Loper Bright Enterprises v. Raimondo and the end of *Chevron* Deference: Assessing *Loper Bright*'s Impact One Year Later

BAFFC Appellate Advocacy Seminar
October 7, 2025

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.

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.

When a challenge to an agency construction of a statutory provision, fairly conceptualized, really centers on the wisdom of the agency's policy, rather than whether it is a reasonable choice within a gap left open by Congress, the challenge must fail. In such a case, federal judges—who have no constituency—have a duty to respect legitimate policy choices made by those who do. The responsibilities for assessing the wisdom of such policy choices and resolving the struggle between competing views of the public interest are not judicial ones: "Our Constitution vests such responsibilities in the political branches." *TVA v. Hill*, 437 U.S. 153, 195, 98 S.Ct. 2279, 2302, 57 L.Ed.2d 117 (1978).

CHEVRON U. S. A. INC. *v.* NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.

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

No. 82–1005. Argued February 29, 1984—Decided June 25, 1984*

The Clean Air Act Amendments of 1977 impose certain requirements on States that have not achieved the national air quality standards established by the Environmental Protection Agency (EPA) pursuant to earlier legislation, including the requirement that such "nonattainment" States establish a permit program regulating "new or modified major stationary sources" of air pollution. Generally, a permit may not be issued for such sources unless stringent conditions are met. EPA regulations promulgated in 1981 to implement the permit requirement allow a State to adopt a plantwide definition of the term "stationary source," under which an existing plant that contains several pollution-emitting devices may install or modify one piece of equipment without meeting the permit conditions if the alteration will not increase the total emissions from the plant, thus allowing a State to treat all of the pollution-emitting devices within the same industrial grouping as though they were encased within a single "bubble." Respondents filed a petition for review in the Court of Appeals, which set aside the regulations embodying the "bubble concept" as contrary to law. Although recognizing that the amended Clean Air Act does not explicitly define what Congress envisioned as a "stationary source" to which the permit program should apply, and that the issue was not squarely addressed in the legislative history, the court concluded that, in view of the purpose of the nonattainment program to improve rather than merely maintain air quality, a plantwide definition was "inappropriate," while stating it was mandatory in programs designed to maintain existing air quality.

Held: The EPA's plantwide definition is a permissible construction of the statutory term "stationary source." Pp. 842–866.

