Abstract

Last year, the United States Supreme Court overturned the Chevron doctrine, ending forty years of automatic judicial deference to agency interpretations of ambiguous statutes. The case, *Loper Bright v. Raimondo*, marked a pivotal shift in the power dynamics among the branches of government and greatly restructured administrative procedure in the United States. This doctrine has long fielded a contentious debate about constitutional limits and the power dynamics between the branches of government. Even after its reversal, there is an ongoing debate that the overturning of Chevron has stripped the government of its essential tools to function. This article will discuss the historical context of administrative deference, explain the impact the doctrine had between the branches of government, and ultimately explain why the Loper Bright decision and the fall of Chevron deference is a success for the future of American jurisprudence. It provides an in-depth defense of the Loper Bright decision and rebuts major criticisms of the ruling.

Loper Bright and the Fall of Chevron Deference

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Introduction

For forty years, the Chevron doctrine was one of the most important legal principles in American law.[1] Since its inception in *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984),[2] the doctrine has become one of the most debated and contentious legal issues and has had a profound effect on the legislative, executive, and judicial branches of government.[3] In *Chevron*, the doctrine required courts to defer to an agency's interpretation of an ambiguous statute as long as the agency's reading was reasonable.[4] This doctrine served as a settled framework for how courts reviewed agency interpretations of statutes.[5] Despite 40 years of support from legal scholars, political representatives, and policy administrators for keeping this controversial doctrine in place,[6] the Supreme Court reversed Chevron in *Loper Bright Enterprises v. Raimondo*, 601 U.S. ___ (2024).[7] Since this decision, critics have warned that the fall of Chevron will cause inefficiencies in government,[8] place undue power in the judicial branch,[9] and shift the reliance on expertise away from policy experts.[10] These concerns

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[1]Benjamin M. Barczewski, *Supreme Court Overrules Chevron Framework*, Cong. Rsch. Serv., LSB11189, 1,2 (June 28, 2024).
[2]*Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).
[3]Thomas W. Merrill, *The Story of Chevron: The Making of an Accidental Landmark*, 66 ADMINISTRATIVE LAW REVIEW, 253, 254 (2014); MICHAEL HERZ, *CHEVRON IS DEAD; LONG LIVE CHEVRON*, 1867, 1909, https://columbialawreview.org/wp-content/uploads/2016/03/November-2015-13-Herz.pdf (last visited Oct 17, 2025).
[4]*See Chevron,* Supra note 2
[5]THOMAS MERRILL, *RESPONSE CHEVRON'S GHOST RIDES AGAIN*, 1718, 1722, https://www.bu.edu/bulawreview/files/2023/11/MERRILL.pdf (last visited Oct 11, 2025).
[6]Cass R. Sunstein, *Chevron as Law*, 107 Geo. L.J. 1573, 1672 (2019); Brief of District of Columbia et al. as Amici Curiae in Support of Respondents, *Loper Bright Enterprises v. Raimondo*, No. 22-451, at 2 (filed Dec. 12, 2022).
[7]*Loper Bright Enters. v. Raimondo*, 601 U.S. ___ (2024).
[8]*See* generally, Clifford Winston, *Overturning the Chevron Precedent — Are Courts Better at Regulating Than Regulators?*, MILKEN INSTITUTE REVIEW (2024), https://www.milkenreview.org/articles/overturning-the-chevron-precedent-are-courts-better-at-regulating-than-regulators? (last visited Oct 17, 2025); Mila Sohoni, *Chevron's Legacy*, 138 HARVARD LAW REVIEW, 66-67 (2025); *See* generally: *See* generally Day Pitney, DAYPITNEY.COM (2024), https://www.daypitney.com/insights/publications/2024/07/18-supreme-court-overturning-chevron-employment-energy (last visited Oct 17, 2025).
[9]Thomas W. Merrill, *The Demise of Deference — and the Rise of Delegation to Interpret?*, 138 Harv. L. Rev. 201, 231 (2024).
[10]*See* generally: Shawn Cheadle, *Navigating Uncertainty: The Legal Landscape of Government Contracts Post-Chevron Reversal | Law Bulletins | Taft Law*, TAFTLAW.COM (2024), https://www.taftlaw.com/news-events/law-

underscore the importance that this decision has had on administrative law and power within the executive. This essay argues in defense of the Loper decision by examining the historical, constitutional, and practical issues with the Chevron doctrine. It argues that overturning of Chevron restores a constitutional rebalance of power and reaffirms judicial independence.

