, 695-702, 143 S.Ct. 1964, 216 L.Ed.2d 624 (2023) (Gorsuch, J., concurring) (expressing doubt that "set aside" in the APA authorizes vacatur: "Why bother jumping through [ordinary joinder and class-action procedures] when a single plaintiff can secure a remedy that rules the world?"). The Court is similarly skeptical that it is necessarily obliged to extend the Fifth Circuit's vacatur of the 2021 Final Rule to the claims and defenses of the parties in this case.

- Ultimately, however, the Court concludes that it need not decide whether the Fifth Circuit's vacatur of the 2021 Final Rule extends to the parties in this case. Plaintiffs' Amended Complaint was filed in February 2021, ten months before the 2021 Final Rule became effective in December 2021. See Sections II.A, I.B supra. "As a general rule, ... [n]ewly promulgated agency rules, ... are ... given only prospective effect." Munoz v. Lynch, 631 F. App'x 510, 512 (10th Cir. 2015). Plaintiffs do not cite the 2021 Final Rule as the basis for their related side work claims, let alone argue the 2021 Final Rule should be given retroactive effect. Thus, setting aside the question of what legally preclusive effect the vacatur decision in Restaurant Law Center should be given in this Circuit, the Court declines to apply the 2021 Final Rule's amendments to the Dual Jobs Regulation to Plaintiffs' claims.
- The Court thus turns to the second inquiry: whether the Fifth Circuit's vacatur of the 2021 Final Rule uprooted the earlier sources for the 80/20 Rule that Plaintiffs rely upon in this case—that is, the Dual Jobs Regulation, the 1988 FOH Guidance, and case law applying the same.
- The parties agree that Restaurant Law Center had no effect on the validity of the Dual Jobs Regulation. But, Defendants argue that after Restaurant Law Center, only the Dual Jobs Regulation's concept of unrelated side work remains intact. Defendants' argument ignores that the 80/20 Rule has, apart from two brief interludes discussed in Section II.A supra, continuously been included in subregulatory guidance interpreting the Dual Jobs Regulation since at least 1988. And they otherwise fail to convince the Court that it must reject the 1988 FOH Guidance for the same reasons that Restaurant Law Center rejected the 2021 Final Rule's codification of the 80/20 Rule.
- For one, the precise legal issue in Restaurant Law Center was "the validity of the [2021] Final Rule as an interpretation of the FLSA"—not, as here, the validity of the DOL's subregulatory guidance as an interpretation of the Dual Jobs Regulation. Thus, while the demise of Chevron featured heavily in Restaurant Law Center, it does not bear on the Court's application of the 1988 FOH Guidance. That is because agency interpretations of their own regulations, like the 1988 FOH Guidance, have never received the benefit of Chevron deference. Rather, "[w]hen an agency reasonably interprets a genuinely ambiguous regulation that it has promulgated, federal courts generally defer to that interpretation" under Auer—not Chevron.
- Auer was not discussed, let alone analyzed, in Loper Bright, and federal courts in this Circuit have continued to apply it.
- Moreover, even if Auer deference were no longer warranted, agency interpretations may still be considered persuasive under Skidmore.
- Just as the Fifth Circuit was free to find persuasiveness—or not—in earlier opinions applying Auer and/or Skidmore to the 1988 FOH Guidance, this Court is free to do the same as to Restaurant Law Center's independent statutory interpretation of the FLSA.
- As the law currently stands, Plaintiffs are free to base their claims on the 80/20 Rule, as embodied by the DOL's subregulatory guidance interpreting the Dual Jobs Regulation.
- Faced with this ambiguity [in the Dual Jobs Regulation's failure to address certain issues], the Court will defer to the DOL's interpretation of its own Dual Jobs Regulation so long

as it is not "plainly erroneous or inconsistent with the regulation." Here again, the Court agrees with Fast that the DOL's interpretation of the Dual Jobs Regulation—"which concludes that employees who spend 'substantial time' (defined as more than 20 percent) performing related but nontipped duties should be paid at the full minimum wage for that time without the tip credit"—is a reasonable one.

- Alternatively, the Court finds the 1988 FOH Guidance has the "power to persuade" and as a consequence is entitled to Skidmore deference. Under Skidmore, "a reviewing court 'accord[s] the [agency's] interpretation a measure of deference proportional to the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade.'"
- Because the 1988 FOH Guidance is entitled to both Auer and Skidmore deference, the Court holds that the 80/20 Rule applies to Plaintiffs' FLSA claims.

***Mayfield v. U.S. Dep't of Labor*, 117 F.4th 611 (5th Cir. 2024)**

- Although the Fair Labor Standards Act defines the workers to whom the statute applies broadly, it also contains a series of exemptions that exclude certain types of employees from that definition. Relevant here, the FLSA exempts "any employee employed in a bona fide executive, administrative, or professional capacity." That exemption is known as the "EAP Exemption" or the "White Collar Exemption,'' and it gives the Secretary of the Department of Labor the power to "define[ ] and delimit[ ]" the "terms" of the exemption.
- n 2019, DOL issued a new version of what is known as the "Minimum Salary Rule," raising the minimum salary required to qualify for the Exemption from $455 per week to $684 per week, an increase of 50.3%. DOL is currently considering a proposed rule that would raise the minimum salary to $1,059 per week, a roughly 55% increase from the 2019 Rule.
- Robert Mayfield challenges the latest rule, which updates the minimum salary necessary to fall within the Exemption, on the ground that promulgating any rule imposing a salary requirement exceeds the Department's statutorily conferred authority or else violates the nondelegation doctrine.
- Mayfield is a small-business owner who runs thirteen fast-food restaurants in Austin, Texas. According to Mayfield, his businesses succeed by offering high bonus payments to the best performing store managers. He asserts that the Rule forces him to pay a higher salary to all managers regardless of performance, leaving him with insufficient funds to reward the best performers.
- There are three indicators that each independently trigger the major questions doctrine: (1) when the agency "claims the power to resolve a matter of great political significance"; (2) when the agency "seeks to regulate a significant portion of the American economy or require billions of dollars in spending by private persons or entities"; and (3) when an agency "seeks to intrude into an area that is the particular domain of state law."
- This case neither is one of vast political or economic significance under Supreme Court or Fifth Circuit precedent nor intrudes into an area that is the particular domain of state law.
- Where, as here, Congress has clearly delegated discretionary authority to an agency, we discharge our duty by "independently interpret[ing] the statute and effectuat[ing] the will of Congress subject to constitutional limits." This means that we must "independently

identify and respect [constitutional] delegations of authority, police the outer statutory boundaries of those delegations, and ensure that agencies exercise their discretion consistent with the APA." Doing so requires using "all relevant interpretive tools" to determine the "best" reading of a statute; a merely "permissible" reading is not enough.

- Here, because there is an uncontroverted, explicit delegation of authority, the question is whether the Rule is within the outer boundaries of that delegation.
- Promulgating the Minimum Salary Rule can be construed in two ways, both of which are consistent with DOL's statutorily conferred authority. By promulgating the Rule, DOL defines, in part, what it means to work in an executive, administrative, or professional capacity (namely, to earn at least a particular amount of money). This tracks the simple fact that a definition can rely on multiple types of characteristics. The Minimum Salary Rule can also be construed as an exercise of the power to delimit the scope of the Exemption. By promulgating the Rule, DOL sets a limit on what is otherwise defined by the text of the Exemption. On either construal of what DOL is doing when it promulgates the Rule, its action is within the scope of its authority.
- Using salary as a proxy for EAP status is a permissible choice because, as we have explained, the link between the job duties identified and salary is strong. That does not mean, however, that use of a proxy characteristic will always be a permissible exercise of the power to define and delimit. If the proxy characteristic frequently yields different results than the characteristic Congress initially chose, then use of the proxy is not so much defining and delimiting the original statutory terms as replacing them. That is not the case here.
- One might ask what work Skidmore deference can do given the Supreme Court's statements that (1) statutes have a "best reading ... the reading the court would have reached if no agency were involved," and (2) "[i]n the business of statutory interpretation, if it is not the best, it is not permissible." Taking these statements together, it seems that either the agency's interpretation is the best interpretation (in which case no deference is needed) or the agency's interpretation is not best (in which case it lacks persuasive force and is not owed deference). We need not address that issue here because DOL's interpretation of the statute is "best" based on traditional tools of statutory interpretation and without reliance on deference of any kind. We note, however, that if Skidmore deference does any work, it applies here. DOL has consistently issued minimum salary rules for over eighty years. Though the specific dollar value required has varied, DOL's position that it has the authority to promulgate such a rule has been consistent. Furthermore, it began doing so immediately after the FLSA was passed. And for those who subscribe to legislative acquiescence, Congress has amended the FLSA numerous times without modifying, foreclosing, or otherwise questioning the Minimum Salary Rule.
- We join two of our sister circuits in finding that, under the existing test, DOL's authority to define and delimit the terms of the EAP Exemption is guided by an intelligible principle.

***Pickens v. Hamilton-Ryker IT Solutions, LLC*, 133 F.4th 575 (6th Cir. 2025)**

- Pickens sued his former employer for classifying him as a salaried worker rather than an hourly worker under the Fair Labor Standards Act.

- An employer need not pay overtime to "any employee employed in a bona fide executive, administrative, or professional capacity," as those "terms are defined and delimited from time to time by regulations of the Secretary [of Labor]."
- An employee works in a bona fide executive, administrative, or professional capacity if (among other things) he is paid on a "salary basis."
- An employee receives a "salary" if he is paid "a predetermined amount" "on a weekly[ ] or less frequent basis." An employee must receive that amount—his "full salary"—"for any week in which [he] performs any work." His pay may not be docked "for time when work is not available," if he happens to call in sick for a day or two, or if he takes a few hours off "for personal reasons."
- The ancien régime of Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc. treated "ambiguous" statutes as "implicit" delegations of authority to agencies, which had final authority to "fill any gap[s]" in the statute with "reasonable" interpretations. Loper Bright Enterprises v. Raimondo rejected that "fiction." A statutory ambiguity "is not a delegation to anybody," the Court explained, meaning that judges could not "defer" to an agency's interpretation whenever they faced an unclear statute. They must instead do what judges do: arrive at their own "independent judgment" about what the statute means.
- In doing away with deference, however, Loper Bright did not do away with discretion. As the Court explained, it will sometimes be the case that "the best reading of a statute is that it delegates discretionary authority to an agency." That is not the product of ambiguity. It is the product of "broad and open-ended" grants of authority under the heading of "terms like 'reasonable,' 'appropriate,' 'feasible,' [and] 'practicable,'" all of which are incapable of precise definition not because they are ambiguous, but because they unambiguously convey discretion. An "express and clear conferral of authority" to an agency "does not rest on Chevron's fiction" at all. It rests on an express delegation of power to an agency.
- What should a court do, then, when asked to review whether an agency has permissibly exercised delegated discretion? Loper Bright tells us. A court plays its part by (1) "recognizing constitutional delegations," (2) "fixing the boundaries of the delegated authority," and (3) "ensuring the agency has engaged in reasoned decisionmaking within those boundaries." A court must ensure that the statute contains an "intelligible principle" and is not an impermissible delegation of legislative power to an executive branch agency. It must determine the scope of the agency's discretion under the statute by setting out the task that the agency must perform. And it must ensure that the agency's action is both "reasonable and reasonably explained." Through it all, we must decide for ourselves "whether the law means what the agency says."
- Congress chose not to specify every aspect of what makes a position "bona fide executive, administrative, or professional" in character. That is precisely why it delegated authority to the Secretary to define and delimit those terms. Congress chose not to unduly limit the Secretary's options in implementing the exemptions, and neither will we.
- It might well be the case that the lines drawn by the Secretary are imperfect, especially on the margins. But that is in the nature of drawing lines. We ask only that the Secretary exercise "reasoned" judgment, not perfect judgment. That happened here.

***Dayton Power & Light Co. v. Federal Energy Regulatory Comm'n*, 126 F.4th 1107 (6th Cir. 2024)**

- Congress did not mandate that electric utilities join a regional transmission organization (RTO).
- Congress directed FERC to provide incentives to electric utilities that joined a regional transmission organization (RTO).
- FERC promulgated a rule allowing utilities to charge higher wholesale rates as an incentive for joining an RTO. Consistent with Congress's goal of encouraging RTO participation, FERC ultimately determined that a utility can qualify for the higher rate only if it voluntarily joins an RTO. FERC thus excludes utilities that are required to join an RTO by state law because the extra payment cannot "incentivize" membership.
- Ohio law requires utilities to join an RTO, so FERC denied the application of Dayton Power, an Ohio utility, for an RTO adder. Then, prompted by a challenge from the Ohio Consumer's Counsel (OCC), FERC removed the adder from another Ohio utility, AEP. But FERC left the adder intact for two others, Duke and FirstEnergy. Duke's and FirstEnergy's rates came from comprehensive settlement agreements, and FERC viewed the adder as inseparable from those settlements.
- Our task is to interpret Section 219(c) and determine whether FERC's voluntariness requirement is valid given the "best reading" of the statute. Loper Bright Enters. v. Raimondo, 603 U.S. 369, 144 S. Ct. 2244, 2266, 219 L.Ed.2d 832 (2024). Since this case was argued, the precedents governing agency deference have shifted. Id. at 2272–73 (overruling Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)). Under the new standard articulated in Loper Bright, we do not defer to an agency's reasonable interpretation of a statute, but we may still "seek aid" from the agency and resort to its "experience and informed judgment" for guidance. Deference would make no difference here. The "single, best" reading of Section 219(c) is that the RTO adder requires voluntary membership.
- Utilities are rewarded for taking optional steps that will achieve a particular improved outcome; they are not rewarded for performance that's already required.
- The statutory text and structure demonstrate that the "best reading" of Section 219(c)—one that gives full effect to both the letter and context of the law—is that the RTO adder is reserved for those utilities that voluntarily choose to join an RTO.
- The Ohio law targets intrastate transmission—an area explicitly reserved for states by the FPA in § 824(a) and § 824(b)(1), so it withstands the utilities' preemption challenges. The text of the Ohio statute reveals that the legislature's primary aim was to regulate transmission within Ohio's borders.
- We consider the utilities' preemption argument and hold that the FPA does not preempt state laws requiring RTO membership.
- We affirm FERC's denial of Dayton Power's application for an RTO adder in the Dayton Power proceeding and its revocation of AEP's RTO adder in the OCC proceeding. We reverse FERC's order in the OCC proceeding declining to revoke the RTO adder from Duke's and FirstEnergy's adder-inclusive settlement rates and remand for further proceedings consistent with this opinion.

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

- In 2004, the Animal and Plant Health Inspection Service (APHIS), housed within the U.S. Department of Agriculture (USDA), announced the intention to revisit regulations governing genetically engineered (GE) organisms. APHIS published a notice of proposed rulemaking in 2008 that kicked off over a decade of activity and concluded in a final rule the agency adopted in May 2020.
- 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 2020 final rule plaintiffs challenge is the culmination of nearly 15 years of attempts by APHIS to update the part 340 GE-plant regulations.
- 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 differed from its predecessors in many respects. In salient part, 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." APHIS also said that it would "continue [its] current practice of considering the weediness" of GE plants when it considers their plant-pest risks. Lastly, the final rule extends record retention for GE-plant developers from one year to two years without requiring permit applicants to retain or prepare any new types of records.
- Plaintiffs sued to rescind the final rule under the Administrative Procedure Act.
- The complaint alleged that the final rule contravened various federal statutes and consequently was arbitrary and capricious. Specifically, plaintiffs alleged that, in promulgating the final rule, the agency failed to heed procedural requirements under the Endangered Species Act of 1973 (ESA), and the National Environmental Policy Act (NEPA). Plaintiffs also alleged that the final rule failed to implement directives set forth in the 2008 Farm Bill and that the rule violated the Plant Protection Act (PPA). And plaintiffs said that portions of the final rule relating to the exemptions unconstitutionally delegated statutory authority to private parties without Congress's express authorization.