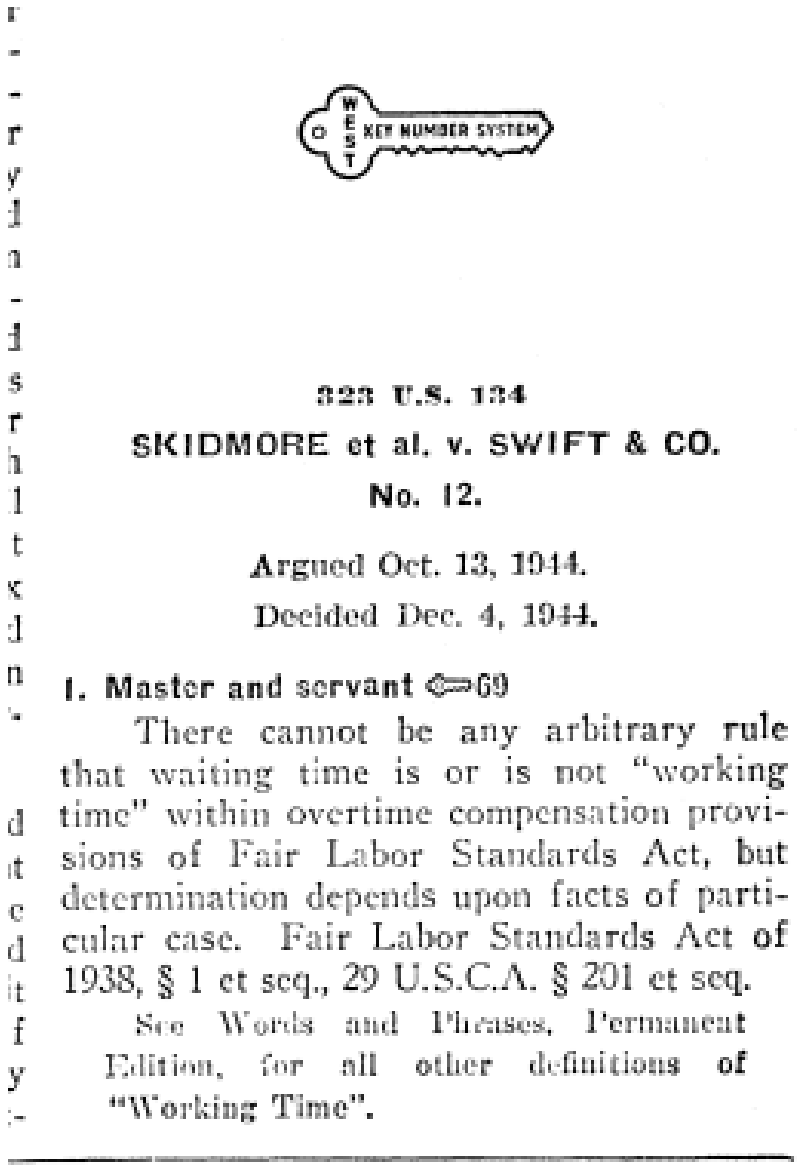
(a) With regard to judicial review of an agency's construction of the statute which it administers, if Congress has not directly spoken to the precise question at issue, the question for the court is whether the

*Together with No. 82–1247, *American Iron & Steel Institute et al.* v. *Natural Resources Defense Council, Inc., et al.*; and No. 82–1591, *Ruckelshaus, Administrator, Environmental Protection Agency* v. *Natural Resources Defense Council, Inc., et al.*, also on certiorari to the same court.

A Brief History of Agency Review: *Chevron* (1984) to *Loper Bright* (2024)

Before *Chevron* – *Skidmore* "Respect"

- *Skidmore v. Swift & Co.* (1944)
- Agency interpretations not binding, but entitled to "respect" by courts
- "[T]he rulings, interpretations and opinions of [the 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."



323 U.S. 134

SKIDMORE et al. v. SWIFT & CO.

No. 12.

Argued Oct. 13, 1944.

Decided Dec. 4, 1944.

1. Master and servant ⇐69

There cannot be any arbitrary rule that waiting time is or is not "working time" within overtime compensation provisions of Fair Labor Standards Act, but determination depends upon facts of particular case. Fair Labor Standards Act of 1938, § 1 et seq., 29 U.S.C.A. § 201 et seq.

See Words and Phrases, Permanent Edition, for all other definitions of "Working Time".

The Era of *Chevron* Deference (1984-2024)

- Supreme Court Interpretive Rule
- Federal agencies fill statutory gaps
  - Agencies are experts in the field of statutory schemes they administer
  - Courts defer to agency expertise
- *Chevron*'s two-step process
  - Applying traditional rules of statutory interpretation: Did Congress speak directly to the issue – clear answer or ambiguity?
  - If ambiguous, defer to permissible agency interpretation (gap-filling)

The Burger Court (1981-1986)

Highlights from the *Chevron* Era

Significant influence on Congress, Courts, and Executive Agencies

Foundational framework for admin law (cited 18,000+ times by federal courts

Applied across all areas of admin law (labor, tax, natural resources, etc.)

