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CHEVRON **DEFERENCE**

**UNDERSTANDING THE LEGAL
DOCTRINE AND ITS EFFECT ON
AGENCY AUTHORITY**

February 2024

***Chevron* Deference: Understanding the legal doctrine and its effect on agency authority**

Summary

This document guides you through the nuts and bolts of *Chevron* deference, including its history, application, evolution, leading arguments for and against, and its uncertain future.

By the end of this reading, you will have an understanding of the following concepts:

- What is deference?
- What qualifies as a reasonable interpretation?
- Case law that influenced the scope of *Chevron* deference doctrine
- Principal arguments in support of and opposition to the use of *Chevron* deference
- A closer look at *Loper Bright Enterprises v. Raimondo* and *Relentless, Inc. v. Department of Commerce*

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***Chevron* Deference: Understanding the legal doctrine and its effect on agency authority**

What is *Chevron* deference?

Chevron deference was one of several deference doctrines developed by the U.S. Supreme Court over the course of the 20th century. Others are *Skidmore* deference and *Auer* deference.

The *Chevron* doctrine is named for the 1984 case *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, in which the U.S. Supreme Court set forth the legal test to determine whether a court should defer to an agency's interpretation of a statute. Courts were expected to refrain from imposing a statutory interpretation unless the agency interpretation was determined to be unreasonable.

Justice Antonin Scalia summed up *Chevron* deference in a 1989 lecture at the Duke University School of Law as "the principle that the courts will accept an agency's reasonable interpretation of the ambiguous terms of a statute that the agency administers."

Deference applied in cases of judicial review, i.e., when a plaintiff accused an agency of unlawful action. In such cases, the court had to decide whether the agency was authorized to act as it did. However, Congress often passes broadly worded legislation that requires agencies to fill in the details of rule-making and enforcement. The degree of interpretation is a direct function of lawmakers' imprecision in crafting statutory language.

What qualifies as a reasonable interpretation?

A reasonable interpretation of a statute is one that is not arbitrary, capricious, or contrary to the statute.

This standard of review originated in the Administrative Procedure Act of 1946 (APA). The act instructs courts to invalidate any agency actions under review that are found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

Case background: the Clean Air Act and the bubble concept

The focus of the case was on the Environmental Protection Agency's (EPA) implementation of the 1977 amendments to the Clean Air Act, in which the agency put forth a new definition of the term *stationary source*.

The new definition of *stationary source* allowed states to treat all pollution control devices within an industrial plant as a single stationary source rather than as distinct entities. In other words, all pollution-emitting devices within the same industrial facility could be grouped together as though they were encased in a single bubble. Under the bubble concept, equipment could be installed or modified within a facility without meeting the new source requirements as long as the change did not increase the plant's total emissions.

The Natural Resources Defense Council (NRDC) challenged the new regulations in November 1981, arguing that the process only maintained air quality when the goal of the Clean Air Act was to improve air quality. The United States Court of Appeals for the District of Columbia Circuit agreed with the NRDC and set aside the regulations. Chevron U.S.A. Inc. joined with a group of affected manufacturers to appeal the decision and argue in support of the regulation.

Case decision: the development of *Chevron* deference

Justice John Paul Stevens delivered the opinion for a unanimous six-person court. (Justices Thurgood Marshall and William Rehnquist recused themselves from the case without explanation. Justice Sandra Day O'Connor did not take part in the decision because the estate of her father owned stock in one of the affected parties.) The ruling upheld the EPA's statutory interpretation as reasonable, and thus proper, and held that the D.C. Circuit Court erred in applying its own interpretation of the agency's authority over the EPA's reasonable construction.

The opinion also presented a two-part test to determine whether a court should defer to an agency's interpretation of a statute:

"First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute."

The justices also directed the lower courts to exercise discipline in cases in which the statutory grant of authority to an agency is implicit rather than explicit. “In such a case,” Justice Stevens wrote, “a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.”

2001: Supreme Court narrows application of *Chevron* deference

In *United States v. Mead Corporation*, the court ruled 8-1 that *Chevron* deference only applied to regulation and enforcement actions--and not agency guidance, policy statements or other administrative actions. Justice Scalia dissented from the majority, arguing that the decision deviated from the historical understanding of *Chevron* deference by requiring courts, rather than agencies, to resolve statutory ambiguities in congressional delegations of authority.