- "[T]he Court will not substitute its own judgment for that of the agency" but will "engage in a careful, searching review to ensure that the agency has made a rational analysis and decision on the record before it." Consequently, the Court "will not 'rubber-stamp' agency decisions that are inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute." "The Court's deference extends to less than stellar work by an agency, so long as its analytical path and reasoning can be reasonably discerned," although it is still incumbent on agencies to "engage in 'reasoned decisionmaking,' and "articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made,'"
- "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority." Loper Bright Enterp. v. Raimondo, 603 U.S. 369, 144 S. Ct. 2244, 2273, 219 L.Ed.2d 832 (2024). There is no question that the PPA expanded the definition of noxious weeds, and so the scope of the agency's regulatory authority as well, nor is there any dispute the statute charges the agency with the responsibility to "facilitate ... interstate commerce in agricultural products ... that pose a risk of harboring plant pests or noxious weeds in ways that will reduce ... the risk of dissemination of plant pests or noxious weeds."
- But 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. Where a "statute delegates authority to an agency ... courts must respect the delegation, while ensuring the agency acts within it." Loper Bright Enterp., 603 U.S. at 413, 144 S. Ct. at 2273.
- Overall, plaintiffs did not establish that the agency exceeded its statutory authority here. Plaintiffs say the agency itself previously interpreted the PPA as imposing a "statutory duty" to add noxious weeds as a trigger for part 340 regulations. Even if an agency's prior interpretations of a statute in rescinded NPRMs carried some persuasive value, which is not at all clear, see Loper Bright Enterp., 603 U.S. at 388, 144 S. Ct. at 2259 (citing Skidmore v. Swift & Co., 323 U.S. 134, 65 S.Ct. 161, 89 L.Ed. 124 (1944)), the statements plaintiffs proffer were the agency's conclusions at the time about how to exercise its discretion, not interpretations of a statutory directive.
- Plaintiffs next contend that the final rule's failure to incorporate noxious weeds as a trigger for part 340 regulations was inadequately explained. This challenge fares better.
- The final rule states that APHIS "disagrees with the proposition that [it] is statutorily obligated to integrate noxious weed authority into a revised part 340" and that it instead believes it has discretion to do so. But APHIS's "assertion that it has the ... authority" to make such a decision "does not address why" it chose to make or not make the decision. In the final rule, APHIS "recognize[d]" that genetic engineering could introduce traits that increase the weedy aspects of a plant and stated, "[a]ccordingly, [it] would continue [its] current practice of considering the weediness of the unmodified plant and whether the new trait could in any way change the weediness." 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.

- The final rule concludes APHIS does not "perceive a basis at this time" for overhauling its noxious-weed regulations because it "believe[s]" those regulations "have functioned well over the years." But the agency's perceptions and beliefs are of little moment when, as here, they are asserted as fiat untethered to a clear and sound analysis. The agency had in hand OIG audit reports the agency understood to suggest that "incorporating the PPA's expanded definition of noxious weeds into the part 340 Rules would be preferable." Yet the rule does not address the relevant recommendations in those reports.
- 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.
- To reiterate, the Court's task in an APA review case is to "ensure that the agency has made a rational analysis and decision on the record before it," not to "substitute its own judgment for that of the agency." Deference to the agency in the exercise of delegated authority in connection with technical matters such as these is appropriate where the record shows that the agency accounted for the relevant evidence and offered an explanation implicating its expertise.
- The record indicates that APHIS supported its views with scientific evidence, and plaintiffs make no argument that the rule conflicts with, or is unsupported by, the evidence on which the agency purported to rely or that there was other evidence undermining the conclusions the agency drew from its expertise.
- 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. Plaintiffs themselves recognize that this form of vacatur suffices to return the industry and GE-crop regulation to the status quo ante.

Loper Bright Enterprises v. Raimondo and the Future of Agency Interpretations of Law

CRS Product Type: Reports
Topics: Federal Government Management & Organization; Law, Constitution & Civil Liberties
Publication Date: 12/31/2024
Author: Barczewski, Benjamin M.

Summary

"*Chevron* is overruled": On June 28, 2024, the Supreme Court overruled the *Chevron* framework in *Loper Bright Enterprises v. Raimondo*, holding that the *Chevron* framework violated Section 706 of the Administrative Procedure Act (APA). The *Chevron* framework required courts to defer to reasonable agency interpretations of ambiguous statutes. In its place, the Court directed the judiciary to exercise its independent judgment to determine the meaning of federal statutes.

The *Chevron* framework was named for the case that articulated it, *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* For four decades, the *Chevron* case, and the framework that grew out of it, was one of the foundational decisions in administrative law, governing the relationship between agencies and courts in matters of statutory interpretation and acting as a backdrop against which Congress has legislated. The *Chevron* framework typically applied if Congress had given an agency the general authority to make rules with the force of law. If a court determined that *Chevron* governed its analysis, at step one it would determine whether Congress directly addressed the precise issue before the court. If the statute was clear on its face with respect to the issue before the court, the court was to implement Congress's stated intent. If the court concluded instead that a statute was silent or ambiguous with respect to the specific issue, the court then proceeded to *Chevron*'s second step. At step two, courts were required to defer to an agency's reasonable interpretation of the statute regardless of whether the court would adopt that interpretation on its own were it to have reviewed the statute without the benefit of the agency's interpretation. The *Chevron* framework rested on several related assumptions, including that (1) statutory ambiguity indicates a congressional delegation of interpretive authority, (2) agencies have more expertise than courts do to interpret the statutes they administer, and (3) agencies are politically accountable and therefore have more claim to

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are politically accountable and therefore have more claim to make policy than courts do.

The APA's Section 706, the Court held in *Loper*, codified existing judicial review practice at the time of its enactment in 1946. Recounting a long line of cases going back to the beginning of the 19th century, the Court explained that the federal courts always understood their role as the final arbiters of the meaning of statutes. Given this history, the Court took specific aim at *Chevron*'s first presumption—that statutory ambiguities indicate implicit delegation of interpretive authority to an agency. This presumption, the Court held, violated the APA's "unremarkable yet elemental proposition … that courts decide legal questions by applying their own judgment." Despite the Court's direction that courts are obligated to exercise their independent legal judgment, the Court emphasized several times that the executive branch's views on the meaning of a statute should be given "weight" or "respect" under certain circumstances outlined by the 1944 Supreme Court case *Skidmore v. Swift & Co*. The Court's emphasis on the judiciary's role to render independent legal judgment on the best meaning of a statute, moreover, does not preclude a court from concluding that a particular statute has vested the agency with discretion. Where Congress has vested an agency with delegated authority, courts must still ensure that the agency has stayed within "the boundaries of the delegated authority and … the agency has engaged in 'reasoned decisionmaking' within those boundaries."

Exactly how Congress, the executive branch, and the judiciary will react to the *Loper* decision is still an open question. In broad terms, *Loper* will likely have a much greater effect in the lower courts than at the Supreme Court, as the Supreme Court did not defer to an agency interpretation under *Chevron* since 2016. The lower courts, however, relied on the framework until the day *Chevron* was overruled. Whether agencies will lose more cases before the courts is another open question. Some evidence of the effect of *Chevron* on the lower courts indicates that overruling *Chevron* may depress agency successes in the lower courts where an agency interpretation of law is at

issue. Nonetheless, in the absence of *Chevron*, courts may rely more heavily on *Skidmore* weight or find more readily that statutes delegate authority to agencies, thereby limiting agency losses in court. Further, *Chevron* did not apply to all agency actions—only to agency interpretations of statutes. Exercises of statutorily delegated policy discretion are (and will continue to be) reviewed under the APA's deferential arbitrary and capricious standard.

The extent to which *Loper* will affect the way agencies regulate and Congress legislates is yet to be seen. The *Loper* decision does not legally bind the executive branch or Congress—it directs *courts* how to resolve cases of statutory interpretation. *Loper* will likely have an indirect effect on each branch, however. Agencies may respond to *Loper* by drafting their interpretations to better mirror the way courts interpret statutes and limit expansive interpretations of the statutes they administer. Congress may respond by drafting more specific statutes, codifying *Chevron* or *Loper*, or using more express delegations in statutes.

Figures

Introduction

On June 28, 2024, the Supreme Court overruled the *Chevron* framework in a pair of cases, *Loper Bright Enterprises v. Raimondo* and *Relentless Inc. v. Department of Commerce* (collectively *Loper*).[1] The *Chevron* framework—named for the case that articulated it, *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*—required federal courts to defer to federal agencies' reasonable interpretations of ambiguous statutory provisions the agencies administer.[2]

For four decades, the *Chevron* case, and the framework that grew out of it, has been one of the foundational decisions in administrative law, governing the relationship between agencies and courts in matters of statutory interpretation and acting as a backdrop against which Congress has legislated. As one legal scholar put it: *Chevron* "is the most talked about, most written about, most cited administrative law decision of the Supreme Court. Ever."[3] For the past decade or so, however, *Chevron* had come under increasing fire from some corners of the federal judiciary and legal academia.[4] Once cited often and approvingly by a majority of Supreme Court Justices, *Chevron* fell into desuetude at the Court.[5] Over the past several terms, the Court has declined to apply or even cite *Chevron* in cases where it may once have governed.[6] Other methods

of statutory interpretation, such as the major questions doctrine, appear to have displaced *Chevron*, at least in some instances.[7] *Chevron*'s absence at the Court has not gone unnoticed, with several Justices commenting on *Chevron*'s absence as evidence that it should be overruled.[8]

Against this backdrop, the Court explicitly overruled the *Chevron* framework, holding that it violates Section 706 of the Administrative Procedure Act (APA).[9] For cases that fall within the ambit of the APA, Section 706 requires courts reviewing agency actions to "decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action."[10] The majority held that the APA's command required courts to exercise their own independent judgment on the meaning of federal statutes, but *Chevron* required courts to defer to reasonable agency interpretations of ambiguous statutes.[11] That deference requirement, the Court held, abdicated the judiciary's foundational function to "say what the law is."[12] Although the petitioners in *Loper* also challenged the *Chevron* framework on constitutional grounds, the majority's opinion did not address those arguments.[13]

The *Chevron* Framework

The *Chevron* framework required a court to defer to an executive agency's interpretation of an ambiguous statute that it administers so long as the agency's interpretation was reasonable.[14] The framework's namesake 1984 Supreme Court case, *Chevron U.S.A. v. Natural Resources Defense Council*, set out a two-step process for determining whether a court must defer to an agency's statutory interpretation.[15]

The *Chevron* framework typically applied if Congress had given an agency the general authority to make rules with the force of law.[16] If a court determined that *Chevron* applied, at step one it would use the traditional tools of statutory construction to determine whether Congress directly addressed the precise issue before the court.[17] If the statute was clear on its face with respect to the issue before the court, the court was to implement Congress's stated intent.[18] If the court concluded instead that a statute was silent or ambiguous with respect to the specific issue, the court then proceeded to *Chevron*'s second step.[19] At step two, a court was required to defer to an agency's reasonable interpretation of the statute regardless of whether the court would adopt that interpretation on its own were it to have reviewed the statute without the benefit of an agency's interpretation.[20] The *Chevron* framework rested on several related assumptions, including that (1) statutory ambiguity indicates a congressional delegation of interpretive authority, (2) agencies have more expertise than courts do to interpret the statutes they administer, and (3) agencies are politically accountable and therefore have more claim to make policy than courts do.[21]

The *Loper* Decision

The Supreme Court's decision to overrule the *Chevron* framework relied exclusively on Section 706 of the APA. The APA generally governs judicial review of agency actions.[22] Section 706 of the APA states "the reviewing court shall decide all relevant questions of law."[23]

Judicial Practice Before Enactment of the APA

Section 706, the Supreme Court held, codified existing judicial review practice at the time of its enactment in 1946.[24] Recounting a long line of cases going back to the beginning of the 19th century, the Court explained that the federal courts always understood their role to be the final arbiters of the meaning of statutes.[25] The Court began by quoting the now famous statement from the seminal 1803 case *Marbury v. Madison* that "it is emphatically the province and duty of the judicial department to say what the law is."[26] Although *Marbury* embodied the "Framers' understanding" of the role of the federal judiciary, the judiciary also historically "accorded due respect" to the views of the executive branch entrusted with administering a statute.[27] That respect was "especially warranted" where the executive branch's interpretation was roughly contemporaneous with the enactment of the statute.[28] Agency interpretations that warranted judicial respect, however, "could inform … but did not supersede" the judgment of a court on a question of law.[29]

The Court acknowledged that it appeared that some cases decided before the enactment of the APA had applied various deference doctrines. Those cases, however, as understood by the Court, did not shift the foundational role of the courts, nor did they apply anything like the deference required under *Chevron*.[30] In a pair of pre-APA cases from the 1940s, *National Labor Relations Board (NLRB) v. Hearst Publications, Inc.*[31] and *Gray v. Powell*,[32] the Court applied what the *Loper* majority called "deferential review"—but only insofar as Congress had empowered the agency to determine the meaning of the statute.[33] In *Hearst Publications*, for example, the Court deferred to the NLRB's determination that newsboys were "employees" within the meaning of the National Labor Relations Act.[34] Deeming the newsboys (who were actually adult men) "employees" provided them the opportunity to engage in collective bargaining with their employer, Hearst Publications.[35] The Court concluded that the task of defining *employee* was "assigned primarily to the agency created by Congress to administer the Act."[36] The NLRB, the Court held, had "[e]veryday experience in administering the statute" and "familiarity with the circumstances and backgrounds of employment relationships in various industries."[37]

Gray was decided under similar circumstances. In that case, the Supreme Court found

that Congress had "specifically granted the agency the authority to" determine whether a coal-burning railroad with contracts with several coal mines was a coal "producer" pursuant to the Bituminous Coal Act of 1937. The *Gray* Court held "[w]here as here a determination has been left to an administrative body, this delegation will be respected and the administrative conclusion left untouched."[38]

The *Loper* majority reasoned that *Hearst Publications* and *Gray* are examples of deferential review "where application of a statutory term was sufficiently intertwined with the agency's factfinding" rather than evidence that the Court had adopted generally applicable *Chevron*-like deference doctrines prior to the enactment of the APA.[39] *Gray* and *Hearst Publications*, in the Court's reasoning, were examples of an adjudication-like action of applying a statutory term to the particular facts before it.[40] As a result, these cases, according to the Court, did not depart from the general rule at the time of the enactment of the APA that pure questions of law were to be answered by the courts —not agencies.[41]

The APA and *Chevron*'s Presumptions

Given this history, the Supreme Court took specific aim at *Chevron*'s first presumption —that statutory ambiguities indicate implicit delegation of interpretive authority to an agency.[42] This presumption, the Court held, violated the APA's "unremarkable, yet elemental proposition … dating back to *Marbury*: that courts decide legal questions by applying their own judgment."[43] The majority explained that presumptions can be salutary but only where they approximate reality.[44] *Chevron*'s presumption, the Court explained, does not approximate reality, "because '[a]n ambiguity is simply not a delegation of law-interpreting power. *Chevron* confuses the two.'"[45] Instead, the Court held that, when confronted with a statutory ambiguity, a court should not defer to an agency's interpretation but instead should do its "ordinary job of interpreting statutes, with due respect for the views of the Executive Branch."[46]

By sweeping away one of *Chevron*'s core assumptions about delegation, the majority declared that ambiguities in statutes pose questions of law, not questions of policy.[47] In holding that the judiciary, not agencies, is to resolve statutory ambiguities, the majority explained that the Framers understood "the complexity of objects … the imperfection of the human faculties, and the simple fact that no language is so copious as to supply words and phrases for every complex idea," yet they still expected politically insulated judges to exercise independent legal judgment in resolving statutory ambiguities.[48]

Statutory Interpretation Under *Loper*

While the Supreme Court acknowledged that ambiguities in statutes surely exist, the majority held that a statute's meaning was fixed at the time of enactment, permitting one and only one interpretation of the statute.[49] The majority reasoned that poorly

drafted, complex, or technical statutes are no different than statutes with clear or obvious meanings—they both have meanings fixed at the time of enactment that a court is obligated to give effect to.[50] According to the majority, a court's job is to find this single "best" meaning by applying the "traditional tools of statutory construction."[51] Courts apply these tools to resolve any potential ambiguity so that the law does not "run out" or leave a "gap" for agencies to fill.[52] The Court itself did not list which tools it believes are included in the traditional tools of statutory construction.[53] Methods of statutory interpretation and how *Loper* may interact with them will be discussed in more detail below.[54]

Regardless of the methods a court uses to interpret a statute, the Court was confident that the judiciary was up to the task of determining the best meaning of any statute. "Resolution of statutory ambiguities," the Court explained, "involves legal interpretation. That task does not suddenly become policymaking just because a court has an 'agency to fall back on.'"[55] The majority stressed that courts resolve statutory ambiguities all the time when reviewing statutes that has agencies have not yet interpreted or in cases where agencies are not involved.[56] In the Court's view, the legal nature of questions of statutory interpretation do not change just because an agency happens to be involved.[57] By characterizing the resolution of statutory ambiguities as a question of law, the Court swept away another one of *Chevron*'s presumptions—that ambiguities call for agency expertise.[58] In light of the majority's reasoning, there is no role for agency expertise to play in interpreting a statute because courts—not agencies—are experts in statutory interpretation.[59]

Application of the *Skidmore* Standard

Despite the Supreme Court's direction that courts are obligated to exercise their independent legal judgment, the majority emphasized several times that the executive branch's views on the meaning of a statute should be given "weight" or "respect" under certain circumstances.[60] As the Court explained, the views of the executive branch may, in the words of the 1944 Supreme Court case *Skidmore v. Swift & Co.*, have the "power to persuade, if lacking the power to control."[61]

Prior to *Loper*, *Skidmore* primarily applied to agency interpretations that were not eligible to be evaluated under the *Chevron* framework.[62] The majority's frequent reference to *Skidmore* and use of language from that decision suggest that, going forward, the Court may expect lower courts to look to *Skidmore* to guide their consideration of agencies' preferred interpretations of ambiguous statutes. *Skidmore* does not require courts to defer to agencies but permits courts to give weight or respect to agency interpretations that the court considers persuasive.[63] The *Skidmore* case itself laid out a list of factors for courts to consider when determining whether an agency's interpretation commands the "power to persuade."[64] Under *Skidmore*,

> the rulings, interpretations and opinions of [an agency], while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.[65]

Skidmore has received far less attention from the courts than *Chevron* has and may need additional development by the courts to refine its application. How courts might apply *Skidmore* after *Loper* is discussed below.[66]

Delegations to Agencies and Statutory Interpretation

The Loper Court's emphasis on the judiciary's role to render independent legal judgment on the best meaning of a statute does not preclude a court from deciding that a statute's best meaning is that "the agency is authorized to exercise a degree of discretion."[67] The majority identified two forms of delegation in particular.