Administrable rule for lower courts facing rising volume of agency interpretations

Congress aware of rule, continued to legislate against *Chevron*'s backdrop

Mounting Criticisms of *Chevron* Deference

Congress avoiding "hard questions"

Growth of administrative state – Executive filling too many gaps

Agency "flip-flopping" and the *Brand X* Problem – "agency inconsistency" not a basis for refusing to apply *Chevron*

Article III Problem – courts deferring to executive branch interpretations

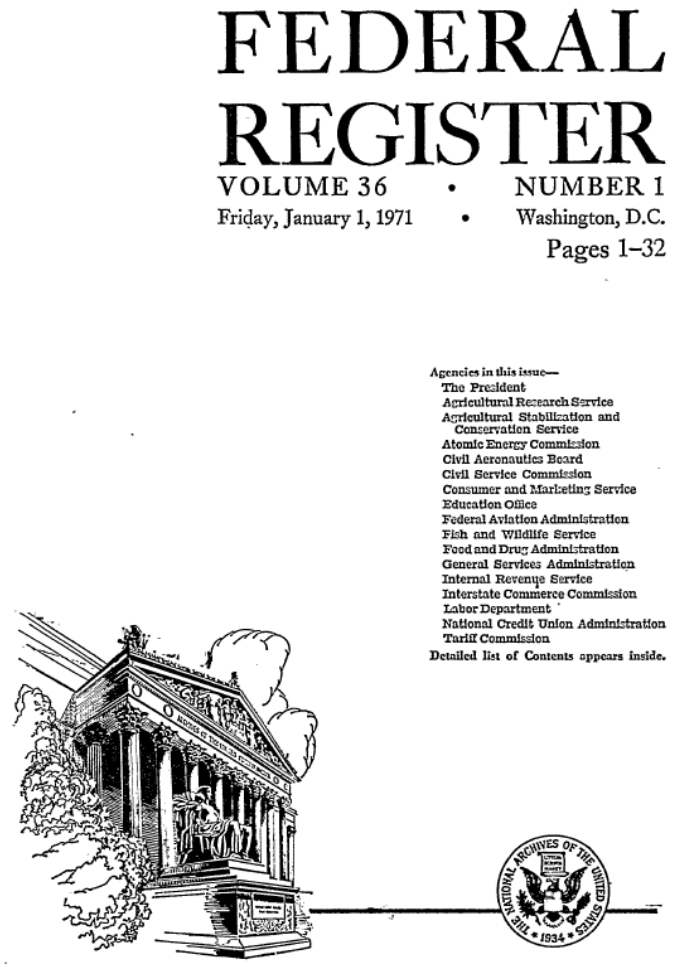
The End of *Chevron* Deference; the *Loper Bright* Era Begins (2024)

- Majority Opinion (Roberts, C.J.)
- Judiciary interprets the law (statutes)
  - Art. III, Federalists Papers, *Marbury v. Madison* (1803)
  - Courts may give "due respect" to agency interpretations – never deference
  - APA codifies this "check" on agency power
- *Loper Bright's* New (or Old) Rule
  - Courts' duty is to exercise "independent judgment" when interpreting statutes
  - May "seek aid" from implementing agency, citing *Skidmore*

The Roberts Court (2022-present)

The APA's Structure: How Challenges to Agency Rules & Decisions Arrive in Court

- APA prescribes procedures for agency rulemaking and adjudications, 5 U.S.C. §§ 551-559, and establishes standards for judicial review of agency actions, 5 U.S.C. § 706
- APA rulemaking process
  - Informal rulemaking ("notice and comment")
  - Formal rulemaking
  - Congress may impose specific rulemaking procedures on agencies under some statutory schemes
- APA adjudication process
  - Formal adjudication as provided by APA
  - Informal adjudication in certain instances, governed by specific statute or Constitutional due process