I. Origins of Chevron

From the ratification of the U.S. Constitution in 1788 to the Theodore Roosevelt administration, the power of the presidency remained relatively stable.[11] For this period, the legislative branch was largely viewed as the arm that controlled the most power.[12] This system of power was intentionally designed that way by the founders, who overwhelmingly feared the executive branch gaining excessive power.[13] Therefore, Congress was the core authority in shaping government direction.[14] A central reason the executive branch lacked power compared to Congress was the limited establishment of federal agencies.[15] The establishment of federal agencies allows the executive to carry out its initiatives by creating rules and regulations that carry the force of law.[16] While the Constitution implicitly grants the executive the right to establish federal agencies under the Necessary and Proper Clause (which grants Congress the power to make all laws "necessary and proper" for executing its enumerated powers),[17] the

bulletins/navigating-uncertainty-the-legal-landscape-of-government-contracts-post-chevron-reversal/ (last visited Oct 17, 2025); *See* generally: Michael Hiltzik, *Column: With its "Chevron" ruling, the Supreme Court claims to be smarter than scientific experts*, LOS ANGELES TIMES (2024), https://www.latimes.com/business/story/2024-07-02/with-its-chevron-ruling-the-supreme-court-shows-that-it-thinks-its-smarter-than-scientific-experts.

[11]Benjamin Ginsberg, *The Growth of Presidential Power*, YALE UNIVERSITY PRESS (2016), https://yalebooks.yale.edu/2016/05/17/the-growth-of-presidential-power/.

[12]*Id.*

[13]John L. Fitzgerald, *CONGRESSIONAL OVERSIGHT OR CONGRESSIONAL FORESIGHT: GUIDELINES FROM THE FOUNDING FATHERS*, 28 ADMINISTRATIVE LAW REVIEW, 429, 434 (1976).

[14]JON C. ROGOWSKI, *Presidential Influence in an Era of Congressional Dominance*, 110 AMERICAN POLITICAL SCIENCE REVIEW, 325, 325 (2016).

[15]Gillian E. Metzger, *AGENCIES, POLARIZATION, AND THE STATES*, 115 COLUMBIA LAW REVIEW, 1739, 1756.

[16]Pierce & J Richard, *Rulemaking and the Administrative Procedure Act*, 32 TULSA LAW JOURNAL, 185, 185 (1996).

[17]*U.S. Const. art. I, § 8, cl. 18.*

number of agencies was widely limited before the turn of the 20th century.[18] Many of these agencies allow the President to significantly influence rulemaking, enforcement, and adjudication.[19] Compared to today, the executive lacked a vast network of agencies and departments.[20] As a result, Congress had significantly more power in government than the executive.[21] However, beginning with the Theodore Roosevelt administration, the balance of power shifted drastically.[22]

Over the course of Roosevelt's administration, he issued over 1000 executive orders, backed major regulatory legislation, and created a number of federal agencies.[23] Additionally, Roosevelt was a strong proponent of an ideology known as "Stewardship Theory",[24] which asserted that presidents should take whatever action is necessary for national interests, unless that action is explicitly prohibited by the Constitution.[25] With this view, President Roosevelt expanded executive reach and positioned the role of the President as a more proactive leader within the government, [26] allowing him to expand the reach of the executive in an unprecedented