Express Delegations

This discretion, the Court explained, could be provided by an express delegation to an agency from Congress to interpret a particular statutory term or phrase.[68] The Court cited several statutes where Congress has expressly delegated interpretive authority to an agency.[69] For instance, the Court cited a provision of the Fair Labor Standards Act, which states in relevant part:

> [A]ny employee employed on a casual basis in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (*as such terms are defined and delimited by regulations of the Secretary*).[70]

According to the Court in *Loper*, the phrase *as such terms are defined and delimited by regulations of the Secretary* indicates that Congress delegated authority to the agency to define the terms referenced in that statutory provision. The Court's requirement that courts give effect to a statute's best meaning accordingly requires a court to respect Congress's explicit choice of which branch—executive or judicial—has the authority to render a final and binding interpretation of a statutory provision.[71]

Delegations of Policy "Flexibility"[72]

In addition to expressly delegating interpretive authority to an agency to interpret a particular word or phrase, the Court also identified instances where Congress has

delegated authority to an agency using terms or phrases "that '[leave] agencies with flexibility.'"[73] The Court identified terms such as *appropriate* and *reasonable* as indications that Congress has delegated flexibility to the agency to make policy within "the boundaries of the delegated authority."[74] The Court cited additional examples of statutory language that delegates this kind of flexibility.[75] For instance, the Court referred to the Clean Air Act, which states: "The Administrator shall regulate [power plants] … *if the Administrator finds such regulation is appropriate and necessary*."[76] In instances where such language is used, the majority reasoned that a court's role is to "ensur[e] the agency has engaged in 'reasoned decisionmaking' within [statutory] boundaries."[77]

Stare Decisis and Cases Decided at *Chevron* Step Two

Although the Supreme Court overruled *Chevron*, it appears to have preserved the holdings in cases that were decided pursuant to the *Chevron* framework prior to *Loper*.[78] In the briefing of the case and during oral argument, the litigants and some of the Justices discussed the fate of cases decided at *Chevron* step two.[79] As explained above, at *Chevron* step two, a court must defer to an agency's reasonable interpretation of an ambiguous statute.[80] In such a case, a court has not made a specific ruling on what the statute means—it has left that determination to an agency in light of the court's finding at step one that the statute is ambiguous.[81] At oral argument, some of the Justices questioned the litigants about whether these step two decisions would still be considered binding if *Chevron* were overruled.[82] Counsel for the petitioners argued that overruling *Chevron* would not disturb these cases because what the court had found at step two was that an agency's interpretation was "lawful."[83] The Court appears to have adopted this argument in its opinion, holding that "we do not call into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are *lawful*—including the Clean Air Act holding of *Chevron* itself—are still subject to statutory stare decisis despite our change in interpretive methodology."[84] Despite the Court's holding, questions are likely to remain about what circumstances allow a court to overrule a past decision in favor of an agency based on the application of step two of *Chevron*. That issue is taken up in more detail below.[85]

The Dissent

The dissent, penned by Justice Kagan and joined by Justices Sotomayor and Jackson (the latter only with respect to the *Relentless* case),[86] defended the *Chevron* framework on grounds that largely track those that supported the continued application of *Chevron* for the past four decades.[87] *Chevron*, Justice Kagan wrote, is part of the "warp and woof of modern government" and "reflects what Congress would want": politically

accountable expert agencies—not judges—making policy.[88] Justice Kagan, providing examples, explained that regulatory statutes often contain ambiguities or gaps (sometimes purposefully so) that cannot be resolved without the exercise of some kind of policymaking expertise that the courts simply do not have.[89] Justice Kagan reasoned that statutes with such ambiguities or gaps have not fixed any "best" meaning at the time of enactment, and accordingly a court using the tools of statutory construction may find multiple possible readings for which the statute provides no rule of decision for a court to choose one over another.[90]

The judiciary's role, Justice Kagan articulated, is only to ensure that an agency's interpretation is a reasonable one, which ensures that courts stay out of policymaking.[91] This limited role for courts, Justice Kagan stressed, is one of judicial "humility," recognizing that agencies have a better claim to democratic legitimacy and more expertise in making policy than courts do.[92] In other words, she explained, "agencies often know things about a statute's subject matter that courts could not hope to."[93] Courts, Justice Kagan explained, can "muddle through" when asked to determine the meaning of an ambiguous statute, but, compared to an agency that Congress has entrusted to administer a statute that may deal with technical subjects such as wildlife regulation or medical drugs and devices, it is reasonable to believe that Congress would prefer the agency to have interpretive authority.[94]

Implications for the Federal Judiciary

As with the *Chevron* framework, the *Loper* decision is legally binding only on the judiciary: It sets out the proper methodology that courts must use for determining the meaning of a federal statute where an agency has also provided its own interpretation.[95] The *Loper* decision, however, will likely affect the Supreme Court differently than it will the lower courts. The Supreme Court has largely avoided applying the *Chevron* framework since 2016, while the lower courts, bound by precedent to apply *Chevron*, were applying the framework regularly until the Court handed down its *Loper* decision.[96]

The lower courts will also be called to address some of the questions left open by the *Loper* decision. Over the coming years, courts may address how they are to engage in statutory interpretation,[97] whether and how the *Skidmore* standard applies to agency interpretations of statutes,[98] how to evaluate delegations of discretion from Congress to agencies,[99] and *Loper*'s interaction with other doctrines such as the major questions doctrine and *Auer* deference, which applies to an agency's interpretation of its own ambiguous regulations.[100]

The Supreme Court

Between 2016 and its decision in *Loper* in 2024, the Court did not defer to agency interpretations under *Chevron* and often did not even mention the framework in cases where it would have once governed.[101] Even prior to the past decade, scholars had identified a trend that the Court was relying less on *Chevron* than might be expected.[102] From roughly the mid-1980s to the mid-2000s, studies found that the Supreme Court applied *Chevron* to about one-quarter[103] to one-third[104] of cases where an agency interpretation was at issue. Even where the Court applied *Chevron*, various studies found that the application of *Chevron* had little effect on the outcome of the case. A 2008 study, for instance, found that agencies prevailed about 76% of the time when the Court applied *Chevron*—similar to agencies' litigation successes in cases where the Court did not apply *Chevron*.[105]

Another study that analyzed cases decided between 1984 and 1990 (i.e., just after the Court decided the *Chevron* case) found similarly that the Court applied *Chevron* in only about one-third of cases to which it would have been applicable.[106] The same study found that despite *Chevron*'s "agency friendly" reputation, agencies had a lower litigation success rate when the Court applied *Chevron* than when it did not.[107] These studies indicate that, at least at the Supreme Court, *Chevron* may not have had a significant impact on the outcome of cases. Put another way by one pair of scholars, "The Court's questionable loyalty to *Chevron* suggests that the doctrine is not meant to discipline Supreme Court decisionmaking. Instead, the doctrine may better serve to control lower courts and provide nationwide uniformity."[108] This difference between the use of *Chevron* at the Supreme Court and in the lower courts has led some to claim that there was a "*Chevron* Supreme and a *Chevron* Regular."[109] Partially in light of this history at the Court, the majority in *Loper* dubbed *Chevron* a "decaying husk" with little practical reason for keeping it.[110]

Overruling *Chevron* may ultimately have little effect on the way the Court approaches questions of statutory interpretation that involve agencies. Rather than applying or even citing *Chevron*, the Court has often engaged in what is known as *de novo* review of statutory text. *De novo* literally means "anew" in Latin and, as applied to the judicial context, means that a reviewing court analyzes the meaning of statutory text without deference to an agency.[111] This type of review reflects the approach the Court in *Loper* directs courts to apply as the proper approach to statutory interpretation.[112] Overruling *Chevron*, accordingly, may have little impact on the outcome of cases at the Court, as the Court began engaging in *de novo* review well before it overruled *Chevron*.[113]

The Lower Courts

Overruling *Chevron* may have a larger impact on the lower courts. Until the day *Loper* was decided, the lower courts were applying the *Chevron* framework regularly.[114] According to legal scholars, *Chevron* was cited by the federal courts roughly 18,000 times in the four decades of its existence, making it the most-cited administrative law

times in the four decades of its existence, making it the most-cited administrative law decision of all time and one of the most cited cases in history.[115] A 2017 study that evaluated more than 1,300 courts of appeals cases from 2003 to 2013—the largest study of courts of appeals decisions that refer to *Chevron*—found that the courts of appeals on average applied *Chevron* in close to three-quarters of cases addressing agency interpretations.[116] A subsequent study that surveyed federal appellate cases from 2020 to 2021 revealed that courts of appeals continued to apply *Chevron* at similar rates as those founds in the 2017 study.[117] In the more recent study, federal courts of appeals applied *Chevron* in close to 85% of cases where agency interpretation was at issue.[118] Thus, unlike the Supreme Court, the lower courts continued to apply *Chevron* in nearly all of the cases in which it would have applied prior to *Loper*.[119]

Loper instructs courts to apply their independent legal judgment in determining the best interpretation of statutes in light of any respect or weight given to agency interpretation under the *Skidmore* standard.[120] In other words, *Loper* instructs courts to engage in *de novo* review of questions of statutory interpretation involving agencies potentially tempered by the *Skidmore* standard.[121] Lower courts are familiar with the *de novo* standard. It is the standard that has traditionally been applied to questions of law where no agency had rendered an interpretation.[122] After *Loper*, that same standard will apply in statutory interpretation cases where *Chevron* would have once governed.[123] The shift from *Chevron* to a *de novo* standard may affect the outcome of those cases.

According to the 2017 study, in general, agencies were significantly more likely to prevail in the lower courts when a court applied the *Chevron* framework (77.4%)—even if the court decided that the statute was unambiguous and did not defer to the agency's interpretation—than when a court applied *Skidmore* (56.0%) or no deference regime whatsoever (38.5%).[124] Given these data, it is possible that overruling *Chevron* will, in the aggregate, diminish the chances that agencies will prevail in federal court in cases where questions of statutory interpretation arise.[125] Several factors may moderate that trend. According to the 2017 study authors, "courts could be strategically choosing deference regimes that more easily allow them to reach an outcome that matches their policy preferences."[126] In other words, some courts may have applied the *Chevron* framework in cases where the agencies were likely to prevail anyway and did not apply the framework where they believed that the agencies were not likely to win.

Agencies may also change their behavior to accommodate the courts' new standard of review.[127] A 2014 study indicated that agency rule drafters may adopt less "aggressive" interpretations of statutes when they did not expect *Chevron* to apply.[128]

The *Loper* decision itself also recognizes that in certain circumstances, agencies' interpretations should be given "great weight" or "respect" pursuant to *Skidmore*.[129] The Court also recognized that in some cases, the best reading of a statute is that

Congress delegated discretion to the agency—not the courts.[130] How the lower courts implement these principles from the *Loper* decision is yet to be seen. Nonetheless, they provide courts with the option to adopt an agency's interpretation under appropriate circumstances or determine that a statute has delegated the authority to resolve the statutory interpretation question to the agency.

The Court's citation to other pre-APA cases (such as *Hearst Publications*) that, in the Court's view, formed the traditional understanding of judicial review codified in Section 706 may also signal approval of the lower courts engaging in deferential review where an agency's interpretation is particularly fact-bound.[131] *Skidmore*, statutory delegations, and mixed questions of law and fact are discussed in more detail below.[132]

Some scholars have contended that *Chevron* may have saved lower courts time by permitting them to engage in meaningful review without having to start from scratch interpreting complex statutory regimes.[133] In the absence of the *Chevron* framework, it is possible that lower courts might turn to other doctrines that serve a similar function as *Chevron*.[134] Two of those doctrines—*Skidmore* and congressional delegations—are addressed in more detail below.[135]

The *De Novo* Standard of Review, Methods of Statutory Interpretation, and Statutory Ambiguity

Scholars have described judicial standards of review as a continuum with independent judgment or *de novo* review on one end and *Chevron* deference at the other.[136] The *Loper* decision fits this model, holding that a court applying the *de novo* review standard is required to exercise its independent judgment to determine the best interpretation of a federal statute.[137] Under the *de novo* standard of review, an agency receives no deference whatsoever.[138]

The *de novo* standard of review typically refers to the methods courts apply to independently determine the meanings of statutes. The Supreme Court in *Loper* (as well as *Chevron*) called these methods the "traditional tools of statutory construction."[139] The Court's reference to "traditional tools," however, masks significant debate over which methods of statutory interpretation are included in a court's traditional toolkit.[140] While the Court used this same phrase in *Chevron*, the importance of particular interpretive methods has changed since *Chevron* was decided.[141] Most notably, when *Chevron* was decided, the statutory interpretation method known as *textualism*—which primarily focuses on the text of a law rather than legislative purpose or prevailing societal values—was not as widely adopted by the federal courts as it is currently.[142] It is unlikely that courts will return to pre-*Chevron* methods of statutory interpretation regardless of the Court's consistent reference to "traditional tools" of statutory interpretation.

Methods of Statutory Interpretation

The *Chevron* Court referred to the "traditional tools" of statutory interpretation in its discussion of how a court should engage in a *Chevron* step one analysis (i.e., to determine whether a statute is clear). As a result, a court's step one analysis in many ways mirrored how courts approached statutory interpretation as a general matter outside of the *Chevron* framework. Sweeping away the *Chevron* framework did not inaugurate a new approach to statutory interpretation: The methods the courts had been using at step one of *Chevron* and in cases where *Chevron* did not apply at all will continue to apply to cases in which agency interpretations of law are at issue. How courts approach statutory interpretation may accordingly shed light on how courts will approach legal challenges to agency interpretations of statutes after *Loper*.