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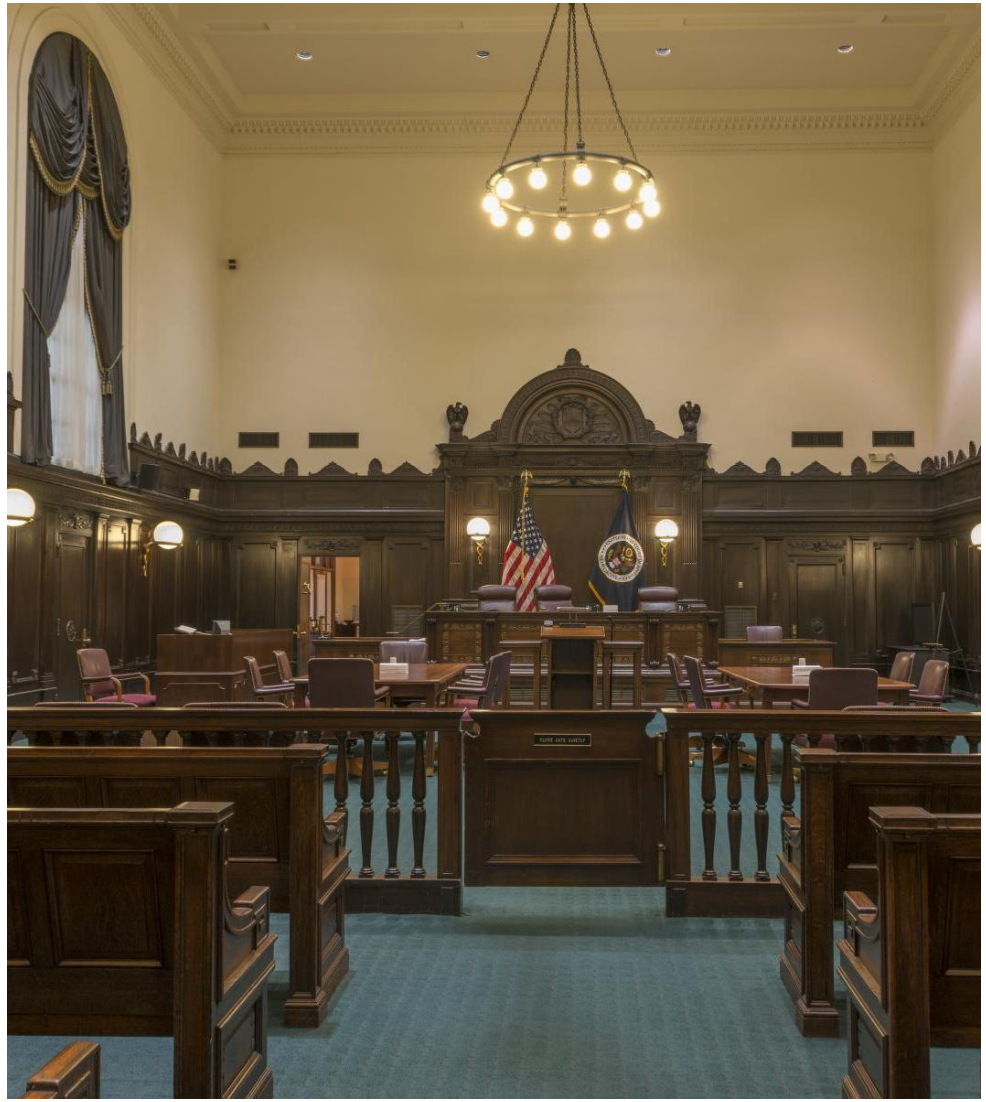
Agencies in this issue—

