***Chevron* Overruled:**
***Loper Bright v. Raimondo* and the Changing Federal Regulatory Landscape**

In June 2024, the Supreme Court issued a landmark administrative law decision in two consolidated cases, *Loper Bright Enterprises v. Raimondo* and *Relentless, Inc v. Department of Commerce*, 603 U.S. 369 *("Loper Bright")*. That ruling made headlines with three words: "*Chevron* is overruled."[1]

A 6-3 majority of the Supreme Court rejected the deference doctrine that the Court had unanimously established in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)—which had provided the framework for judicial review of federal agencies' formal interpretations of statutes for four decades.

Under *Chevron*, a reviewing court was required to defer to a federal agency's reasonable interpretation of ambiguity in a statute administrated by the agency—a standard that led lower federal courts to rule in favor of the government in the majority of challenges to agency rules and regulations.

In *Loper Bright*, the Court abolished such deference, holding that the Administrative Procedure Act instead requires courts to "exercise independent judgment in determining the meaning of statutory provisions," even ambiguous ones.[2]

The ruling carries implications for all three branches of government and all those subject to federal regulations—which is to say, nearly everyone in the United States. As we discuss below, the decision:

- Charges ***courts*** with supplying the definitive interpretation of all ambiguous statutory provisions, even those implicating highly technical or scientific subjects;
- Limits ***executive agencies'*** ability to fill gaps in the laws or to address situations not expressly anticipated by Congress,
- Focuses attention on whether ***Congress*** has legislated with specificity or has expressly delegated interpretative authority.

It remains too early to draw conclusions about the long-term implications of *Loper Bright* for the regulatory landscape, including Executive agency actions and the balance of power among the three branches of the federal government. Court rulings over the last year have been mixed but provide some support for the view that *Loper Bright* may help to level the playing field in private party litigation against the government, increasing the likelihood of success of those challenging agency interpretations.

I. BACKGROUND AND CONTEXT

The *Chevron* deference doctrine was articulated by Justice Stevens in *Chevron USA, Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984), a case involving a challenge to EPA regulations interpreting a term in the federal Clean Air Act. The Supreme Court decision set out a two-step test for courts reviewing an agency's construction of a statute the agency administered.

- **At step one**, the court asked, "whether Congress has directly spoken to the precise question at issue."[3] If the meaning of the statute is "unambiguously expressed," then "that is the end of the matter" because the agency and court must adhere to that congressional direction.[4]

[1] Loper Bright, 603 U.S. 369, 412 (2024).
[2] *Id.* at 394.
[3] *Id*. at 842.
[4] *Id*. at 842-43.

- **At step two**, "if the statute is silent or ambiguous with respect to the specific issue," the court then asked, "whether the agency's answer is based on a permissible construction of the statute."[5]

It is the second step that became known as "*Chevron* deference," as it called for courts to resist "simply impos[ing] their own construction of the statute" and instead to defer to an agency's reasonable construction of a statute when the statute failed to clearly express Congress's intent.[6]

Over the last 40 years, *Chevron* deference became a bedrock doctrine of administrative law, with federal district courts and appellate courts applying the test in tens of thousands of cases. Application of the test strongly favored agency interpretations. Studies have estimated that the agency prevailed in more than three-quarters of such cases decided by federal courts of appeals and that proportion may have been higher in federal district courts.

As a result, under *Chevron*, executive branch agencies have played a central (and seemingly ever-expanding) role in interpreting federal regulatory statutes, which sometimes purposefully leave gaps for agencies to fill or simply do not anticipate issues that may arise in their implementation and enforcement.

Whether vesting such judgments and power in federal agencies is appropriate as a matter of law, policy, political accountability, or practicality has been a matter of continuing debate. In the last decade, there have been increasing calls to limit or overrule the *Chevron* standard in favor of more stringent judicial review.