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[18]Susan Dudley, *Milestones in the Evolution of the Administrative State*, 150 DAEDALUS, 33, 33-34 (2021).
[19]*See* generally: Emily S. Bremer, *Presidential Adjudication*, 110, VIRGINIA LAW REVIEW (2024); Morton Rosenberg, *Beyond the Limits of Executive Power: Presidential Control of Agency Rulemaking Under Executive Order 12,291*, 80 MICHIGAN LAW REVIEW, 193, 195 (1981)
[20]*See* Dudley, supra note 18 at 185
[21]*See* Duley: supra note 18, at 34-35
[22]Sidney Milkis, *Theodore Roosevelt: Impact and Legacy | Miller Center*, MILLER CENTER (2017), https://millercenter.org/president/roosevelt/impact-and-legacy.
[23]Lorraine Boissoneault, *The Debate Over Executive Orders Began With Teddy Roosevelt's Mad Passion for Conservation*, SMITHSONIAN (2017), https://www.smithsonianmag.com/history/how-theodore-roosevelts-executive-orders-reshaped-countryand-presidency-180962908/.
[24]Randall L. Robinson, *The Stewardship Theory of the Presidency: Theodore Roosevelt's Political Theory of Republican Progressive Statesmanship and the Foundation of the Modern Presidency*, DEFENSE TECHNICAL INFORMATION CENTER (1997).
[25]Joseph Teplin, *THEODORE ROOSEVELT: A STUDY IN ADMINISTRATIVE THOUGHT AND BEHAVIOR*, Sep., 1949, 1, 54-55.
[26]*See* Teplin, *supra* note 25, at 55-56

way.[27] However, the most significant growth of executive power came from establishing new federal agencies.[28]

President Roosevelt's actions laid the groundwork for another presidency that would increase executive authority further: the FDR administration. FDR's most famous policy, the New Deal, created numerous executive agencies, such as the Works Progress Administration, Federal Communications Commission, and the Social Security Administration.[29] This growth gave rise to what many would call the "administrative state,"[30] a term used to describe the overwhelming power of federal agencies to wield legislative duties by enacting and enforcing regulations.[31] Throughout FDR's administration, there was a growing concern in Congress that the executive was consolidating an unconstitutional and excessive amount of power.[32] By the mid-1940s, Congress was pressing for a structural reform that would rein in executive authority and reassert congressional powers.[33] As a result, Congress passed the Administrative Procedure Act (APA) of 1946, a federal statute that sets standards for how executive agencies operate and administer regulatory decisions.[34]

By doing so, Congress was able to successfully ensure that agencies could not operate unchecked.[35] The APA successfully balanced the power between the branches of government by

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[27]*See* Teplin, *supra* note 25
[28]*See* Dudley, *supra* note 18
[29]Catherine A. Paul, *The New Deal*, SOCIAL WELFARE HISTORY PROJECT (2020), https://socialwelfare.library.vcu.edu/eras/great-depression/the-new-deal/.
[30]*See* generally Ronald Pestritto, *The Birth of the Administrative State: Where It Came From and What It Means for Limited Government*, THE HERITAGE FOUNDATION (2007), https://www.heritage.org/political-process/report/the-birth-the-administrative-state-where-it-came-and-what-it-means-limited.
[31]*See* generally Pestritto, *supra* note 30
[32]*See* Kovacs, infra note 33 at 19
[33]Kathryn Kovacs, *From Presidential Administration to Bureaucratic Dictatorship*, 135 HARVARD LAW REVIEW, 1, 15 (2021).
[34]Administrative Procedure Act, 5 U.S.C. §§ 551–559.
[35]GILLIAN METZGER & COLUMBIA LAW SCHOOL, *THE ADMINISTRATIVE PROCEDURE ACT: AN INTRODUCTION*, 1, 1 (2017), https://www.prrac.org/pdf/APA.summary.ProfMetzger.pdf? (last visited Oct 12, 2025).