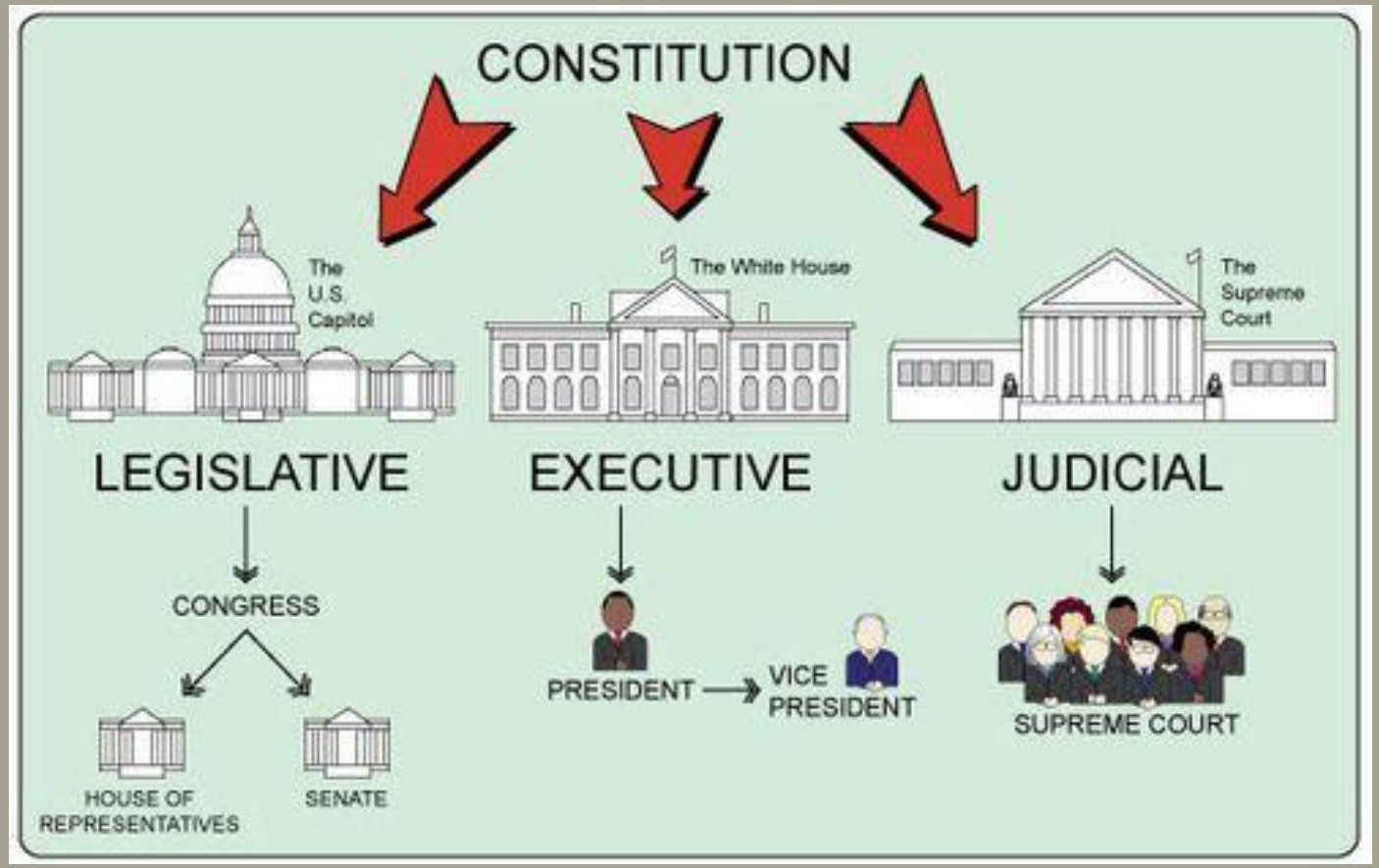
The President
Agricultural Research Service
Agricultural Stabilization and Conservation Service
Atomic Energy Commission
Civil Aeronautics Board
Civil Service Commission
Consumer and Marketing Service
Education Office
Federal Aviation Administration
Fish and Wildlife Service
Food and Drug Administration
General Services Administration
Internal Revenue Service
Interstate Commerce Commission
Labor Department
National Credit Union Administration
Tariff Commission

Detailed list of Contents appears inside.