In *Loper Bright Enterprises v. Raimondo* and *Relentless, Inc v. Department of Commerce*, the circuit courts applied the *Chevron* methodology to uphold a somewhat obscure National Marine Fisheries Service ("NMFS") regulation. The rule at issue requires fishing vessel owners, in certain circumstances, to pay for an onboard observer to monitor compliance with federal fisheries regulations. In the lead case, *Loper Bright*, the D.C. Circuit found the underlying statute, the Magnuson-Stevens Act, silent on the question of whether vessel owners could be required to pay for a monitor. The court proceeded to *Chevron* step two where it deferred to the agency's interpretation, which it found to be reasonable.

When the Supreme Court agreed to hear the consolidated cases, the Court's framing of the "question presented" gave notice that it would look beyond the fishing vessel rules to decide the fate of the longstanding *Chevron* doctrine. The Court agreed to consider "[w]hether the Court should overrule *Chevron* or at least clarify that statutory silence concerning controversial powers expressly but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency."[7]

II. THE SUPREME COURT'S *LOPER BRIGHT* DECISION

The Supreme Court's ruling in *Loper Bright* resolved the question presented in no uncertain terms: "*Chevron* is overruled."[8]

Chief Justice Roberts, writing for the majority, found that the Administrative Procedure Act ("APA") requires that result when it commands that courts decide "all relevant questions of law" when reviewing an agency action.[9]

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[5] *Id*. at 843.
[6] *Id*.
[7] *Loper Bright* Cert. Petition, No. 22-451 (Question 2); *see* U.S. Sup. Ct., Order of May 1, 2023 (granting certiorari as to Question 2).
[8] 603 U.S. at 412.
[9] *Id*. at 391 (quoting 5 U.S.C. § 706).

According to the Court, there is a "best reading" of each statute, and it is the "one the court, after applying all relevant interpretative tools, concludes is best."[10] The one exception is when "a particular statute delegates authority to an agency consistent with constitutional limits," but even then "courts must respect the delegation, while ensuring that the agency acts within it."[11]

The Court concluded that *Chevron* deference was an erroneous judicial invention that should not be protected by *stare decisis.*[12] The Court suggested, however, that its overruling of *Chevron* deference did not apply retrospectively. That is, cases that held that "specific agency actions are lawful" based on *Chevron* remain good law entitled to statutory *stare decisis* "despite [the Court's] change in interpretive methodology."[13]

While the majority opinion is grounded in the statutory requirements imposed on courts by the APA, a concurring opinion by Justice Thomas asserted that the same result is also constitutionally required based on separation-of-powers principles. In a separate concurrence, Justice Gorsuch wrote that the ruling reflects "the proper application of the doctrine of *stare decisis*," "return[ing] judges to interpretative rules that have guided federal courts since the Nation's founding."[14]

Dissenting, Justice Kagan (joined by Justice Sotomayor and Justice Jackson) observed that regulatory laws often contain ambiguities and gaps, and that agencies are more likely than courts to have the subject-matter expertise necessary to determine how to read those statutes. The dissent expressed deep concern that the ruling gives the judiciary "exclusive power over every open issue—no matter how expertise-driven or policy-laden—involving the meaning of regulatory law."[15]

III. IMPLICATIONS FOR THE REGULATORY LANDSCAPE, INCLUDING COURT CHALLENGES

- *Loper Bright* carries consequences for all three branches of the federal government. Perhaps most clearly, the decision shifts power and responsibility for interpreting ambiguous federal regulatory statutes from the executive to the judicial branch. But, as we discuss below, it is unclear how lower ***courts*** will implement the decision. The *Skidmore* factors may provide an avenue for some courts to continue to look to agencies for guidance as they determine "what the law is,"[16] especially when dealing with highly specialized areas of law.

- In a post-*Chevron* environment, **executive agencies** may be more circumspect in adopting regulations, filling legislative gaps, and taking regulatory actions to address situations and developments that Congress did not anticipate or address.[17]

- *Loper Bright* arguably calls for greater clarity and specificity from **Congress** in the statutes it enacts. This is likely to be a tall order for Congress as it is presently constituted and resourced—and may create heightened demand for input from outside experts. In some instances, the ruling

[10] *Id*. at 400.
[11] *Id*. at 413.
[12] *Id*. at 407.
[13] *Id*. at 412.
[14] *Id*. at 417 (Gorsuch, J., concurring).
[15] *Id*. at 450 (Kagan, J., dissenting).
[16] *Marbury v. Madison*, 1 Cranch 137, 177 (1803).
[17] On April 9, 2025, the President issued an Executive Order directing agencies to rescind regulations that do not comply with *Loper Bright*.

may impel clearer congressional directions to federal agencies regarding how statutes are to be implemented. At a minimum, the ruling may prompt more explicit delegations of interpretive authority to agencies with subject-matter expertise when Congress wants to empower agencies to address particular matters, including gaps in the laws.