2013: Supreme Court expands scope of *Chevron* deference

In *City of Arlington v. FCC*, the United States Supreme Court held that *Chevron* deference extends to an agency's interpretation of its own jurisdiction. (In this instance, the court recognized the FCC's reading of statute as authorizing it to set time limits on cities processing wireless network applications.) In the dissent, Chief Justice John Roberts, joined by Justices Anthony Kennedy and Samuel Alito, argued that the court should not grant deference until it had first decided whether deference was justified. He claimed that the majority improperly expanded *Chevron* deference to include agency determinations of whether Congress has given the agency interpretive authority over a statute. Roberts rejected the majority's framing of the question as one concerning jurisdiction and said the issue was about whether the FCC had the legal authority to administer the scrutinized provision. Roberts argued that the opinion expanded the power of the administrative state and signaled that some justices might be willing to limit the *Chevron* doctrine.

2015: Supreme Court holds that *Chevron* deference does not apply to major questions

In *King v. Burwell*, the United States Supreme Court held that *Chevron* deference did not apply to questions of great economic and political significance. The case questioned whether the Affordable Care Act permitted the Internal Revenue Service (IRS) to grant tax credits to individuals who purchased their health insurance from the federal health insurance exchange rather than the state exchanges. The United States Court of Appeals for the Fourth Circuit applied *Chevron* deference and deferred to the IRS' interpretation of the statute, which stated that tax credits were available for plans from both state and federal exchanges. The U.S. Supreme Court upheld the Fourth Circuit's ruling, but declined to apply *Chevron* deference. “Whether those credits are available on Federal Exchanges is thus a question of deep ‘economic and political significance’ that is central to this statutory scheme,” wrote Roberts in the opinion. “Had Congress wished to assign that question to an agency, it surely would have done so expressly.”

2015: Supreme Court further narrows *Chevron* deference

In *Michigan v. Environmental Protection Agency*, the United States Supreme Court ruled that the EPA had strayed far beyond a reasonable interpretation of the Clean Air Act when the agency ignored costs in crafting power plant regulations. In his concurrence, Justice Clarence Thomas stated that *Chevron* deference "wrests from Courts the ultimate interpretative authority to 'say what the law is,' and hands it over to the Executive."

2024: Supreme Court overturns the *Chevron* deference doctrine

In *Loper Bright Enterprises v. Raimondo* and *Relentless, Inc. v. Department of Commerce*, the United States Supreme Court ruled to overturn the *Chevron* deference doctrine, holding that federal courts may not defer to an agency's interpretation of an ambiguous statute.

Arguments in support of the use of *Chevron* deference

This is not an exhaustive list but rather an introduction to the ongoing debate about agency powers and the expansion of the administrative state. Our goal is to present the leading views on *Chevron* doctrine to enable you to draw informed conclusions.

***Chevron* deference recognizes agency expertise**

Agency officials possess high-level knowledge about authorizing statutes and, therefore, are uniquely qualified to interpret ambiguities. By comparison, judges cannot be agency experts for the entire executive branch.

***Chevron* deference is a valid extension of the authority granted agencies by Congress**

Congress delegates rulemaking and enforcement authority to agencies through statutes. Therefore, interpreting said statutes is a valid exercise of agencies' responsibilities. Administrative law scholar Jonathan Siegel summarizes the point in the following: "In his classic article, 'Marbury and the Administrative State,' Professor Henry Monaghan made the key observation that ambiguity in a statute entrusted to an administrative agency for enforcement is best understood as a delegation of power to the agency. A year later, *Chevron* endorsed this concept by holding that an ambiguous provision in an agency statute should be deemed to constitute an implicit delegation of power to the agency to fill the gap left by Congress. Thus, the most basic reason why agencies should have the power to resolve ambiguities in provisions of statutes they administer is that Congress should be understood to have delegated this power to agencies."

***Chevron* deference adheres to the separation of powers**

Chevron deference adheres to the separation of powers doctrine through valid congressional delegations of legislative authority to agencies of the executive branch. The courts would be out of line to interfere when Congress has delegated authority to agencies.

Administrative law scholar [T.J. McCarrick](#) quoted the U.S. Supreme Court's decision in *City of Arlington v. FCC* in his summary of this argument: "[T]he *Chevron* framework also reinforces separation-of-powers norms. Though rules and adjudications 'take "legislative" and "judicial" forms,' agency action in a zone of ambiguity is an exercise of executive power. But only such power as the legislature confers. 'Congress knows how to speak in plain terms when it wishes to circumscribe, and in capacious terms when it wishes to enlarge, agency discretion.' And when it comes to regulation, courts should not do for Congress what Congress can do for itself."

Arguments in opposition to the use of *Chevron* deference

***Chevron* deference is unconstitutional because it violates the separation of powers**

Chevron deference violates the separation of powers established in the U.S. Constitution. The separation of powers vests government authority in three distinct branches (executive, legislative and judicial) in order to restrain overreach and abuses of power. *Chevron* deference doctrine transfers judicial power to the executive branch and ignores the court's obligation to interpret the law and serve as a check on the other political branches.