curbing federal agencies' authority,[36] subjecting them to procedural guidelines and judicial review, rather than allowing them to act solely on the executive's will.[37] Additionally, courts began applying a new standard for examining these actions: the Skidmore standard.[38] The Skidmore standard established that agency interpretations of congressional statutes are given weight based on the validity, persuasiveness, thoroughness, expertise, and overall strength of their argument.[39] While the APA provided a guideline,[40] the Skidmore standard helped agencies influence judges through reasoned interpretations.[41] The concurrent consideration of these two legal procedures was standard across administrative law for four decades.[42] However, in 1984 this framework was challenged by the Supreme Court in *Chevron.*[43]

In *Chevron,* the central issue concerned the interpretation of the term "stationary sources" within the Clean Air Act of 1963.[44] Stationary sources are defined as any installation, infrastructure, or building that emits or has the potential to emit any pollutant.[45] Prior to the Reagan administration, the Environmental Protection Agency (EPA) treated each individual emissions source within a facility as a separate stationary source.[46] This interpretation lasted

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[36]T. Elliot Gaiser, Mathura Sridharan & Nicholas Cordova, The Truth of Erasure: Universal Remedies for Universal Agency Actions, UNIVERSITY OF CHICAGO LAW REVIEW, 1, 16 (2024).
[37]Nicholas R. Parrillo, *165 Federal Agency Guidance and the Power to Bind: An Empirical Study of Agencies and Industries*, YALE JOURNAL ON REGULATION, 165, 168 (2019).
[38]*Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).
[39]*Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).
[40]Ronald M. Levin, *Rulemaking and the Guidance Exemption*, 70 ADMINISTRATIVE LAW REVIEW 266 (2018).
[41]Jim Rossi, *Respecting Deference: Conceptualizing Skidmore Within the Architecture of Chevron*, 42 SSRN ELECTRONIC JOURNAL, 1110 (2000).
[42]*See* "Review of an Agency's Interpretation of Statutory Authority" An Introduction to Judicial Review of Federal Agency Action, CONGRESS.GOV (2025), https://www.congress.gov/crs-product/R44699? (last visited Sep 28, 2025).
[43]Chevron U.S.A., Inc. v. NRDC, 467 U.S. 837 (1984), JUSTIA LAW (2025), https://supreme.justia.com/cases/federal/us/467/837/?utm_source.
[44]Isaiah McKinney, *The Many Heads of the Chevron Hydra: Chevron's Revolutionary Evolution Between 1984 and 2023*, SSRN ELECTRONIC JOURNAL, 254, 257 (2023).
[45]*Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).
[46]*Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans*, 45 Fed. Reg. 52,676, 52,746 (Aug. 7, 1980); *Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans; Prevention of Significant Deterioration; Nonattainment Area New Source Review*, 46 Fed. Reg. 50,766 (Oct. 14, 1981).

through the Carter administration.[47] In 1981, the Reagan administration's EPA adopted the *bubble concept*, in which an entire facility was treated as a single stationary source, provided that the plant's total emissions did not increase.[48] This reinterpretation reflected the administration's dual objectives of promoting deregulation and protecting big business,[49] which were achieved by empowering federal agencies to put new interpretations on congressional statutes.[50]

The Natural Resources Defense Council (NRDC), an environmental advocacy group, brought this issue before the courts and challenged the new Reagan interpretation, arguing in favor of the Carter administration's view of stationary sources.[51] When *Chevron* reached the Supreme Court, the justices ultimately decided to adopt a position of deference to the agency's interpretation of the statute at hand based on a two-pronged test.[52] Firstly, is the statute ambiguous in nature; that is, whether Congress has clearly articulated the issue at hand, and if so, they must follow the full intent of Congress.[53] Second, if ambiguity exists, is the agency's interpretation reasonable?[54] If both conditions are met, courts must defer automatically to the agency's interpretation without weighing the other party's arguments.[55]

Under Chief Justice Burger's Court, establishing this deference was necessary because of two main factors: expertise and executive accountability.[56] The court concluded that agency