Next, we take a closer look at federal **judicial review** post-*Chevron*, and what, to date, *Loper Bright* appears to mean for regulated entities.

Improved chances for those challenging federal agency interpretations?

Since the *Loper Bright* decision, a common view among practitioners is that the overruling of *Chevron* creates enhanced opportunities for those seeking to challenge regulations they believe are unreasonable, unsound, or inconsistent with congressional direction or intent. Regulatory statutes are frequently silent or unclear on issues critical to implementation and enforcement. In those cases, absent interpretive authority clearly and lawfully delegated to the agency, challengers no longer have to overcome automatic deference to any reasonable agency interpretations. Rather, under *Loper Bright*, their task is simply to persuade the reviewing court that the agency did not apply the best interpretation of the underlying statute.

How will federal courts determine the "best" interpretation of statutes?

Statutory ambiguity, gaps, and unanticipated developments are inevitable. But how will courts resolve questions about the "best' interpretation of a federal statute?

Loper Bright makes clear the power and responsibility for determining the best interpretation is the province of the courts, who should use "all relevant interpretive tools"—including "traditional tools of statutory construction" —at their disposal.[18] Rejecting *Chevron*'s precept that there could be permissible agency interpretations that are not what the court would have reached, the majority concluded "[i]n the business of statutory interpretation, if it is not the best, it is not permissible."[19]

Loper Bright thus forecloses the automatic deference afforded to agencies that was commonplace under step two of the *Chevron* analysis. It does not, however, preclude reviewing courts from considering the persuasive power of an agency's views when determining the "best reading" of a statute.

The majority opinion cites *Skidmore v. Swift*, 323 U.S. 134 (1944), approvingly. Under *Skidmore* (which pre-dates the enactment of the APA), courts give no presumptive weight to agency interpretations but consider the agency's "power to persuade." Factors a court may consider in determining the persuasiveness of an agency's interpretation include the thoroughness of the agency's consideration, the validity of its reasoning, and its consistency with earlier and later pronouncements.

This multi-factor analysis has long been the approach federal courts have taken to reviewing informal, non-binding interpretations issued by agencies. The question after *Loper Bright* is whether, and to what extent, lower courts will extend the *Skidmore* analysis to formal agency regulations. The application of *Skidmore* may allow courts to recognize, where appropriate, the persuasive power of an agency's expertise and experience.

Early results are mixed but confirm the importance of *Loper Bright*.

Since the Supreme Court's decision at the end of June 2024, federal district courts and courts of appeals have heard and decided a number of challenges to federal agency regulations and other actions.

[18] *Id*. at 400-01.
[19] *Id*. at 400.

The rulings consistently acknowledge the interpretive responsibility of the courts confirmed by *Loper Bright* but their approaches to discharging that responsibility have varied. Immediately following *Loper Bright*, we observed a flurry of rulings against the federal government—many coming out of courts in the Fifth, Sixth, and Eleventh Circuits.[20] For example, district courts in Texas and Florida quickly enjoined enforcement of a Federal Trade Commission ("FTC") rule banning noncompete provisions in employment agreements.[21] Not all decisions have disfavored the government. A Ninth Circuit panel, for example, drew attention when it afforded *Skidmore* "respect" to an agency interpretation of an immigration statute.[22]

There have been several significant cases where *Loper Bright* appears to have played a dispositive role. The Fifth Circuit struck down the Department of Labor's "tip credit" rule for determining whether an employer may pay a tipped employee less than the otherwise applicable federal minimum wage. That court reversed a district court decision issued under what the appellate court called the "now-*ancien régime* that *Chevron* imposed."[23] The decision acknowledged that the challenged rule had existed in similar form for decades but held that the elimination of *Chevron* deference compelled vacatur of the rule in light of the text of the Fair Labor Standards Act.[24]