Despite some convergence toward a focus on the text of a statute over the past four decades,[143] there remains significant current debate among judges and scholars over the proper methods of statutory interpretation.[144] There are different theories of statutory interpretation, and each interpretive school has a distinct view of which tools courts should appropriately deploy when they seek to discern statutory meaning.[145] Some studies suggest that many judges do not subscribe to any particular method of statutory interpretation, instead using different methods in different contexts.[146] Nonetheless, many (if not most) courts start their statutory interpretation analyses with the statutory text.[147] Moreover, there are several variants of textualism applied throughout the federal judiciary.[148] Many, however, share some common assumptions, such as that the words of a statute read in context are the best evidence of the meaning of the statute and that a court can identify the best meaning by resorting to rules of grammar and syntax, context, and canons of construction.[149]

A focus on text has consequences for which methods of statutory interpretation are considered valid. For example, judges who consider themselves textualists may discount the value of legislative history as poor evidence of the meaning of a statute because legislative history was not enacted through the legislative process as the text of the statute was.[150] They may turn to legislative history only when a court cannot resolve the meaning of a statute using other approaches or as a second order justification for an interpretation derived using more textualist methods.[151] Textualists may also turn to legislative history not as objective evidence of congressional intent but as evidence of ordinary meaning (i.e., how Congress used a statutory term).[152] Textualists are sometimes skeptical of methods of interpretation that impose judges' substantive values on the meaning of the text, such as clear statement rules or other substantive canons of construction.[153] As noted above, however, many judges take a more eclectic approach to statutory interpretation and may deploy these tools of interpretation at different times or in different ways.

In addition, some of the Supreme Court's more recent decisions have appeared to use older tools of statutory construction that were commonly used prior to *Chevron*. It was common prior to *Chevron* for courts to look to long-standing agency practice as evidence of a statute's meaning.[154] After *Chevron* was decided, there was some dispute over whether courts should continue to do so as part of the *Chevron* framework.[155] While the Court never entirely stopped referring to past agency practice,[156] more recently, the Court has appeared to rely on it more often.[157] The Court in *Loper* appeared to explicitly endorse past agency practice as an appropriate tool of statutory interpretation.[158] In *Loper*, for instance, the Court interpreted Section 706 of the APA by relying in part on the Department of Justice's long-standing interpretation of Section 706 set forth in a 1947 manual.[159] The *Loper* Court explicitly justified its use of past agency practice by citing *Skidmore*,[160] which identified a number of indicia to which a court may look to determine the persuasiveness of an agency's interpretation. Some of those indicia include the consistency of an agency's interpretation and whether the interpretation was issued contemporaneously with the statute.[161] *Skidmore* predated the APA by two years and, in the Court's view, forms part of the general background norms of judicial review that were codified in Section 706 of the APA.[162]

Statutory Ambiguity

Related to the broader debates in the legal community over the proper methods of statutory interpretation, the majority and the dissent in *Loper* split over whether statutory ambiguity could still exist even after the application of the traditional tools of statutory interpretation. The existence of statutory ambiguity was a central assumption of the *Chevron* framework.[163] *Chevron*'s first step required a court to apply the traditional tools of statutory construction to determine whether the statute at issue was clear or ambiguous.[164] The implicit assumption in the *Chevron* framework was that there would be some statutes that, even after the application of all the generally accepted methods of statutory interpretation, may not yield clear answers. In these situations, the *Loper* dissent argued that "Congress's instructions have run out."[165] The choice between different reasonable interpretations of an ambiguous statute was, according to the dissent's view, more akin to policy than to law.[166] Where statutory ambiguity existed, the Court in *Chevron* determined that the judiciary should stay out of making policy.[167] Accordingly, the APA's charge that courts "decide all relevant questions of law" did not conflict with *Chevron* on this account, because instances where courts deferred were not questions of law.[168]

The *Loper* Court rejected the claim that statutory ambiguity implies an absence of law.[169] For the majority, law never "run[s] out."[170] Questions of the meaning of a statute are, for the *Loper* Court, always questions of law susceptible to resolution by the application of the tools of statutory interpretation.[171] "[S]tatutes, no matter how

application of the tools of statutory interpretation.[171] "[S]tatutes, no matter how impenetrable, do—*in fact, must*—have a single, best meaning" that is "fixed at the time of enactment."[172] In *Loper* the Court left unsaid which tools produce the most persuasive evidence of statutory meaning—for example, the text of the statute, statutory purposes, or legislative history.[173] It is likely, given the views of a majority of Justices expressed in other opinions, that they would consider themselves textualists.[174] Although textualists typically focus on what is within the four corners of the statute, modern textualists also take into account certain types of "context."[175] Context can be as narrow as the context in which a contested word or phrase is used in the statute itself[176] or as broad as general constitutional norms.[177] Falling somewhere between those two poles, statutory structure,[178] enactment history[179] and prior judicial precedent[180] can also supply "context" for the meaning of a statute. Judges and scholars, however, debate the proper use of context, including how widely courts should look for context and under what circumstances some forms of context should be used.[181]

Regardless of which evidence is used to determine the meaning of a statute, the Court's statement that a statute's meaning (however determined) is fixed at a particular time—the time of enactment—implies that post-enactment policy considerations by, for example, agency personnel implementing the statute (as happened under *Chevron*) and possibly by courts interpreting the statute may be inappropriate as a means to provide meaning to a statute. If this reading of the *Loper* decision is correct, it may call into question certain tools of statutory construction (e.g., substantive canons of construction) that themselves are triggered by ambiguity and impose post-enactment and extratextual value choices on a statute's text.[182]

In a footnote in her dissent, Justice Kagan took up this issue, arguing that the majority's view that *Chevron* was based on an erroneous presumption when a court identified an ambiguity may call into question other presumptions that are likewise triggered by "a congressional lack of direction."[183] In Justice Kagan's view, like *Chevron*, these presumptions both rely on identifying a statutory gap or ambiguity and impose post-enactment values on the meaning of a statute.[184] The majority's skepticism of the existence of ambiguity as a trigger for *Chevron* may prompt courts to revisit some of these other presumptions.[185]

Whether and to what extent lower courts embrace the Court's view of statutory ambiguity is yet to be seen. The Court's skepticism of the existence of ambiguity, if taken at face value by the lower courts, may have implications for how courts approach statutory interpretation in general and which tools of statutory construction are considered applicable in particular. For instance, as described above, substantive canons are triggered only by ambiguity.[186] Substantive canons are judicial presumptions that impose certain substantive values on the outcome of a case.[187]

Unlike semantic canons, substantive canons are not derived from general assumptions about how ordinary speakers use English or how Congress uses statutory terms.[188] For instance, the federalism canons serve to preserve the federal-state balance, requiring Congress to make a clear statement before intruding on state authority.[189] As a result, substantive canons are viewed by certain judges with some trepidation because they impose judicial values that may not be represented in the text of the statute.[190]

Moreover, the application of *Skidmore* and other deference doctrines such as *Auer* deference, which are discussed in more detail below, may also be affected by the Court's skepticism of ambiguity.[191] *Skidmore*, like some canons of construction, has often been applied where a court is unable, after using the tools of statutory construction, to resolve a question of statutory meaning.[192] The same goes for *Auer* deference.[193] Like *Chevron*, *Auer* deference applies only where a court first identifies an ambiguity.[194] Thus, if it is not possible for ambiguity to exist after applying the traditional tools, *Skidmore* and *Auer* deference would never come into play. Whether these doctrines and tools of statutory construction will play a significant role or even persist in future cases is unclear.

It is possible to read the *Loper* majority's view more modestly. The Supreme Court stressed that courts should "*use every tool* at their disposal to determine the best reading of the statute."[195] Tools such as substantive canons, *Auer*, and *Skidmore* can help resolve statutory ambiguities and at least superficially appear to fit within the majority's view that questions about the meaning of statutes should be resolved through legal means.[196] Under this view, the Court was simply reiterating that questions of the meaning of law are legal questions to be resolved by *any* means peculiar to courts.[197] This more modest view stands in some tension with the Court's description of a statute as having a "single best" meaning "fixed at the time of enactment."[198]

Skidmore Weight

The Supreme Court cited *Skidmore* several times in the *Loper* decision.[199] The Court's frequent invocation of *Skidmore* appears to endorse courts' consideration of agency practice as potential evidence of the best meaning of a statute.[200]

Prior to *Loper*, *Chevron* deference applied only to an interpretation that had been issued by an agency that possessed statutorily delegated authority to regulate with the force of law and used that delegated authority to announce its interpretation.[201] Interpretations advanced in non-legally binding forms—such as guidance documents, policy statements, or interpretive rules—were not eligible for *Chevron* deference.[202] In the 2001 case *United States v. Mead*, the Supreme Court held that even where an agency interpretation, because of its lack of the force of law, was ineligible for *Chevron*, it may be eligible to be evaluated pursuant to *Skidmore*.[203]

Chevron and subsequent cases refining its application, such as *Mead*, accordingly

Chevron and subsequent cases refining its application, such as *Mead*, accordingly created a two-tiered standard of review for agency interpretations.[204] Agency interpretations that carried the force of law were eligible for evaluation under *Chevron*, while every other interpretation by an agency was potentially eligible for treatment pursuant to *Skidmore*.[205] By overruling *Chevron*, *Loper* collapsed this two-tiered system into a single standard of review, with the option for courts to evaluate an agency's interpretation pursuant to *Skidmore* where appropriate.[206] As a result, any agency interpretation is now potentially eligible to be evaluated under *Skidmore*, although, given the Court's statements regarding ambiguity, it is not clear how much of a role *Skidmore* will play in the future.[207]

Skidmore is considered to be less deferential than *Chevron* is.[208] Just how deferential *Skidmore* is, however, has been the subject of some debate.[209] The Court in *Mead*, for example, described *Skidmore* as providing "some deference"[210] to agency interpretations, though not "the same deference as [interpretations] that derive from the exercise of delegated lawmaking powers."[211] At bottom, unlike *Chevron*, *Skidmore* is understood to permit—but not require—a court to adopt an agency's interpretation.[212] *Skidmore* provided a framework through which a court might give special consideration to an agency's interpretation.[213]

It is still not entirely clear whether application of *Skidmore* post-*Loper* will resemble the courts' application of *Skidmore* during the time of *Chevron*. Only a relatively small number of cases have addressed *Skidmore* post-*Loper*. Moreover, prior to *Loper*, *Skidmore* typically applied only to agency interpretations that did not carry the force of law. In practice, this scope meant that most agency interpretations evaluated pursuant to *Skidmore* were not promulgated through notice and comment rulemaking and as a result may have lacked the thorough explanations that accompany agency actions promulgated through notice and comment. By making all agency interpretations potentially eligible for treatment under *Skidmore*, an agency's chance of prevailing in court on its preferred statutory interpretation may increase compared to win rates under *Skidmore* prior to *Loper*. This could be true because some number of interpretations promulgated through notice and comment rulemaking will likely include more thorough explanations of agencies' positions.[214] Nonetheless, empirical analyses of *Skidmore*'s effect on the outcome of cases and how courts applied it prior to *Loper* may provide clues as to what the application of *Skidmore* may look like in the years to come.

Analyses of *Skidmore* Pre-*Loper*

The way courts applied *Skidmore* before *Loper* may help illuminate how courts might approach *Skidmore* going forward. As an initial matter, *Skidmore* has received far less attention from the courts in the past decades than did *Chevron* and may need additional development by the courts to refine its application. Nonetheless, scholars studying judicial approaches to *Skidmore* were able to identify certain trends in its

studying judicial approaches to *Skidmore* were able to identify certain trends in its application. A 2007 study of cases applying *Skidmore* prior to the *Loper* decision identified significant variability in the ways in which courts applied *Skidmore*.[215] The study identified two conceptions of *Skidmore*.[216] In one conception—dubbed the "independent judgment conception"—the *Skidmore* standard evaluates an interpretation as persuasive on its merits or its rightness.[217] This view tends to discount *Skidmore*'s contextual factors, such as the long-standing nature of the interpretation.[218] "In effect, [under this view] *Skidmore* directs courts to treat the agency's view just as it would the view of any litigant."[219]

The Court's decision in *Christensen v. Harris County* exemplifies the independent judgment conception.[220] In that case, the Court was called on to evaluate a Department of Labor (DOL) interpretation of the Fair Labor Standards Act.[221] Although the Court found the statute silent on the question at hand, it began with an independent evaluation of the statute's text to find the "better" reading of the statute.[222] The Court's conclusion ran counter to the agency's interpretation.[223] Only then did the Court turn to *Skidmore*.[224] In applying *Skidmore*, the Court ignored *Skidmore*'s contextual factors, finding the agency's interpretation "unpersuasive" compared with its own interpretation.[225]

There is some question as to whether the independent judgment conception differs from finding that a statute has a clear meaning.[226] Some see the independent judgment conception as amounting to a court finding the statute clear.[227] In these cases, *Skidmore* takes on a subordinate role to other tools of statutory interpretation rather than extending respect.[228] The 2007 study found that the independent judgment conception represented the minority view in the lower courts, with 18.9% of the cases evaluated applying *Skidmore* in this way.[229]

The 2007 study identified a second approach it dubbed the "sliding-scale conception."[230] Under this view, application of *Skidmore* yields varying degrees of deference (or weight) to an agency's interpretation based on a court's evaluation of *Skidmore*'s contextual factors.[231] "The sliding-scale model … counsels special consideration of agency interpretations that courts do not necessarily afford to the views of other litigants."[232] Describing this approach, the Supreme Court explained that *Skidmore* "has produced a spectrum of judicial responses, from great respect on one end to near indifference at the other."[233] What differentiates it from the independent judgment conception is that, although applying the sliding-scale approach may result in a court giving little to no weight to an agency interpretation, the court treats the agency's interpretation as at least potentially deserving of greater respect than that of an ordinary litigant after evaluating *Skidmore*'s contextual factors.[234] The 2007 study found that the sliding-scale conception was by far the most commonly used by the lower courts, accounting for 74.5% of all the uses of *Skidmore* in the study.[235] While it

was the most commonly applied approach to *Skidmore* in the 2007 study, the study authors noted that the Supreme Court had "not offered firm rules" for the application of *Skidmore* or provided an exhaustive list of factors for courts to consider in applying *Skidmore*.[236]

Post-*Loper* Applications of *Skidmore*

As of December 2024, there are only a handful of cases addressing the application of *Skidmore* since the *Loper* decision.[237] In an early post-*Loper* example of the independent judgment approach, the U.S. Court of Appeals for the Fifth Circuit in *Restaurant Law Center v. Department of Labor* held that although courts should carefully consider long-standing and contemporaneous interpretations, those considerations never have "the power to control."[238] Rather, the court found that the statute clearly resolved the case and that *Skidmore*'s contextual factors could not outweigh the clear text of the statute.[239] The court's approach is consistent with the application of *Skidmore* prior to *Loper*.[240] Nevertheless, the number of cases applying the principles set out in *Loper* is still quite small. It may take some time before trends in the application of *Skidmore* can be identified.

Conversely, a handful of cases decided after July 2024 appear to have approached the application of *Skidmore* akin to the sliding-scale approach discussed above. In these cases, the courts, although not always ruling in favor of the agencies, engaged with the *Skidmore* indicia of persuasiveness as a way to measure the weight the agencies' interpretations should be given. In one case, the federal district court for the Northern District of Ohio found that a DOL regulation had the "power to persuade" based largely on its thoroughness and validity.[241] The court found the regulation was the product of "thorough consideration" during the notice and comment process and that the "reasoning behind the regulation is valid."[242] In another case from the U.S. Court of Appeals for the Eleventh Circuit, the court found another DOL interpretation "persuasive" because of its consistency over time.[243] DOL, the court found, had maintained the same interpretation of the Fair Labor Standards Act for 80 years.[244] Neither case, however, addressed whether a court must find the statute ambiguous before turning to *Skidmore*'s contextual factors.

The U.S. Court of Appeals for the Ninth Circuit has also begun applying *Skidmore*. In an appeal decided in September 2024, a panel of the Ninth Circuit applied *Skidmore* in what appears to be a highly deferential way.[245] The appeal arose from a decision of the Bureau of Immigration Appeals (BIA) interpreting the meaning of *crimes involving moral turpitude* found in the Immigration and Nationality Act.[246] The Ninth Circuit concluded that BIA's interpretation was "entitled to" *Skidmore* deference.[247] The court concluded that BIA's interpretation was entitled to "deference" because it was "thorough and well-reasoned," "consistent with judicial precedent," and "consistent with the generic

definition of theft."[248] The court did not determine whether BIA's interpretation was the best interpretation as the Supreme Court directed in *Loper*, nor did the court engage in its own statutory analysis.[249] The Ninth Circuit's decision was announced in a reported decision, which will have binding effect on future Ninth Circuit panels and the district courts within the geographic bounds of the Ninth Circuit. It is not clear whether the Ninth Circuit's more deferential approach to *Skidmore* will be applied in future cases. More broadly, it will take some time for any trends to emerge in how the courts are (or are not) applying *Skidmore*.