The APA's Structure: How Challenges to Agency Rules & Decisions Arrive in Court

- APA provides for two types of judicial review
- Courts review some issues de novo
  - whether agency action, findings, and conclusions are unconstitutional or exceed the agency's statutory authority or limitations
  - whether agency action was undertaken without observing required procedure
- Courts apply an "arbitrary, capricious, or abuse of discretion" standard when reviewing the merits of agency actions, findings, and conclusions
- Courts apply a "substantial evidence" standard to merits of agency actions, findings, and conclusions arrived at through a formal process

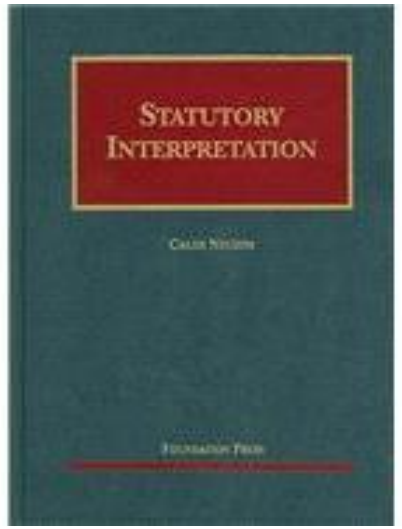


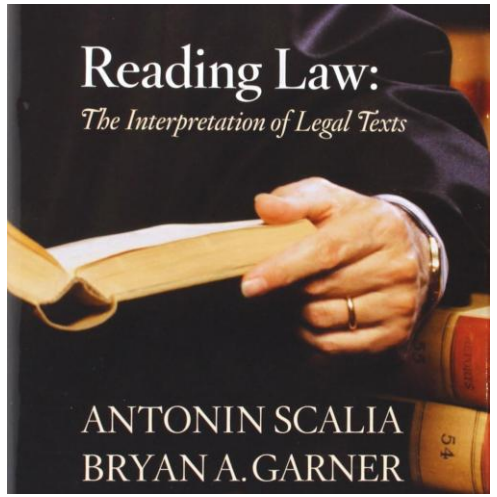


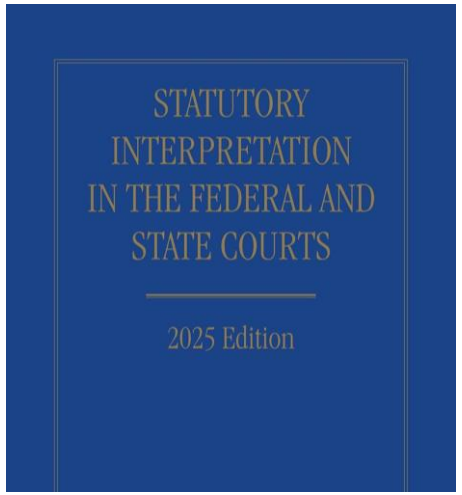
Taking Stock of *Loper Bright*: One Year Later and the New Era of Administrative Law Ahead

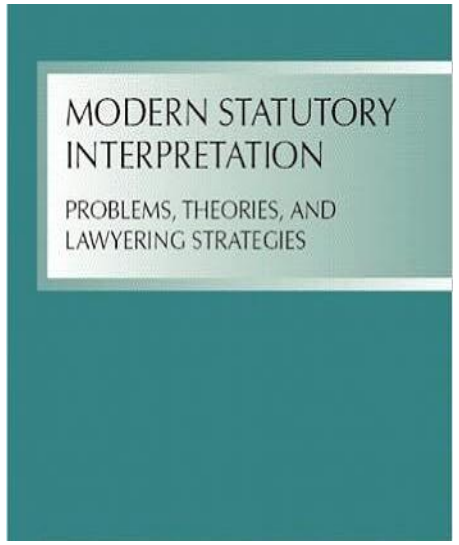
"Traditional Tools of Statutory Construction"

- *Loper Bright* directs federal courts to use "traditional tools of statutory construction" to resolve ambiguities
- What are those "tools" in challenges to agency rules and decisions
- Text, structure, context, history, purpose
- Interpretive canons, presumptions, respected views
- Countless examples—including *Loper Bright* itself









Applying *Skidmore* in the post-*Loper Bright* Era: What "respect" is due?