Another prominent post-*Loper Bright* decision may signal the end of the long-running Federal Communications Commission ("FCC") policy dispute regarding the agency's authority to require "net neutrality" (*i.e.*, to impose rules precluding internet services providers from treating data differently based on its source, such as varying service speed or site access). FCC policy on the subject has oscillated with successive presidential administrations for nearly two decades, each subject to court challenges. Applying *Chevron* deference, the D.C. Circuit twice had upheld prior (opposing) versions of the challenged FCC regulations.[25] In January 2025, the Sixth Circuit held that broadband services are not "telecommunications services" within the meaning of the federal Communications Act of 1934, and therefore the FCC lacks authority to regulate those services.[26] The Court noted that prior D.C. Circuit decisions had applied *Chevron* deference, and absent that overruled standard of review the FCC net neutrality rule could not be sustained.[27]

Loper Bright is unlikely to put a judicial end to all agency flip-flopping. Courts' differing application of *Loper Bright*'s statement that *Chevron*-era decisions upholding "specific agency action" are entitled to statutory *stare decisis*, has resulted in differing degrees of leeway for changes in agency positions.[28] *Ohio Telecom Ass'n* also suggests that *Loper Bright*'s admonition regarding statutory *stare decisis* will not prevent lower courts from overruling prior decisions that were grounded in *Chevron* deference.

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[20] *See, e.g.*, R. Iafolla, *GOP-Picked Judges Take Hard Line on Regulations Post*-Chevron, Bloomberg Law, https://news.bloomberglaw.com/daily-labor-report/gop-picked-judges-take-hard-line-on-rules-after-chevrons-demise (Sept. 4, 2024).
[21] Appeals of those decisions are pending before the Fifth and Eleventh Circuits. In March 2025, the government asked those courts to stay their review while the FTC evaluates whether it will continue to defend the regulation.
[22] *Lopez v. Garland*, 116 F.4th 1032 (9th Cir. 2024).
[23] *Restaurant Law Ctr. v. Dep't of Labor*, 120 F.4th 163, 170-71 (5th Cir. 2024).
[24] *Id*. at 174.
[25] *Compare Mozilla Corp. v. Federal Communications Commission*, 940 F.3d 1 (D.C. Cir. 2019) (upholding, in relevant part, the FCC's repeal of net neutrality rules) *with U.S. Telecom Association v. Fed. Comm. Comm'n*, 825 F.3d 674 (D.C. Cir. 2016) (upholding FCC order imposing net neutrality rules).
[26] *Ohio Telecom Ass'n v. FCC*, 124 F.4th 993 (6th Cir. 2025).
[27] *Id.* at 997, 999-1000, 1009.
[28] *See, e.g.*, A. Baum, Blog Essay, *How Much of the Regulatory State Is Safe Post*-Loper Bright*?*, Harvard L. Rev. (Dec. 20, 2024), https://harvardlawreview.org/blog/2024/12/how-much-of-the-regulatory-state-is-safe-post-loper-bright/ (discussing case studies).

Loper-Bright itself is pending on remand before the D.C. Circuit. The government had argued from the outset that the NMFS regulation was a lawful implementation of the agency's *clear* statutory charge (a step one argument under *Chevron*) and, on this basis, maintains on remand that the regulation should survive judicial scrutiny under *Loper Bright*. At oral argument in November 2024, the D.C. Circuit had tough questions for both sides—reflecting the difficulty of discerning the "best reading" of the statute. Indeed, for this reason, we expect that lower courts may reach differing or inconsistent conclusions about the "best reading" of many statutes.[29]

Application of the major questions and non-delegation doctrines

Loper Bright acknowledges that a statute may contain an express delegation of authority to an agency to interpret and implement particular provisions. According to the ruling, courts should defer to such delegations, provided that the agency is properly acting within the scope of its lawful delegation.

Both the major questions doctrine and the non-delegation doctrine limit the scope of delegations, which is likely to figure prominently in future litigation.