Delegations from Congress

Following *Loper*, the judiciary will also confront questions about whether and to what extent Congress has delegated authority to an agency. If the primary question courts faced applying the *Chevron* framework was whether the statute was ambiguous, one of the most important questions courts will face under *Loper* is whether Congress delegated authority to the agency to resolve the question at issue in the case. As the Supreme Court held in *Loper*, "[i]n a case involving an agency, of course, the statute's meaning may well be that the agency is authorized to exercise a degree of discretion."[250]

As discussed previously, the Court in *Loper* laid out a handful of examples to illustrate where Congress had delegated certain powers to an agency. In one set of examples, the Court pointed to statutes that expressly delegated to agencies the power to define statutory terms.[251] In another set of examples, the Court cited statutes that delegated discretionary regulatory authority to agencies.[252] In a third category, the Court explained that Congress sometimes delegates to agencies the authority to "fill up the details" of statutory schemes.[253] The Court appears to have treated these categories as illustrative, not intending to furnish an exhaustive list of ways in which Congress might delegate authority to an agency.[254]

The Court left open whether delegations must be express or whether courts could recognize implied delegations. At least one commentator has argued that the best understanding of the Court's opinion is that although the Court did away with *Chevron*'s general presumption that ambiguities are delegations of interpretive authority, it did not state that all delegations must be express.[255] For example, this commentator argued, delegations to "fill up the details" "might be discerned not from express delegation, but simply from Congress leaving essential details incompletely specified."[256] To read *Loper* to require express delegations would, this argument goes, cut against a background principle of statutory interpretation that holds that "what a legislature may do explicitly, it may do implicitly."[257] Whether and to what extent courts will recognize implicit delegations is yet to be seen. Post-*Loper* decision and as of the time of this writing, few courts have addressed the delegation issue in any depth.[258]

More fundamentally, in light of the Court's discussion of congressional delegations, some have questioned whether the *Loper* decision changed much at all. One law professor has argued that the Court's acknowledgement that courts must continue to respect statutory delegations from Congress has "recreated" *Chevron* "under a different label: '*Loper Bright* delegation.'"[259] Others have argued that something like *Chevron* deference may be inevitable.[260] One reason that *Chevron* likely took on such an important role in the lower courts is the differential capacity of the Supreme Court and the lower federal courts to engage in independent review of statutory interpretations advanced by agencies. While the Supreme Court hears roughly 75 cases per year—a handful of which involve agency interpretations of law—each lower court might handle thousands of cases per year.[261] Some contended that *Chevron* saved lower courts time by permitting them to engage in meaningful statutory review without having to start from scratch.[262] Removing this tool, some argue, will add to the already heavy burden of the federal courts.[263] That additional burden may create an incentive for the lower courts to apply *Loper* in ways that recreate something like *Chevron*, such as identifying statutory delegations or finding interpretations that are persuasive under *Skidmore* (discussed above).[264]

Policy Discretion, Mixed Questions of Law and Fact, and Arbitrary and Capricious Review

Even when courts determine that the best reading of a statute is that Congress delegated the relevant question to the agency to resolve, courts will still play a role. As the Supreme Court in *Loper* explained, courts must still ensure that the agency has stayed within "the boundaries of the delegated authority and … the agency has engaged in 'reasoned decisionmaking' within those boundaries."[265] The Court's reference to "reasoned decisionmaking" and subsequent citation to *Motor Vehicles Manufacturers Association v. State Farm Mutual Automobile Insurance Co.* appears to indicate that the Court expects that where a court determines that the best reading of a statute is that Congress delegated the issue to the agency, the court should evaluate the reasonableness of the agency's action pursuant to the APA's arbitrary and capricious review standard.[266]

Section 706 of the APA defines the scope of judicial review of final agency actions.[267] In addition to providing the standard of review for questions of law, which formed the basis of the Court's decision in *Loper*, the APA also provides that a reviewing court "shall hold unlawful and set aside agency action, findings, and conclusions" that violate any of the six standards in Section 706.[268] One of the mostly commonly invoked standards is the arbitrary and capricious standard, which requires agencies when exercising discretionary policymaking authority to do so in a reasonable way.[269]

The *State Farm* decision is credited with defining the arbitrary and capricious standard

of review in Section 706 of the APA—sometimes referred to as "hard look" review.[270] In now often-cited language, the Court held that, to survive judicial scrutiny under the arbitrary and capricious standard, "the agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"[271] Elaborating on this standard, the Court explained that, among other things, "an agency rule would be arbitrary and capricious" if the agency's explanation of its action "is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[272] The arbitrary and capricious standard is deferential to agency policy choices.[273] The Court in *State Farm* held that a court may not use the arbitrary and capricious standard to substitute its judgment for that of the agency's.[274] So long as the agency's decision is a reasonable one, even if the court would prefer a different policy, it must be upheld.[275]

The *Loper* decision did not disturb the arbitrary and capricious review standard announced in *State Farm*.[276] *Chevron*, and by extension *Loper*, applied only to agency interpretations of law, not to exercises of an agency's discretionary policymaking authority.[277] That policymaking authority has traditionally been evaluated pursuant to the arbitrary and capricious review standard—it is not a question of statutory interpretation.[278] As the Court in *State Farm* indicated, the arbitrary and capricious standard is generally (although not always) applicable when an agency applies its expertise to evaluate facts and form a policy from that evaluation.[279] A classic example of an agency action subject to arbitrary and capricious review is the Environmental Protection Agency's (EPA's) regulation of ambient air quality that "in the judgment of the Administrator … [is] requisite to protect the public health."[280]

As the Court recognized in *Loper*, determining whether an agency acting pursuant to a statutory delegation of the type noted above acted unlawfully entails two inquiries—whether the agency acted within the scope of the delegation and whether the agency's decision is reasonable (i.e., is not arbitrary and capricious).[281] Although the first inquiry focuses on statutory meaning, and thus is subject to *de novo* review, the determination of statutory meaning does not dictate the agency's policy outcome—it only serves to set the parameters of the agency's decision.[282] The agency's ultimate decision would appear to be subject only to a reasonableness analysis.[283]

Along these lines, some legal scholars have argued that courts will continue their tradition of respecting agencies' assessments of data, collection of facts, and choices among competing policy options. In other words, these scholars argue, courts are likely to treat questions of statutory interpretation that "turn on facts about the world, non-legal, technical expertise, and judgments about policy priorities, and likely outcomes" "as questions of policy judgment subject to standard arbitrary-and-capricious review."[284] The upshot for agency actions that a court determines are subject to the arbitrary and capricious review standard is that those actions will be reviewed under a

standard often understood to be similar to deference under *Chevron*.[285]

Nonetheless, the distinction between agency decisions that are "factbound" or mixed questions of law and fact and decisions regarding pure statutory interpretation is murky.[286] The Court has not set out a bright-line rule for how to differentiate between the two.[287] The *Chevron* case itself provides a useful example to illustrate the difficulty that courts may have in determining whether a case presents a question of law application or a "naked question of law."[288] The *Chevron* case concerned a provision of the Clean Air Act that authorizes EPA to regulate "stationary sources" of pollution.[289] The Court treated the case as one of statutory interpretation—about what *stationary source* means—ultimately creating the *Chevron* two-step framework to resolve that question.[290] Some have argued that *Chevron* could have been decided on grounds similar to those in *Hearst Publications*, where the Court treated the meaning of *employee* as a policy determination informed by the agency's application of its expertise to its findings of fact.[291] The regulation challenged in *Chevron* does not just provide an interpretation of *stationary sources* but engages with various factual scenarios regarding ownership of different facilities, geographical distribution of facilities, and third-party industrial classifications of sources.[292] In many ways, this argument goes, EPA's regulation at issue in *Chevron* is an example of the agency exercising authority delegated to it by Congress through the application of its factfinding abilities and expertise.[293]

There are important differences between *Hearst Publications* and *Chevron* that may partly explain the different approaches the Court took in each case. *Hearst Publications*, like *Gray*, was an appeal from an agency adjudication. That is, it was an appeal from a decision the agency made applying the relevant statute to a particular party before it. *Chevron*, however, was a challenge to a rulemaking. EPA's regulation in *Chevron* was generally applicable to any entity that fell within the sweep of the regulation. It was not directed at determining whether a particular facility was a "stationary source." Agency adjudications may lend themselves more easily to being categorized as presenting mixed questions of law and fact, because, by their nature, agency adjudications apply law to the particular facts presented by the party or parties before the agency. Regulations, although often based on factual determinations, are not typically directed at particular sets of facts connected to particular parties.[294] Nonetheless, the Court in *Loper* did not make this distinction and appears to have endorsed the approach the Court took in *Hearst Publications* and *Gray* as useful in informing the proper standard of review for mixed questions of law and fact regardless of the form of agency action.[295]

Because of the similarity between *Chevron* step two and the arbitrary and capricious standard, the Court had little incentive to explicitly define which issues should be reviewed under the *Chevron* framework and which should be evaluated under the

reviewed under the *Chevron* framework and which should be evaluated under the arbitrary and capricious standard.[296] Now that questions of law will be reviewed *de novo*, while exercises of policy discretion and mixed questions of law and fact will continue to be evaluated under the deferential arbitrary and capricious review standard, the Court may find reason to provide additional guidance on this issue.[297] Unless and until the Court refines its approach to differentiating these two spheres, it may be hard to predict whether any specific agency action will be reviewed under the *de novo* standard of review or the more deferential arbitrary and capricious standard.

Relationship with other Doctrines of Judicial Review

Major Questions Doctrine

Overruling *Chevron* has raised questions in the legal community over whether the major questions doctrine is still viable. For some, by overruling *Chevron*, the Supreme Court undermined the purpose of the major questions doctrine, while for others, it may still serve an independent purpose regardless of the existence of the *Chevron* framework.

The major questions doctrine requires an agency to point to clear congressional authorization if it seeks to regulate on an issue of great "economic and political significance."[298] The Supreme Court first referred to the major questions doctrine by name in a 2022 decision, but the doctrine has its roots in scattered cases over many years.[299]

Until recently, the major questions doctrine was closely associated with the *Chevron* framework and was often invoked as a part of the *Chevron* framework.[300] The major questions doctrine rests on a determination by the Court that one of the core assumptions that supported *Chevron* deference—that Congress intended the agency to resolve the statutory ambiguity—was no longer tenable.[301] Where major questions are at stake, the Court has said, "there may be reason to hesitate before concluding that Congress … intended" to delegate resolution of that question to the agency.[302]

Further, while some cases suggested that the major questions doctrine might have been part of the *Chevron* analysis, the Court's approach has not been consistent. Initially, the Court invoked this concern while applying *Chevron*[303] to justify concluding that under the two-part test, the Court should not defer to the agency's construction of the statute.[304] The Court then shifted its approach slightly, holding that the fact that an agency interpretation implicates a major question renders the *Chevron* framework of review inapplicable.[305] In its most recent major questions cases, the Court has invoked the doctrine without resort to *Chevron* at all, suggesting that the more recent version of the doctrine operated as a principle of statutory interpretation independently from the *Chevron* framework.[306] In *Loper*, the Court reiterated that "*Chevron* does not apply if the question at issue is one of 'deep economic and political significance'"[307]

the question at issue is one of 'deep economic and political significance.' [...]

The Court made this statement in the context of a discussion of the "many refinements" the Court has made to *Chevron* in an attempt to "match *Chevron*'s presumption" regarding implicit legislative delegation "to reality."[308] The Court identified the major questions doctrine among these "many refinements."[309] Given these statements, the majority in *Loper* seemed to understand the major questions doctrine as a response to *Chevron*.[310] With *Chevron* overruled, some have questioned whether the major questions doctrine should be retained. One commentator has argued that now that *Chevron* is gone, there is no longer reason to apply the major questions doctrine to depart from applying ordinary textualist methods of statutory interpretation.[311] The Court's approach to statutory interpretation in *Loper* may support this argument. The major questions doctrine applies where a statute is less than clear,[312] but if courts, following *Loper*, find the single best meaning of a statute, then the major questions doctrine may not come into play, because there is no question what the meaning of the statute is.[313]

The *Loper* opinion also provides reason to believe that the major questions doctrine may be preserved. As already discussed, the opinion recognizes that Congress sometimes delegates to agencies the authority to regulate pursuant to broad terms such as *reasonable* and *appropriate*.[314] The Court explained that in those situations, a court's job is twofold: ensure that the agency has stayed within the bounds of the statutory delegation and come to its decision through "reasoned decisionmaking."[315] It is in fulfilling this first duty where courts might turn to the major questions doctrine. Broad grants of regulatory power subject to statutory limits such as "reasonable" may give rise to questions over how much authority Congress delegated to the agency at the outer margins of the agency's statutory authority. Were an agency to rely on a broad (but not specific) grant of power to regulate something of "vast economic and political significance,"[316] the major questions doctrine might play a role in resolving the case.

For instance, in the 2023 Supreme Court decision in *Biden v. Nebraska*, the Court held that the Department of Education's plan to cancel hundreds of billions of dollars of student loans was a major question and that the agency could not point to clear congressional authorization for such a plan.[317] At issue in that case was a provision of the Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES Act) that authorizes the Secretary of Education to "waive or modify any statutory or regulatory provisions" applicable to certain student loan programs.[318] The Court called the magnitude of the loan cancellation "staggering by any measure" and held that the plan was of the kind of politically and economically significant actions that mark a major question.[319] As such, the Court held, "it is 'highly unlikely that Congress' authorized such a sweeping loan cancellation program 'through such a subtle device as [...]

permission to "modify."""[320] To come to this conclusion, the Court relied, in part, on the Secretary's past uses of the HEROES Act.[321] The Court surveyed the Secretary's past invocations of power to waive or modify student loans and explained that past waivers were "modest and narrow in scope."[322] These modest and narrow uses of the waive or modify authority, the Court reasoned, supported the Court's view that Congress likely did not delegate the authority to cancel student loans generally.[323]

Although *Nebraska* was decided prior to *Loper*, it may provide an insight into where the major questions doctrine may still play a role—instances where agencies acting under broad, but not specific, statutory authorizations attempt to regulate in a novel way that a court finds to be economically or politically significant.