Loper Bright ends *Chevron* Deference but endorses continued application of *Skidmore* Respect.

How have federal courts applied *Skidmore* "respect" since *Loper Bright*?

Is there much difference, in practical application, between respect and deference?

Will a spectrum of respect/deference develop?

Which rules are most likely to receive deference – e.g., expertise in complex regulatory schemes versus ad hoc implementations or more basic statutes.

Supreme Court Applications *Loper Bright*

- *Bondi v. Vanderstok*, 145 S. Ct. 857 (2025)
  - Challenge to ATF rule interpreting Gun Control Act to cover "weapons parts kits" ("ghost guns")
  - Emphasizes "contemporary and consistent views" of executive branch interpretations of Gun Control Act
- *McLaughlin Chiropractic Assoc. v. McKesson Corp.*, 145 S. Ct. 2006 (2025)
  - Holds that *Loper Bright* applies in judicial review enforcement proceedings under APA § 703
  - Federal courts not bound by agency's interpretation unless Congress expressly prohibits review
  - *Loper Bright* is "default rule" in all challenges to agency interpretations of statutes absent contrary Congressional mandate

Recent Fifth Circuit Applications *Loper Bright*

- *United Natural Foods, Inc. v. NLRB*, 138 F.4th 937 (5th Cir. 2025)
  - On remand from Supreme Court, applying *Loper Bright* to review NLRB General Counsel's authority to withdraw complaint
- *Texas v. EPA*, 137 F.4th 353 (5th Cir. 2025)
  - Challenge to EPA's "nonattainment" designation of two Texas counties under the National Ambient Air Quality Standards ("NAAQS")
  - "To be clear, discarding *Chevron* deference does not mean ignoring agency interpretations."
  - Note Elrod, C.J., concurrence

The *Chevron* Framework and *Stare Decisis*

- Thousands of cases decided – agency rules and decisions upheld – under *Chevron*'s framework
  - Entitled to *stare decisis* effect; remain binding
  - Not absolutely safe
- Article III concerns (Thomas, Gorsuch concurrences)
- Agency flip-flopping and "unexplained inconsistency"
- *Corner Post, Inc. v. Bd. of Governors of the FRB*
  - APA claim does not accrue under 6-year statute of limitations until the plaintiff is injured by final agency action – longer horizon for challenges