As law professor [Philip Hamburger](#) wrote, "When judges defer to agency interpretations, they depart from their judicial office or duty, under Article III of the Constitution, to exercise their own independent judgement."

***Chevron* deference violates administrative law and legal precedent**

Chevron deference violates the [Administrative Procedure Act \(APA\)](#) and legal precedents, including the early tradition of de novo review of agency actions and the [nondelegation doctrine](#).

As administrative law scholar [Aditya Bamzai](#) observed, "[W]hen Congress enacted the APA, it ... did not, however, incorporate the rule that came to be known as *Chevron* deference, because that was not (at the time) the traditional background rule of statutory construction. Under the traditional approach, a court would 'respect'—or, to use modern parlance, 'defer to'—an agency's interpretation of a statute if and only if that interpretation reflected a customary or contemporaneous practice under the statute."

Administrative law scholar [Christopher Walker](#) argued that "Article I vests Congress with 'All legislative Powers,' yet *Chevron* deference encourages members of Congress to delegate broad lawmaking power to federal agencies. In doing so, Congress further frustrates the values of the nondelegation doctrine."

A closer look at *Loper Bright Enterprises v. Raimondo* and *Relentless, Inc. v. Department of Commerce*

After covering the background and history of *Chevron*, let's take a look at the 2024 Supreme Court cases that overturned the *Chevron* deference doctrine.

Case background

A coalition of commercial fishermen in *Loper Bright Enterprises v. Raimondo* appealed an August 2022 ruling from a divided panel of the United States Court of Appeals for the District of Columbia Circuit. The ruling applied *Chevron* deference to uphold the National Marine Fisheries Service's (NMFS) interpretation of a federal fishery law—the Magnuson-Stevens Act—requiring the presence of federal compliance observers on certain fishing boats. While the federal law is silent on who must pay for such oversight, the judges deferred to the NMFS' interpretation of the statute requiring the boat owners to pay the compliance costs.

The fishermen appealed the ruling to the U.S. Supreme Court, arguing that the D.C. Circuit's decision "perceives ambiguity in statutory silence, where the logical explanation for the statutory silence is that Congress did not intend to grant the agency such a dangerous and uncabined authority." The fishermen further urged the U.S. Supreme Court to reconsider its approach to *Chevron* deference, stating, "Whether by clarifying *Chevron* or overruling it, this Court should grant review and reverse the clear agency overreach at issue here."

The court in May 2023 agreed to hear *Loper Bright* and later consolidated the case with *Relentless, Inc. v. Department of Commerce*. *Relentless* involved a challenge to the same NMFS rule, which was appealed to the United States Court of Appeals for the First Circuit. The court argued, "that the rule is a permissible exercise of the agency's authority and is otherwise lawful."

Case decision: overturning *Chevron* deference

The court ruled 6-3 to overrule the 1984 decision in *Chevron v. Natural Resources Defense Council*, holding that federal courts may not defer to an agency's interpretation of an ambiguous statute. It vacated and remanded the D.C. Circuit and the First Circuit's rulings.

Chief Justice John Roberts delivered the opinion, arguing that the Administrative Procedure Act (APA) requires courts to determine whether agencies acted within their statutory authority. Roberts wrote:

"*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."

Justices Clarence Thomas and Neil Gorsuch filed separate concurring opinions. Justice Thomas wrote in favor of overturning *Chevron* because it violates the separation of powers, arguing, "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.' [...] 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."

Justice Gorsuch's concurring opinion stated, "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."

Case dissent

Justice Elena Kagan filed a dissenting opinion in the cases, joined by Justice Sonia Sotomayor and joined by Justice Ketanji Brown Jackson as it pertained to *Relentless*. Justice Jackson took no part in the consideration or decision of *Loper Bright*.

Justice Kagan's dissent argued against the court's decision to overturn *Chevron*, contending deference to agency interpretation is necessary to fill the gaps of ambiguous statutes:

"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. [...] 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."



Continued reading:

Thank you for downloading our PDF on *Chevron* deference.

Check out the following Ballotpedia pages to dive deeper into the key concepts of this report:

- [Deference](#)
- [Chevron Deference](#)
- [Administrative Procedure Act](#)
- [Arbitrary-or-Capricious Test](#)
- [Natural Resources Defense Council](#)
- [Judicial deference: a timeline](#)
- [Nondelegation doctrine](#)
- [*Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*](#)
- [*Loper Bright Enterprises v. Raimondo*](#)
- [*Relentless, Inc. v. Department of Commerce*](#)
- [John Roberts](#)
- [Philip Hamburger](#)
- [Jonathan Siegel](#)
- [United States v. Mead Corporation](#)
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