Auer (*Kisor*) Deference

Overruling *Chevron* has also raised questions about the viability of other deference doctrines, such as *Auer* deference.[324] *Auer* deference closely mirrors *Chevron* but applies to an agency's reasonable interpretations of its own ambiguous *regulations*.[325] This form of deference originated in a 1945 Supreme Court case *Bowles v. Seminole Rock & Sand Co.*, which concerned the proper interpretation of a maximum price regulation issued by the Office of Price Administration.[326] o determine the proper interpretation of the regulation, the Court explained that it "must necessarily look to the administrative construction of the regulation if the meaning of the words used is in doubt."[327] Where that is the case, "[t]he ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation."[328] It is this formulation that later found its way into the 1997 Supreme Court case authored by Justice Scalia, *Auer v. Robbins*, from which the deference doctrine takes its name.[329]

In addition to mirroring *Chevron*'s structure, *Auer* also shares a similar foundation. The Court explained that it "presume[s] that the power authoritatively to interpret its own regulations is a component of the agency's delegated lawmaking powers."[330] As with *Chevron*, the Court assumed that Congress would have wanted the agency rather than a court resolving ambiguities because of an agency's "unique expertise and policymaking prerogatives," ability to conduct investigations, and political accountability.[331]

In 2019 the Supreme Court revisited—and on some accounts narrowed—*Auer* deference in *Kisor v. Wilkie*.[332] The petitioners asked the Court to overrule *Auer*, but in an opinion written by Justice Kagan, the Court "restate[d]" and "somewhat expand[ed]" on the principles governing the application of *Auer*.[333] The Court acknowledged that it had at times sent mixed signals regarding how to apply *Auer*, may have inadvertently suggested that deference was "reflexive," and in some cases had applied it "without significant analysis of the … regulation."[334]

The Supreme Court took the opportunity to remind lower courts that they should not be too quick to find ambiguity in a regulation. "[T]he possibility of deference can arise only if a regulation is genuinely ambiguous. And when we use that term, we mean it—genuinely ambiguous."[335] "The core theory of *Auer*," the Court held, "is that sometimes the law runs out."[336] Courts must first resort to all of the "traditional tools of construction" before declaring a regulation ambiguous.[337] A court "cannot waive the ambiguity flag just because it found the regulation impenetrable on first read."[338] The Court stressed that a court must use every tool—including the text, structure, history, and purpose of the regulation—before determining that there is no single right answer.[339]

Even after a court finds a regulation ambiguous, the Court clarified that not all reasonable interpretations "are entitled to deference."[340] *Auer*, like *Chevron*, presumes that Congress would want an agency rather than a court to resolve ambiguities in regulations, but the Court stressed that "such a presumption cannot always hold."[341] The Court then went on to provide an illustrative list of factors that indicate that deference is appropriate.[342] The interpretation must represent the agency's official position, implicate its substantive expertise, and be the product of "fair and considered judgment."[343] In the Court's view, if these guardrails are properly observed, *Auer* deference "often" does not apply.[344]

Despite *Kisor*'s refinement of *Auer*, its continued viability after *Loper* is a serious question. The *Loper* decision rested on an interpretation of Section 706 of the APA.[345] That same provision of the APA directing courts to "decide all relevant questions of law" applies equally to challenges to agency interpretations of their own regulations.[346] Professor Cass Sunstein has observed that "*Loper Bright* sits (umm, errr) uneasily with *Kisor*."[347] The *Kisor* opinion itself, he notes, is "essentially identical" to Justice Kagan's dissent in *Loper*.[348] It would, in his estimation, be "awkward" to revisit *Kisor* so soon after it was decided but equally awkward for the Court to preserve *Auer* deference.[349] That awkwardness stems primarily from the similarities between the presumptions underpinning *Chevron* that the *Loper* decision swept away and those that underpin *Auer*—that in many cases Congress would have wanted agencies to resolve ambiguities in their own regulations.[350] If the presumption that statutory ambiguities are implicit delegations of interpretive authority violates Section 706 of the APA, then it is possible that the same presumption for regulations also violates the APA. Whether the Court takes up this issue in the future, however, is an open question.[351]

Further Litigation: Prior *Chevron* Cases

Although the Supreme Court overruled *Chevron*, it appears to have preserved the holdings in cases that were decided pursuant to the *Chevron* framework prior to *Loper*.[352] In the briefing of the case and during oral argument, the litigants and some of

Loper. In the briefing of the case and during oral argument, the litigants and some of the Justices discussed the fate of cases decided at *Chevron* step two.[353] As explained above, at *Chevron* step two, a court must defer to an agency's reasonable interpretation of an ambiguous statute.[354] In such a case, a court has not made a specific ruling on what the statute means—it has left that determination to an agency in light of the court's finding at step one that the statute is ambiguous.[355] At oral argument, some of the Justices questioned the litigants about whether these step two decisions would still be considered binding if *Chevron* were overruled.[356] Counsel for the petitioners argued that overruling *Chevron* would not disturb these cases, because what the court had found at step two was that an agency's interpretation was "lawful."[357] The Court appears to have adopted this argument in its opinion, holding that "we do not call into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are lawful—including the Clean Air Act holding of *Chevron* itself—are still subject to statutory stare decisis despite our change in interpretive methodology."[358]

The Court held that its decision to overturn *Chevron* is not itself a reason to overturn a prior case finding an agency's interpretation "lawful" pursuant to step two of *Chevron*.[359] Rather, litigants will have to make an additional showing that the older decision should be overturned on other grounds.[360] The *Loper* majority did not elaborate on what that additional showing could or should be.[361] It is possible that the additional showing could be that the agency's interpretation of the statute upheld in the prior case as "reasonable" under step two of *Chevron* is at variance with the present-day court's view of the "best" interpretation of that statute.

Despite the Court's holding, questions are likely to remain regarding the circumstances in which a court can overturn a prior decision that rested on application of *Chevron*'s second step. For instance, the *Loper* case leaves open the question of what exactly a court decided at step two of *Chevron*.[362] If, as has been commonly understood, a decision in favor of the agency at step two simply means that the agency chose one of the multiple possible reasonable interpretations of an ambiguous statute, then that decision may have little binding effect on a future court considering whether the agency's interpretation is the single best interpretation of the statute.[363] The Court in *Loper*, however, described decisions pursuant to step two as finding the agency's interpretation "lawful."[364] Accordingly, it may be the case that the Supreme Court was signaling to the lower courts that a decision at step two should be taken as more than just determining that an agency interpretation is a "reasonable" one.[365] Instead, the Court's use of the term *lawful* could be read to instruct lower courts to interpret prior decisions upholding agency interpretations at step two such that a court's prior decision carries more precedential weight than might otherwise be accorded a decision finding an agency interpretation reasonable. Although the U.S. Court of Appeals for the Sixth Circuit (Sixth Circuit) has confronted this issue,[366] it will likely be some time before

there is enough case law to identify trends in how the lower courts are resolving this issue.

Loper does not address whether an agency retains the ability to change its interpretation of a statute that a court found to be ambiguous under *Chevron*. Finding a statute ambiguous under *Chevron* brought with it the assumption that Congress had implicitly delegated interpretive authority to the agency to resolve that ambiguity. *Loper* swept that assumption away as in conflict with Section 706 of the APA, holding that a statute has a fixed meaning at the time of enactment. As a practical matter, an agency likely could still change an interpretation upheld under step two and may choose to do so where the agency believes a different interpretation would better align with the best meaning of the statute. It is not clear how courts would evaluate this situation. The Sixth Circuit, for example, has suggested that *Loper* implicitly overruled *Brand X* and that agencies no longer have any authority to change their interpretations.[367]

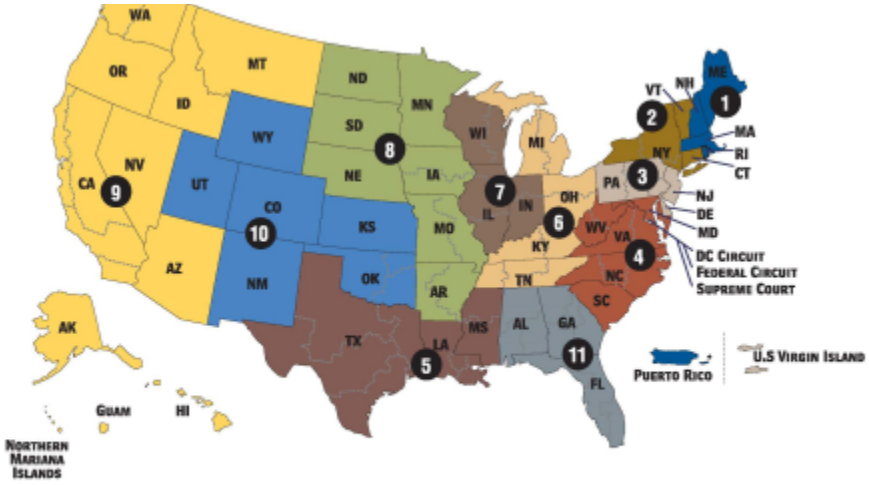
The Process of Relitigating Prior *Chevron* Cases

One significant consideration in assessing the practical effect of the Court's holding that *Loper* is not a reason to overrule prior cases relying on *Chevron* is whether a future court is bound by a prior case that relied on *Chevron* and, if it is, whether that court has the authority to overrule the prior case. As discussed in more detail below, the geographic jurisdiction and the hierarchy of the federal courts and the Supreme Court's decision in *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*[368] may provide additional opportunities to challenge regulations upheld under *Chevron* step two. New challenges brought in a circuit that does not have any precedent on point will not be bound by circuit precedent from other courts of appeals. Further, decisions of the federal district courts are not precedential and accordingly do not bind future courts' decisions. As a result, although the *Loper* Court's holding regarding the precedential value of prior *Chevron* cases may limit certain challenges, the scope of the Court's holding does not reach all prior *Chevron* cases.

Geographic Jurisdiction of the Federal Courts

A decision by a federal court of appeals is binding precedent only for federal district courts within the geographic jurisdiction of the relevant court of appeals and future panels of the same circuit court of appeals.[369] There are 12 geographic federal courts of appeals in the United States (see **Figure 1** below).

Figure 1. Geographic Boundaries of the Federal Courts



Source: Administrative Office of the United States Courts, https://www.uscourts.gov/sites/default/files/u.s._federal_courts_circuit_map_1.pdf (last visited Dec. 20, 2024).

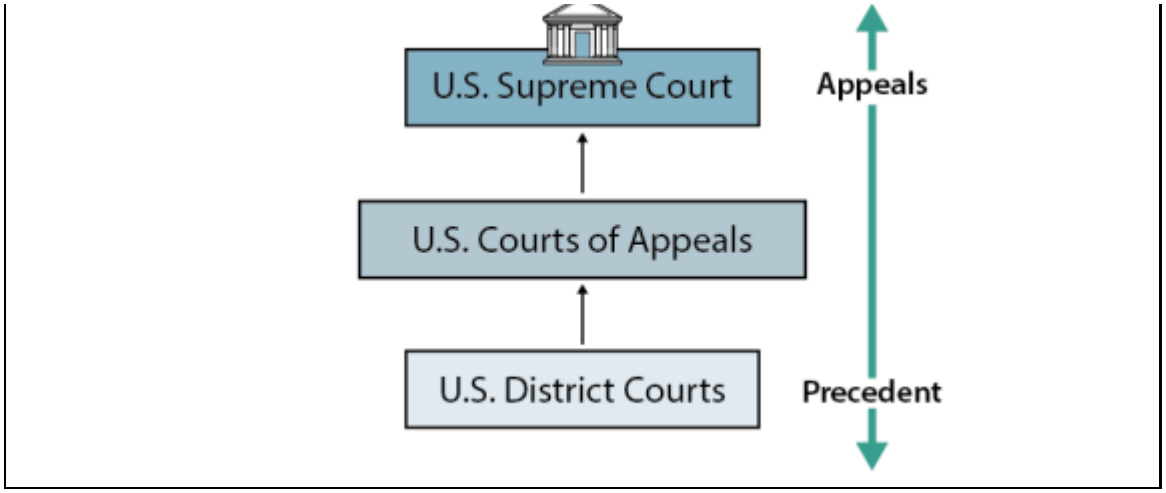
Notes: District court boundaries are delineated by gray lines within state boundaries. The U.S. Court of Appeals for the D.C. Circuit's geographical jurisdiction covers only the District of Columbia, but because many D.C. Circuit cases involve the federal government, decisions of the D.C. Circuit often bind agencies nationwide. Additionally, the U.S. Court of Appeals for the Federal Circuit has nationwide jurisdiction but can hear appeals on only a limited number of subjects.

If a plaintiff challenges a regulation in a jurisdiction that has not previously rendered a decision evaluating the regulation, then that court would not be bound by any precedent regarding the legality of the regulation. Decisions by courts in other jurisdictions regarding the legality of the regulation may be persuasive authority, but they would not control the outcome of the new case.[370] The *Loper* decision did not address this scenario, likely because decisions from one court of appeals have never been thought to be binding on decisions of its sister courts of appeals.[371] The *Loper* decision does not change that basic fact of the federal judiciary.[372]

Hierarchy of the Federal Courts

Even where a new challenge is brought in a jurisdiction that has already found an agency's interpretation to be reasonable under step two of *Chevron*, the court in which the challenge is brought may not have the authority to overturn the prior decision.[373] The binding nature of precedent flows down the hierarchy of a court system. Decisions made by higher courts, such as the Supreme Court, are binding on lower courts—federal courts of appeals and district courts.[374] A corollary is that lower courts have no authority to overturn binding precedent decided by a higher court.[375]

Figure 2. Hierarchy of the Federal Court System



Source: CRS.

A district court's decision has no precedential value—that is, it binds only the parties to the case but not future decisions of other district courts.[376] District courts also have no power to overturn a decision of the court of appeals.[377] A three-judge-panel of a court of appeals has no authority to overturn a decision of a prior three-judge panel.[378] A circuit court can overturn its own precedent through a special circuit court procedure known as a *rehearing en banc*.[379] A rehearing en banc is a hearing before a larger panel of appellate judges. In smaller circuits, all active judges on the court of appeals participate in en banc proceedings, while in larger circuits a subset of active judges may participate.[380] Rehearings en banc are discretionary, meaning that, unless the judges of the circuit vote to hear an appeal en banc, the only way to overturn a decision of the court of appeals is to seek review by the Supreme Court.[381]

Precedential weight, to the extent any attaches, attaches only to published opinions. Not all decisions by the federal courts are published, meaning not all appear in the official reports of the decisions of the federal courts. The judges who author the opinions decide which decisions should be published. Unpublished decisions of the federal courts of appeals are not binding and may be treated only as persuasive authority.[382]

The upshot for prior cases decided at *Chevron* step two is that cases decided by district courts or cases decided through unpublished opinions of courts of appeals have no precedential value. Accordingly, because they do not bind future courts analyzing the same agency interpretations, the *Loper* Court's pronouncement regarding prior *Chevron* cases likely does not apply in those situations. A case that was decided through a published opinion of a court of appeals may be considered binding precedent within the relevant circuit. Few courts have addressed the Supreme Court's direction to treat prior *Chevron* cases as binding precedent. The Sixth Circuit provided an early example of how a court might analyze this issue after *Loper* in *Tennessee v. Becerra*.

Tennessee v. Becerra: *Stare Decisis* and Loper Applied

In 2021, the Department of Health and Human Services (HHS) promulgated a regulation requiring federal grant recipients under Title X of Public Health Service Act (PHSA) to offer neutral, nondirective counseling and referrals for abortions to patients who request it.[383] Tennessee, a Title X grant recipient, challenged the regulation, arguing, among other things, that the requirement violates Section 1008 of the PHSA.[384] The Sixth Circuit affirmed the federal district court's denial of Tennessee's motion for a preliminary injunction to stop the enforcement of the Title X regulation.[385] In affirming the district court's denial, the court addressed the precedential value of two prior cases—one a Supreme Court case and another a prior Sixth Circuit case—that had held that Section 1008 was ambiguous and deferred to HHS's earlier interpretations of that section of the PHSA.[386] In addition, the prior Sixth Circuit case addressed the same 2021 regulation at issue in *Becerra*.[387] As a result, the Sixth Circuit had already found HHS's interpretation "lawful" under step two of *Chevron*.[388]

In light of *Loper*, Tennessee disputed whether these two prior cases had precedential effect.[389] Relying on *Loper*, the court held that "it forecloses new challenges based on specific agency actions that were already resolved via *Chevron* deference analysis."[390] *Loper*, the court held, opens the door only to new challenges to agency interpretations that have not yet been adjudicated.[391] Arguing, as Tennessee did, that *Loper* abrogated the precedential effect of the two prior cases, the court reasoned, would just be making an argument that the prior cases were wrongly decided.[392] *Loper* explicitly held, however, that argument is "not enough to justify overruling a statutory precedent."[393]

The Sixth Circuit's opinion is one of the first, if not the first, decision from a federal court of appeals addressing the precedential effect of a prior case decided pursuant to *Chevron* step two. As such, it is difficult to say whether other courts will approach the issue in the same way. For instance, *Loper* held that reliance on *Chevron* is not by itself enough to justify overruling prior precedent, but the Sixth Circuit in *Becerra* found that Tennessee did not present any other argument to the court other than that prior precedent relied on *Chevron*. Accordingly, it is unclear how courts may treat overruling prior precedent if presented with arguments that go beyond those made in *Becerra*.

Interactions with Corner Post, Inc. v. Board of Governors of the Federal Reserve System

Several days after the Supreme Court issued its *Loper* opinion, it issued an opinion in *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*.[394] The opinion addressed the statute of limitations for a claim brought against the government pursuant to the APA.[395] The APA itself has no statute of limitations, but Section 2401(a) of Title 28 provides a general statute of limitations for civil claims brought against the United States.[396] Section 2401(a) requires plaintiffs to bring suit "within six years after

the right of action first accrues."[397]

The Court held that a claim accrues when a plaintiff is first injured by a final agency action.[398] The Court's decision was a departure from decades of caselaw that had determined that, for the purposes of Section 2401(a), a claim accrues on the date the agency action becomes final for all plaintiffs.[399]

The import of the shift in interpretation of Section 2401(a) is best illustrated by the facts of the *Corner Post* case itself. Corner Post is a truckstop and convenience store located in North Dakota.[400] It opened for business in 2018.[401] Corner Post accepts credit cards for payment and as a result is required to pay an "interchange fee" to the bank that issued the credit card.[402] In 2011, the Federal Reserve, pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, issued a regulation that set a maximum interchange fee that banks could charge to retailers.[403] Corner Post joined a suit against the Federal Reserve in 2021, challenging the Federal Reserve's regulation as allowing higher fees than permitted by Dodd-Frank.[404] Under then-prevailing caselaw in a majority of the federal circuit courts of appeals, a cause of action challenging the legality of the Federal Reserve's regulation accrued for any and all plaintiffs the date the regulation became final (2011) and expired six years later (2017), effectively barring Corner Post's suit.[405] Under the Supreme Court's interpretation of Section 2401(a), however, Corner Post's claim did not accrue until it was injured by the regulation (e.g., when it paid the first interchange fee).[406] That means that Corner Post's claim did not expire until six years after that initial injury—possibly sometime in 2024.[407]

Plaintiffs that are newly injured by older regulations (for example, by entering a regulated market) will now be able to challenge those regulations so long as they bring suit within six years of first being injured by the regulations. As a result, *Corner Post* may permit parties that did not exist at the time an agency took an action interpreting a statute to challenge that interpretation. That is true where a court had already found an agency interpretation reasonable under step two of *Chevron* or where the agency action was never challenged in court. *Corner Post* may, accordingly, lead to more agency interpretations being litigated under the principles set out in *Loper*.