> 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,*

Assessing *Loper Bright*'s Impact on the Coordinate Branches

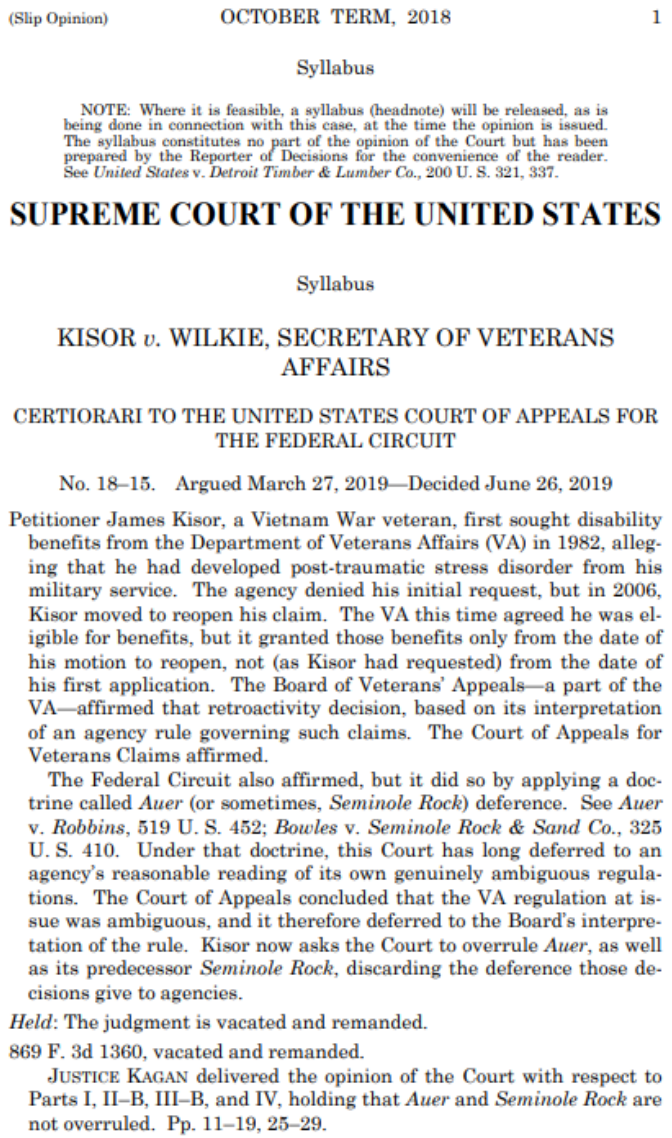
- Executive Branch
  - Agency Rulemaking
  - Agency Adjudications
  - Contemporaneous and consistent interpretations
- Congress
  - Legislation drafting
  - Express delegations
  - Relations with the Executive
  - Potential amendments to APA

Loper Bright and other Supreme Court Doctrines

- How will the Supreme Court's other administrative law doctrines fare in the *Loper Bright* era?
  - The Major Questions Doctrine
  - The Non-Delegation (or "Intelligible Principle") Doctrine
  - The Independent Agencies Doctrine (*Humphrey's Executor*)
    - Cert Grant in *Trump v. Slaughter* (Sept. 22, 2025) - removal of FTC Commissioner

The Future of *Kisor/Auer* Deference

- *Kisor v. Wilkie* (2018) – retained rule of deference to agency's reasonable reading of its own ambiguous regulations
- Will *Kisor* deference withstand a subsequent challenge after *Loper Bright*?



(Slip Opinion) OCTOBER TERM, 2018 1

Syllabus

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

Syllabus

KISOR *v.* WILKIE, SECRETARY OF VETERANS AFFAIRS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 18–15. Argued March 27, 2019—Decided June 26, 2019

Petitioner James Kisor, a Vietnam War veteran, first sought disability benefits from the Department of Veterans Affairs (VA) in 1982, alleging that he had developed post-traumatic stress disorder from his military service. The agency denied his initial request, but in 2006, Kisor moved to reopen his claim. The VA this time agreed he was eligible for benefits, but it granted those benefits only from the date of his motion to reopen, not (as Kisor had requested) from the date of his first application. The Board of Veterans' Appeals—a part of the VA—affirmed that retroactivity decision, based on its interpretation of an agency rule governing such claims. The Court of Appeals for Veterans Claims affirmed.

The Federal Circuit also affirmed, but it did so by applying a doctrine called *Auer* (or sometimes, *Seminole Rock*) deference. See *Auer* v. *Robbins*, 519 U. S. 452; *Bowles* v. *Seminole Rock & Sand Co.*, 325 U. S. 410. Under that doctrine, this Court has long deferred to an agency's reasonable reading of its own genuinely ambiguous regulations. The Court of Appeals concluded that the VA regulation at issue was ambiguous, and it therefore deferred to the Board's interpretation of the rule. Kisor now asks the Court to overrule *Auer*, as well as its predecessor *Seminole Rock*, discarding the deference those decisions give to agencies.

Held: The judgment is vacated and remanded.

869 F. 3d 1360, vacated and remanded.

JUSTICE KAGAN delivered the opinion of the Court with respect to Parts I, II–B, III–B, and IV, holding that *Auer* and *Seminole Rock* are not overruled. Pp. 11–19, 25–29.

Questions & Answers?