The major questions doctrine prevents agencies from undertaking regulation with "vast economic and political significance" unless Congress has in clear terms expressly delegated that power to the agency. *See, e.g., West Virginia v. EPA*, 597 U.S. 697 (2022).

The non-delegation doctrine enforces the constitutional separation of powers between the legislative and executive branches by imposing limits on what lawmaking powers Congress may delegate to administrative agencies (current precedent requires Congress to provide agencies with an "intelligible principle" upon which to base regulations). The doctrine has rarely been applied by federal courts in the last several decades, but may be a basis, going forward, by which courts seek to limit excessive delegation of legislative power to executive branch agencies.

This Term, the Supreme Court is considering a case that presents an opportunity for the Court to establish a more demanding standard for permissible delegations of legislative power. In *FCC v. Consumers' Research*, the Fifth Circuit held *en banc* that the FCC's Universal Service Fund—a longstanding mechanism for the collection of fees to subsidize the provision of telecommunications services to rural areas—violates the public non-delegation doctrine and the administration of the Fund violates the private non-delegation doctrine.[30] The FCC successfully petitioned for Supreme Court review.[31] At oral arguments in March 2025, a majority of the Court

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[29] At least two post-*Loper Bright* decisions in the D.C. Circuit warrant further mention. In *U.S. Sugar Corp. v. EPA*, 113 F.4th 984, 991 (D.C. Cir. 2024), the court—no longer "deferring to EPA's interpretation of the Clean Air Act"—rejected a regulation regarding standards for air emissions from industrial boilers based on what the court "regard[ed] as the statute's 'best' reading." In *Marin Audubon Society v. FAA*, 121 F.4th 902 (D.C. Cir. 2024), a divided panel decided a question not raised by the parties, holding that regulations promulgated by the White House Council on Environmental Quality ("CEQ") under the National Environmental Policy Act ("NEPA") were invalid because Congress had not authorized CEQ to issue such regulations. The majority opinion observed that, historically, "*Chevron*-like" deference had been paid to CEQ's NEPA regulations but that those statements could no longer be credited in light of *Loper Bright*. *Id*. at 913. *Marin Audubon Society* may have broader implications as many federal agencies have adopted or relied upon the CEQ regulations to govern their NEPA process and review.

[30] 109 F.4th 743 (5th Cir. 2024) (en banc).

[31] The Supreme Court granted the petition for writ of certiorari in *FCC v. Consumers' Research*, No. 24-354, consolidated with *Schools, Health & Libraries Broadband Coalition v. Consumers' Research*, No. 24-422, also from the Fifth Circuit.

seemed likely to uphold the FCC's subsidy program, but at least some of the Justices signaled they may be inclined to adopt a more demanding standard for congressional delegations of power than the Court has previously articulated.

Challenges to the Trump Administration's tariff programs, issued under the International Economic Emergency Powers Act, can be expected to raise major questions and non-delegation doctrine questions and challenges. In short, the scope and contours of these doctrines are likely to continue to be subjects of federal litigation.

More uncertainty for regulated entities and incentives for forum shopping?

Regulatory certainty and stability are important to most companies in developing strategic plans, investment decisions, mitigating risks, and making other important business decisions. To varying extents, businesses rely on agency regulations to establish standards governing their business activities and to delineate how federal laws will be enforced in specific contexts and circumstances. The *Chevron* deference doctrine provided some assurance to regulated entities that a reviewing court would likely uphold an agency's reasonable construction of a statute the agency was charged with implementing.

One early result of the elimination of *Chevron* deference has been **heightened regulatory uncertainty.** The Supreme Court overruled *Chevron*, but did not provide clear specific direction about what comes next: What approach or standard should lower courts apply to resolve uncertainty that persists ***after*** the traditional tools of statutory construction have been applied? Since June 2024, we have seen that results may vary by judge or appellate panel when the question boils down to one question: What is the *best* interpretation, construction, or application of a statute?

Until the Supreme Court provides further guidance, federal courts of appeals and district courts are likely to continue to apply different analytic approaches, fostering continued uncertainty and likely encouraging litigation forum shopping.

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