Implications for Executive Branch Agencies

Neither the *Chevron* framework nor *Loper* applies directly to agencies; they direct how courts are to interpret a statute when an agency has issued its own interpretation.[408] Relatedly, *Chevron* did not give—and *Loper* did not take away—an agency's ability to interpret the statutes that it administers. When Congress vests an agency with regulatory authority, an agency will necessarily interpret the provisions of that statute when it takes action pursuant to the statute. *Loper* changed which branch of the federal

government—the judiciary or the executive—will have the final say about what the statute means when an agency's interpretation is challenged in court.[409] Where an agency's interpretation is never challenged in court, the agency will likely be the first and only interpreter of the statute.

That context does not mean that *Loper* will not have significant indirect effects on how agencies interpret statutes. As the lower courts resolve some of the questions left open by the *Loper* decision through case-by-case adjudication, agencies will likely shift their behavior in light of trends that emerge from the lower courts applying *Loper* and subject to their own particular success before the courts.

By its own terms, *Chevron* did not purport to instruct *agencies* how they should interpret the statutes that they administer.[410] Although the framework announced by *Chevron* was not binding on agencies, according to at least one study, it did have an effect on how agencies interpreted the statutes they administer. In a 2014 survey of agency personnel engaged in drafting regulations, approximately 43% of respondents agreed or strongly agreed (10% strongly agreed; 33% agreed) "that their agencies would be more aggressive in their interpretive practices" if they knew or strongly believed that a particular statutory interpretation would be entitled to *Chevron* deference.[411] Another 40% somewhat agreed.[412] Similarly, one commentator described *Chevron*'s effect as encouraging agencies to be "more adventurous" in interpreting statutes.[413]

Like the *Chevron* framework, *Loper*'s requirement to apply the traditional tools of statutory construction is directed at the courts; it does not directly bind or apply to agencies.[414] Nonetheless, as with *Chevron*, it is likely that *Loper* will have an indirect effect on agencies as the lower courts adjudicate more and more agency interpretations. By overruling *Chevron*, *Loper* may cause agencies to be more cautious in their interpretations. In the same 2014 study, when agency rule drafters were asked if they would be less aggressive in their interpretive practices if *Chevron* did not apply, roughly the same proportions strongly agreed (7%), agreed (31%), and somewhat agreed (45%).[415]

In addition to becoming more cautious in their interpretations, interpretations may also become more legalistic. In a 2005 essay, Donald Elliott, EPA's general counsel under President George H. W. Bush, explained that *Chevron* shifted power away from agency lawyers to other professionals within agencies.[416] Prior to *Chevron*, Elliott observed, agency lawyers exercised significant authority within agencies through the interpretation of the agencies' statutes.[417] In his telling, the predominant view of the courts prior to *Chevron* was that a statute had a single "best meaning" and it was an agency lawyer's job to identify the best meaning through the application of specialized legal means.[418] In this account, *Chevron* shifted how courts approach the meaning of statutes and, as a result, shifted the relative power of lawyers and other professionals

statutes and, as a result, shifted the relative power of lawyers and other professionals within agencies.[419] While *Chevron* was in place, agency lawyers attempted to describe the permissible range of discretion created by ambiguous statutory terms.[420] Agency policymakers would then select one of the permissible interpretations to adopt.[421] The shift to *Chevron* led to a policymaking dialogue within agencies over what policy an agency should adopt and why that was not possible prior to *Chevron*.[422] It is too early to tell whether overruling *Chevron* will result in the balance of power within agencies shifting back to lawyers. It is possible that, as the lower courts apply *Loper* in more and more cases, agencies may begin to rely more on agency lawyers to apply the specialized tools of statutory interpretation to identify the best meanings of statutes to increase their chances of prevailing in court.[423]

Overruling *Chevron* will also result in reifying interpretations of statutes such that agencies will no longer be able to change their interpretations without legislative intervention. The *Chevron* framework rested on a presumption that an ambiguity was an implicit delegation of interpretive authority to the agency to resolve that ambiguity.[424] One consequence of this assumption was that, where a court found an ambiguity, a court had no power to determine what the meaning of the statute was—that was for the agency.[425] As a result, even where a court had reviewed the statute, if it had determined that the statute was ambiguous, the agency could change its interpretation in the future.[426] So long as the new interpretation was reasonable, a court would be bound to defer to the agency's interpretation.[427] The *Chevron* decision itself recognized the policy discretion that attended ambiguous statutory provisions.[428] In a 2005 case captioned *National Cable & Telecommunications Association v. Brand X Internet Services*, the Supreme Court explicitly confirmed this consequence of *Chevron*.[429] The Court held that in light of *Chevron*, "only a judicial precedent holding that the statute unambiguously forecloses the agency's interpretation, and therefore contains no gap for the agency to fill, displaces a conflicting agency construction."[430]

The policy space or discretion that statutory ambiguity provided to agencies under *Chevron* was one factor the Court identified in *Loper* as a reason to overrule *Chevron*.[431] The *Loper* majority explained, "Under *Chevron*, a statutory ambiguity, no matter why it is there, becomes a license authorizing an agency to change positions as much as it likes, with 'unexplained inconsistency' being 'at most a reason for holding an interpretation to be arbitrary and capricious.'"[432] Except where Congress has delegated interpretive authority to an agency to interpret the statutory provisions at issue, *Loper* likely forecloses an agency's ability to change its interpretation after a court has determined the best meaning of a statute.[433] The *Loper* decision held that a statute has a single meaning fixed at the time of enactment.[434] Where a court has identified that meaning, there is no policy space within which an agency has discretion to choose among different reasonable interpretations.[435]

Loper also held that sometimes the single best meaning fixed at the time of enactment was that Congress delegated interpretive authority to an agency to define certain statutory terms.[436] In these circumstances, agency interpretations may be subject to only a reasonableness standard similar to *Chevron*'s second step.[437] Under these conditions it may be possible for an agency to change its interpretation even after the agency's interpretation was litigated. In that scenario, a court has fulfilled its duty to "say what the law is" by determining that the best meaning of the statute is that Congress vested the agency with discretion to define particular terms or phrases so long as it exercises that discretion reasonably.[438] As a corollary, although the agency may be able to change its interpretation of the statute, it has no power to adopt an interpretation that conflicts with the court's determination that the statute vests the agency with interpretive authority.[439]

Considerations for Congress

The *Loper* decision was based on an interpretation of the APA, not the Constitution. *Loper*, accordingly, did not diminish Congress's constitutional lawmaking authority. Put another way, *Loper* does not direct Congress to legislate in any particular way—it directs *courts* how to resolve cases of statutory interpretation. Because *Loper* does not directly bind Congress, whether *Loper* will affect how Congress legislates is still an open question.

Legislative Productivity

The *Loper* decision may affect Congress's approach to legislation in an indirect way. Courts and commentators argued that while *Chevron* was in place, Congress often legislated with it in mind.[440] That is, Congress may have made the same assumption that the *Chevron* decision made—that ambiguous terms in a statute would be interpreted by the relevant agency, not a court. The *Loper* decision disposed of that assumption when it held that *Chevron*'s general presumption about statutory ambiguity violated the APA.

Prior to the Court's decision in *Loper*, some had argued that Congress's assumption that courts would grant agencies deference pursuant to *Chevron* reduced Congress's incentive to pass new legislation—sometimes called "congressional abdication."[441] Proponents of this argument, including the petitioners in *Loper*, argued that because *Chevron* permitted agencies to change their interpretations of ambiguous statutes, Congress may not have thought it necessary to provide additional statutory authority for agencies to address new or unforeseen circumstances.[442] At oral argument, the petitioners argued that overruling *Chevron* would prompt Congress to limit using vague terms and take the lead in deciding questions of policy through an increase in legislation.[443] As of fall 2024, there is little data at the federal level regarding how

overruling *Chevron* may change legislative drafting.

A 2024 study of state legislatures' reactions to the varying deference regimes at play in different state courts may shed some light on how Congress might react.[444] The study used variations among different states' judicial deference doctrines and variations of the same state's judicial deference doctrine across time and compared them to "legislative productivity" in state legislatures.[445] It found that differences in deference doctrines had almost no effect on legislative activity.[446] To the extent that judicial deference had any effect, some evidence indicated that legislatures produced more statutory text and used more definitions while also relying on explicit delegations and vague and precatory terms.[447] The study noted that these results were a "mixed bag, sometimes aiding legislatures' efforts to produce high-quality legislation and sometimes impeding it."[448] The study itself cautions that data from states may not translate directly to Congress and that a focus on all legislative output from state legislatures might miss important effects from deference or the absence of it that might appear only in certain types of legislation.[449]

Legislative Specificity

Regardless of the experience of state legislatures, Congress has a number of options to respond to *Loper*. Congress could respond as the petitioners in *Loper* argued that it might—by drafting statutes with more specificity and fewer vague or ambiguous terms.[450] As noted above, *Loper* does not require any particular congressional response, but after *Loper*, where litigation occurs between an agency and a private party regarding the meaning of a statute, a court rather than an agency will determine the meaning of the statute. If Congress does not want a court to have the power to resolve vague or ambiguous statutory text, Congress could choose to draft statutes with more specificity, effectively choosing the policy it prefers rather than leaving the judiciary to interpret a vague or ambiguous term.

Some have argued that Congress currently lacks the institutional capacity to draft statutes with more specificity.[451] The House Committee on Administration held a hearing less than a month after the Court issued the *Loper* opinion seeking input on how *Loper* might change how Congress operates.[452] While the witnesses disagreed on a number of issues, they all agreed that were Congress to want to draft more specific statutes or increase oversight of agency rulemaking in response to *Loper*, it would need to increase the quantity and quality of congressional staff.[453]

Codifying *Chevron* or *Loper*

Congress could also respond by codifying some form of deference either for all agencies or for specific agencies or specific agency actions. As noted above, the *Loper* decision rested on an interpretation of the APA. As a result, Congress retains the

authority to amend the APA to require courts to defer to agency interpretations of federal law or to enact stand-alone statutes that apply to some agencies but not others. For example, in 2023, the Stop Corporate Capture Act was introduced in the House.[454] The bill would amend Section 706 of the APA to codify a version of *Chevron* deference. A companion bill was introduced in the Senate in July 2024.[455]

Codifying *Chevron* may raise constitutional concerns for some Justices. Justices Thomas and Gorsuch have both written publicly that they believe *Chevron* deference violates Article III of the Constitution.[456] Article III, their argument goes, requires that courts have the final word on the meaning of federal law.[457] *Chevron*, however, shifted the authority to render final binding interpretations of federal law to agencies under certain circumstances.[458] That shift, they believe, violates Article III's command as declared by the Court in *Marbury v. Madison* to "say what the law is."[459] The petitioners' appeal to the Court in the *Loper* case was built around the Article III argument.[460] Although the Court ultimately rested its decision on an interpretation of the APA, the Court referred back to 19th-century cases interpreting Article III to support its finding that the APA rendered in statute the traditional role of the courts to "say what the law is."[461] Thus, although the Court declined to decide the case on constitutional grounds, its decision was influenced by Article III cases that predated the APA.[462]

Conversely, Congress could also codify the *Loper* decision. By basing its decision on the meaning of the APA, the *Loper* decision essentially fixed the meaning of Section 706. Were Congress to want to reinforce *Loper*'s holding and potentially limit the effect were the Court to overrule *Loper*, it could amend the APA to explicitly bar the application of any kind of deference doctrine for cases brought pursuant to the APA. Prior to the *Loper* decision, the House had introduced the Separation of Powers Restoration Act (SOPRA) in the 106th[463], 107th[464], and 114th-118th Congresses.[465] SOPRA would amend Section 706 of the APA to require courts to apply *de novo* review to questions of law raised in cases brought pursuant to the APA.[466] Were it enacted prior to the *Loper* decision, it would have prevented courts from deferring to agency interpretations pursuant to *Chevron*—at least for cases brought pursuant to the APA. If SOPRA were enacted now, it would likely reinforce the *Loper* decision and prevent deference from applying to cases brought pursuant to the APA if the Court overrules *Loper* in the future.

Congress could also amend other judicial review statutes. Although the APA is the most prominent judicial review statute, the Administrative Conference of the United States has identified more than 600 other statutes that provide for judicial review of certain agency actions.[467] Many of those statutes do not include text similar to the language on which the Supreme Court based its decision in *Loper*.[468] Whether the Court's decision in *Loper*, which was based on an interpretation of the APA, extends to other judicial review provisions is an open question. Congress may wish to amend other non-APA

review provisions is an open question. Congress may wish to amend other non-APA judicial review provisions to either ensure that the *Loper* decision applies to judicial review conducted under those statutes or to codify deference for cases brought under those statutes.

Delegations to Agencies

Another potential congressional response to *Loper* is the use of different drafting techniques to delegate certain authority to agencies. As noted above, the Supreme Court in *Loper* recognized that Congress retains the authority to craft delegations of authority by statute that can empower agencies to interpret statutory terms or exercise discretionary authority.[469] The Court cited phrases such as *as determined by the Secretary* to indicate where Congress has empowered an agency, rather than a court, to render final and binding interpretations of particular terms or phrases.[470] Similarly, the Court cited phrases such as *the Administrator shall regulate if the Administrator finds such regulation appropriate and necessary* as delegations from Congress to an agency of policy discretion that the courts may not second-guess unless the agency exercises its discretion unreasonably.[471] Congress can use these drafting techniques to tailor the type and scope of delegation to an agency to ensure that the agency is able to exercise whatever authority Congress intends it to have. As the Court explained in *Loper*, a court's job when faced with a statutory delegation is to ensure that the agency has not exceeded the boundaries of the delegation and ensure that it exercises its delegated authority reasonably.[472]

Footnotes

1. 144 S. Ct. 2244 (2024).
2. 467 U.S. 837, 843 (1984), *overruled by* Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244 (2024).
3. Ronald A. Cass, *Chevron—Complicated, Start to Finish*, 23 Federalist Soc'y Rev. 265, 265 (2022).
4. *See* Pereira v. Sessions, 585 U.S. 198, 221 (2018) (Alito, J., dissenting) (writing that *Chevron* is now an "increasingly maligned precedent" that the Court feels comfortable "simply ignoring"); Buffington v. McDonough, 143 S. Ct. 14, 22 (2022) (Gorsuch, J., dissenting from denial of certiorari) (arguing that that *Chevron* "deserves a tombstone no one can miss."). Prior to being appointed to the Supreme Court, Justice Kavanaugh raised concerns that *Chevron* was conceptually muddled, while Chief Justice Roberts had suggested that *Chevron* should be significantly narrowed. *See* Brett M. Kavanaugh, *Fixing Statutory Interpretation*, 129 Harv. L. Rev. 2118, 2136 (2016); City of Arlington v. FCC, 569

U.S. 290, 323–27 (2013) (Roberts, C.J., dissenting) (advancing a narrower theory of *Chevron*). For a survey of academic literature criticizing *Chevron* deference, see Christopher J. Walker, *Attacking* Auer *and* Chevron: *A Literature Review*, 16 Geo. J.L. & Pub. Pol. 103 (2018).

5. *See* Kristin E. Hickman & Aaron L. Nielson, *Narrowing Chevron's Domain*, 70 Duke L.J. 931, 1000 (2021).
6. *See Loper*, 144 S. Ct. at 2271 (stating that the Court has not deferred under *Chevron* since 2016).
7. *See Buffington,* 143 S. Ct. at 22 (Gorsuch, J., dissenting from denial of certiorari); CRS Legal Sidebar LSB11084, *Clear Statement Rules, Textualism, and the Administrative State*, by Benjamin M. Barczewski and Valerie C. Brannon (2023); CRS In Focus IF12077, *The Major Questions Doctrine*, by Kate R. Bowers (2022).
8. *See, e.g.*, *Buffington*, 143 S. Ct. at 22 (Gorsuch, J., dissenting from denial of certiorari); Pereira v. Sessions, 585 U.S. 198, 221–22 (2018) (Alito, J., dissenting).
9. *Loper*, 144 S. Ct. at 2263.
10. 5 U.S.C. § 706(2).
11. *Loper*, 144 S. Ct. at 2266.
12. *Id.* at 2257 (quoting Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803)).
13. Brief for Petitioners at 24, Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244 (2024) (No. 22-451).
14. *See* Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 843 (1984).
15. *Id.*
16. *See* United States v. Mead Corp., 533 U.S. 218, 226–27 (2001).
17. *Chevron*, 467 U.S. at 843 n.9.
18. *Id.*
19. *Id.* at 843.
20. *Id*. at 844–45, 865–66.
21. *Id*. Justice Scalia later expressed another justification for *Chevron* deference, rooted in the history of federal court review of agency action before passage of the federal question jurisdiction statute in 1875. *See* United States v. Mead Corp., 533 U.S. 218, 241–42 (2001) (Scalia, J., concurring) (asserting that the *Chevron* decision "was in accord with the origins of federal-court judicial review," because a court would issue "the prerogative writ of mandamus" only if the executive officer "was acting plainly beyond the scope of his authority.").
22. 5 U.S.C. §§ 701–706.
23. *Id*. § 706.

24. Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2261 (2024).
25. *Id.* at 2257–60.
26. *Id.* at 2257 (quoting Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803)).
27. *Id.* The Court cited another of its early 19th-century cases, *Edwards' Lessee v. Darby*, for the proposition that from the very beginning of the Republic, courts accorded contemporaneous executive branch interpretations of "doubtful and ambiguous law ... very great respect." 25 U.S. (12 Wheat.) 206, 210 (1827) ("In the construction of a doubtful and ambiguous law, the cotemporaneous [sic] construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect.")
28. *Loper*, 144 S. Ct. at 2258.
29. *Id.*
30. *Id.* at 2259.
31. 322 U.S. 111 (1944).
32. 314 U.S. 402 (1941).
33. *Loper*, 144 S. Ct. at 2259.
34. *Hearst Publications*, 322 U.S. at 129–30.
35. *Id.* at 113–14.
36. *Id.* at 130.
37. *Id.* "In making [the NLRB's] determinations as to the facts in these matters conclusive, if supported by evidence, Congress entrusted to it primarily the decision whether the evidence establishes the material facts. Hence in reviewing the Board's ultimate conclusions, it is not the court's function to substitute its own inferences of fact for the Board's, when the latter have support in the record." *Id.* (citing NLRB v. Nev. Consol. Copper Corp. 316 U.S. 105 (1942)).
38. *Gray v. Powell*, 314 U.S. 402, 412 (1941).
39. Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2260 (2024).
40. *See id.* at 2259–60.
41. *Id.* In *The* Chevron *Doctrine: Its Rise and Fall, and the Future of the Administrative State*, Professor Thomas Merrill notes that one way to read *Hearst Publications* and similar cases is that the Court engaged in deferential review where the agency was engaged in applying the law to the facts before it (e.g., is a particular entity covered by a statutory term?)—not pure legal analysis. Thomas W. Merrill, The Chevron Doctrine: Its Rise and Fall, and the Future of the Administrative State 39 (2022) [hereinafter The Chevron Doctrine]. This view aligns squarely with the majority in *Loper*. 144 S. Ct. at 2259 (calling the agency actions in *Hearst*

Publications and *Gray* "factbound"). If that is what in fact the Court was doing in *Hearst Publications* and *Gray*, then those cases do not necessarily stand for the proposition that the Court was engaged in something like a proto-*Chevron* analysis prior to the enactment of the APA. Nonetheless, Professor Merrill explains that *Hearst Publications* can also be understood to be an early instantiation of one of *Chevron*'s core assumptions—that ambiguities are implicit delegations of interpretive authority. The Chevron Doctrine 39-40.

42. *Loper*, 144 S. Ct. at 2265.
43. *Id.* at 2261.
44. *Id.* at 2265.
45. *Id.* (quoting Cass R. Sunstein, *Interpreting Statutes in the Regulatory State*, 103 Harv. L. Rev. 405, 445 (1989)).
46. *Id.* at 2267.
47. *Id.* at 2267–68.
48. *Id.* at 2266 (quoting The Federalist No. 37, at 236 (J. Madison) (J. Cooke ed. 1961).
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.*
53. *See id.* Similarly, while the Court suggested in *Chevron* itself that courts should use "traditional tools of statutory construction" at step one, it did not elaborate on what those tools are. Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 843 n.9 (1984).
54. *See infra* "The De Novo Standard of Review, Methods of Statutory Interpretation, and Statutory Ambiguity." For a longer discussion of statutory interpretation, see CRS Report R45153, *Statutory Interpretation: Theories, Tools, and Trends*, by Valerie C. Brannon (2023).
55. *Loper*, 144 S. Ct. at 2268 (quoting Kisor v. Wilkie, 588 U.S. 558, 575 (2019)).
56. *Id.* at 2266.
57. *Id.*
58. *Id.* at 2268.
59. *Id.*
60. *Id.* at 2265 (citing Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944)).
61. *Id.* at 2267 (quoting *Skidmore*, 323 U.S. at 140).
62. Kristen E. Hickman & Matthew D. Krueger, *In Search of the Modern* Skidmore

Standard, 107 Colum. L. Rev. 1235, 1245–46 (2007), (summarizing the evolution of the *Skidmore* doctrine).

63. *See Skidmore*, 323 U.S. at 140.
64. *Id.*
65. *Id.*
66. *See infra* "Skidmore Weight."
67. Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2263 (2024).
68. *Id*.
69. *Id.* at 2263 nn.5–6.
70. 29 U.S.C. § 213(a)(15) (emphasis added).
71. *See Loper*, 144 S. Ct. at 2263.
72. The Court identified another category where Congress delegates authority to an agency. The Court identified it as authority for an agency to "prescribe rules to 'fill up the details'" of a statutory scheme. *Id.* (quoting Wayman v. Southard, 23 U.S. (10 Wheat.) 1, 43 (1825)).
73. *Id.* (quoting Michigan v. EPA, 576 U.S. 743, 752 (2015)).
74. *Id.*
75. *Id.*
76. *Id.* at 2263 n.6 (citing 42 U.S.C. § 7412(n)(1)(A)) (emphasis added).
77. *Id.* at 2263 (quoting Michigan, 576 U.S. at 750). The Court's reference to "reasoned decisionmaking" may be a nod to a court's role in reviewing an agency's discretionary policy decisions, findings of fact, and exercise of its technical expertise under the APA's arbitrary and capricious standard of review. *See id.*; 5 U.S.C. § 706(2); Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co., 463 U.S. 29, 43 (1983). Under that standard, which will be discussed in more detail below, an agency must show that its decision was reasonable give the facts before it. *State Farm*, 463 U.S. at 43.
78. *Loper*, 144 S. Ct. at 2273.
79. *See* Brief for Respondents at 31, Loper Bright Enters. v. Raimondo, 143 S. Ct. 2244 (2024) (No. 22-451); Transcript of Oral Argument at 59–61, Relentless, Inc. v. Dep't of Commerce, 144 S. Ct. 2244 (2024) (No. 22-1219).
80. *See* Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844–45 (1984).
81. *See* Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs. 545 U.S. 967, 982 (2005) (holding "only a judicial precedent holding that the statute unambiguously forecloses the agency's interpretation, and therefore contains no gap for the

agency to fill, displaces a conflicting agency construction").

82. Transcript of Oral Argument at 59:8-61:7, Relentless, Inc. v. Dep't of Commerce, 144 S. Ct. 2244 (2024) (No. 22-1219).

83. *Id.*

84. *Loper*, 144 S. Ct. at 2273.

85. *See infra* "Further Litigation: Prior Chevron Cases."

86. Justice Jackson recused herself from Loper Bright Enters. v. Raimondo, 143 S. Ct. 2429 (2023), because she was on the panel that decided Loper Bright Enters. v. Raimondo, 45 F.4th 359, 363 (D.C. Cir. 2022), *cert. granted in part*, 143 S. Ct. 2429 (2023).

87. *Loper*, 144 S. Ct. at 2294 (Kagan, J., dissenting).

88. *Id.*

89. *Id.* at 2296–97.

90. *Id.* at 2297.

91. *Id.*

92. *Id.* at 2295.

93. *Id.* at 2298.

94. *Id.*

95. *Id.* at 2273 (majority opinion) (holding that *courts* are no longer permitted to apply the *Chevron* framework).

96. *Id.* at 2271–72 (citing William Eskridge & Lauren Baer, *The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations From* Chevron *to* Hamdan, 96 Geo. L.J. 1083, 1125 (2008)) ("we have avoided deferring under *Chevron* since 2016. That trend is nothing new; for decades, we have often declined to invoke *Chevron* even in those cases where it might appear to be applicable."); Isaiah McKinney, *The Chevron Ball Ended at Midnight, but the Circuits are Still Two-Stepping by Themselves*, Notice & Comment, Yale J. on Regul. Blog (Dec. 18, 2022), https://www.yalejreg.com/nc/chevron-ended/ (studying the application of the *Chevron* framework in the lower courts in 2020 and 2021).

97. *See infra* "Methods of Statutory Interpretation."

98. *See infra* "Skidmore Weight."

99. *See infra* "Delegations from Congress."

100. *See infra* "Relationship with other Doctrines of Judicial Review."

101. *Loper*, 144 S. Ct. at 2271–72.

102. See William Eskridge & Lauren Baer, *The Continuum of Deference: Supreme*

[102]. See William Eskridge & Lauren Baer, *The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations From* Chevron *to* Hamdan, 96 Geo. L.J. 1083, 1125 (2008); Thomas W. Merrill, *Judicial Deference to Executive Precedent*, 101 Yale L.J. 969, 982 (1992).

[103]. William Eskridge & Lauren Baer, *The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations From* Chevron *to* Hamdan, 96 Geo. L.J. 1083, 1125 (2008).

[104]. Thomas W. Merrill, *Judicial Deference to Executive Precedent*, 101 Yale L.J. 969, 982 (1992).

[105]. William Eskridge & Lauren Baer, *The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations From* Chevron *to* Hamdan, 96 Geo. L.J. 1083, 1099 (2008).

[106]. Thomas W. Merrill, *Judicial Deference to Executive Precedent*, 101 Yale L.J. 969, 981–84 (1992).

[107]. *Id.* at 984.

[108]. Kent Barnett & Christopher J. Walker, Chevron *in the Circuit Courts*, 116 Mich. L. Rev. 1, 18 (2017).

[109]. *Id.* at 6.

[110]. Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2272 (2024).

[111]. Isaiah McKinney, *The Chevron Ball Ended at Midnight, but the Circuits are Still Two-Stepping by Themselves*, Notice & Comment, Yale J. on Regul. Blog (Dec. 18, 2022), https://www.yalejreg.com/nc/chevron-ended; *De novo*, Black's Law Dictionary (12th ed. 2024) ("When a court engages in de novo review of a legal issue, it makes an independent determination without deference to any earlier analysis about the matter.").

[112]. *Loper*, 144 S. Ct. at 2266.

[113]. Kristen E. Hickman & Aaron L. Nielson. *Narrowing* Chevron*'s Domain*, 70 Duke L.J. 931, 934 (2021) (noting "At a minimum, the Justices seem more willing to find clarity using traditional tools of statutory interpretation, thereby avoiding Chevron deference altogether."); *see, e.g.*, Becerra v. Empire Health Foundation, 597 U.S. 424, 434 (2022) (resolving the case without mentioning *Chevron*); Am. Hosp. Ass'n v. Becerra, 596 U.S. 724, 734 (2022) (same); Epic Sys. Corp. v. Lewis, 584 U.S. 497, 520–21 (2018) (holding that where a statute is clear after application of tools of statutory construction *Chevron* does not apply).

[114]. *See, e.g.*, Soumah v. Collett, No. TDC-23-2473, 2024 WL 3201096, at *7 (D. Md. Jun. 26, 2024); Associated Gen. Contractors of Am. v. DOL, No. 5:23-CV-0272-C, 2024 WL 3635540, at *11 (N.D. Tex. Jun. 24, 2024).

[115]. Ronald A. Cass, *Chevron—Complicated, Start to Finish*, 23 Federalist Soc'y Rev.

265, 265 (2022); Christopher J. Walker, *Most Cited Supreme Court Administrative Law Decisions*, Notice & Comment, Yale J. on Regul. Blog (Oct. 9, 2014), https://www.yalejreg.com/nc/most-cited-supreme-court-administrative-law-decisions-by-chris-walker/.

116. Barnett & Walker, *supra* note 108, at 5.

117. McKinney, *supra* note 111.

118. *Id.*

119. *Id.*; Barnett & Walker, *supra* note 108, at 29.

120. Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2265 (citing Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944)).

121. *Id.*

122. *See* Pierce v. Underwood, 487 U.S. 552, 558 (1988) (noting that questions of law are traditionally reviewable *de novo*).

123. *Loper*, 144 S. Ct. at 2266.

124. Barnett & Walker, *supra* note 108, at 30. These aggregate averages disguise significant variation in outcomes across different federal circuit courts of appeals, different agencies, and different subject matters. For example, the D.C. Circuit led the way in applying *Chevron*, relying on it in approximately 89% of cases that concerned agency interpretations of a statute, while the Sixth Circuit applied *Chevron* in 61% of cases involving agency interpretation. *Id.* at 44. Courts of appeals applied *Chevron* at high rates (75%-100%) to cases involving telecommunications, Indian affairs, and pensions, and courts deferred to agencies under *Chevron* at similar rates (83%-92%) in those same subject matter areas. *Id.* at 50, 54. Conversely, courts applied *Chevron* less frequently (52%-67%) in cases involving housing, tax law, and employment. *Id.* at 50. Furthermore, even when the courts applied *Chevron* in this latter group of cases, win rates for agencies were comparatively low (69%-81%). *Id.* at 54. Somewhat surprisingly, some agencies, such as the Federal Trade Commission, had a *higher* litigation success rate when courts did not apply *Chevron*. *Id.* at 54. Overruling *Chevron* will likely have differing effects within different circuits and across different agencies.

125. *See generally* Robert Lafolla, *GOP-Picked Judges Take Hard Line on Regulations Post*-Chevron, Bloomberg Law (Sep. 4, 2024), https://news.bloomberglaw.com/daily-labor-report/gop-picked-judges-take-hard-line-on-rules-after-chevrons-demise (finding that out of 26 cases decided after *Loper* agencies won only 4).

126. Barnett & Walker, *supra* note 108, at 32.

127. For a more detailed discussion, see *infra* "Implications for Executive Branch Agencies."

128. Christopher J. Walker, Chevron *Inside the Regulatory State: An Empirical Assessment*, 83 Fordham L. Rev. 703, 724 (2014).

129. Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2265 (citing Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944)).

130. *Id.* at 2263.

131. *Id.* at 2259, 2263.

132. *See infra* "Policy Discretion, Mixed Questions of Law and Fact, and Arbitrary and Capricious Review"; "Skidmore Weight"; "Delegations from Congress."

133. *See* Barnett & Walker, *supra* note 108, at 71; Thomas W. Merrill, *Response: Chevron's Ghost Rides Again*, 103 B.U. L. Rev. 1717, 1738 (2023); Gary Lawson, *The Ghosts of Chevron Present and Future*, 103 B.U. L. Rev. 1647, 1709 (2023).

134. *See* Lisa Schultz Bressman, *Lower Courts After* Loper Bright, 31 Geo. Mason L. Rev. 499, 504 (2024) (arguing "deference (of the controlling variety) is unlikely to disappear after *Loper Bright*").

135. *See infra* "Skidmore Weight"; "Delegations from Congress."

136. *See, e.g.*, Cynthia R. Farina, *Statutory Interpretation and the Balance of Power in*