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[47] *See* McKinney, *supra* note 44 at 257.
[48] *See* McKinney, *supra* note 44, at 258.
[49] Michael E. Kraft, *Environmental Policy in the Reagan Presidency*, 99 Political Science Quarterly 415, 428 (1984); Philip Weinberg, *Masquerade for Privilege: Deregulation Undermining Environmental Protection*, 45 Wash. & Lee L. Rev. 1321, 1321-1323 (1988).
[50] The Regulatory Review, *Regulatory Reform Under Reagan and Trump | The Regulatory Review*, WWW.THEREGREVIEW.ORG (2018), https://www.theregreview.org/2018/07/30/pierce-regulatory-reform-reagan-trump/.
[51] *Infra note* 53: *Chevron*, 467 U.S. at 839-42
[52] *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).
[53] Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., (1984).
[54] *Id.*
[55] *Id.*
[56] *Id.* at 865-866

rulings are areas that require technical expertise on nuanced and sophisticated topics–a form of knowledge that judicial officials generally lack.[57] The Court also emphasized that, as a part of the executive branch, agencies are more directly accountable to elected officials than federal judges.[58] Initially, when the Supreme Court made its ruling on *Chevron*, it thought this doctrine would have minimal future significance.[59] However, it failed to anticipate that Chevron would substantially influence the power of the executive branch and cause significant issues for the judiciary.[60]

II. The Flaws of Chevron

In *Loper Bright*, the issue revolved around the requirement of fishing vessels to pay for onboard federal observers who monitored regulatory compliance.[61] This rule was issued from the National Marine Fisheries Service (NMFS) under the Magnuson-Stevens Fishery Conservation and Management Act. The fisheries argued that the statute did not grant the agencies the right to impose the costs on private parties.[62] This dispute provided the Supreme Court the opportunity to examine the doctrine in a new light, ultimately reversing Chevron and ruling in favor of the fisheries.[63] The *Loper Bright* decision has sparked significant criticism within the legal community.[64] However, many of these critiques fail to acknowledge deeper problems inherent with the Chevron doctrine. The doctrine proved increasingly impractical, defied America's

[57]*Id.*
[58]*Id.*
[59]Thomas W. Merill, *The Story of Chevron: The Making of an Accidental Landmark*, 66 ADMINISTRATIVE LAW REVIEW, 253, 283 (2014).
[60]*Id.*
[61]Bright, *Infra* note 63
[62]Bright, *Infra* note 63
[63]*Loper Bright Enters. v. Raimondo*, 601 U.S. ___ (2024).
[64]Cary Coglianese & David B. Froomkin, *Loper Bright's Disingenuity*, 174 UNIVERSITY OF PENNSYLVANIA LAW REVIEW, 1, 2-3 (2025).

system of checks and balances, invited legislative manipulation, and destroyed judicial autonomy–issues that form the basis of concerns about Chevron.[65]

A central problem with Chevron is that it undermines America's governmental system of checks and balances.[66] This system serves as a structural safeguard that ensures each branch remains within its constitutional limits. Congress reinforced this principle under the APA: "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."[67] One of the most important and defining features of checks and balances is judicial autonomy. Judicial autonomy was clearly defined in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803)[68], in which the Court established the principle of judicial review.[69] In the landmark case, Chief Justice Marshall made it clear that: "it is emphatically the province and duty of the judicial department to say what the law is."[70] However, this foundational principle was challenged by Chevron which shifted interpretive authority away from courts and to agencies.[71] Chevron automatically delegates statutory interpretations to agencies simply because they are reasonable.[72] By doing so, the executive branch gained legislative power in an unprecedented way.[73] Regardless of how strong of an argument a party were to present against an agency for a statutory interpretation, it was of no

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[65] *See Chevron, supra* note 53 (Majority)
[66] The Regulatory Review, *Chevron Undermines Checks and Balances | The Regulatory Review*, WWW.THEREGREVIEW.ORG (2014), https://www.theregreview.org/2014/09/08/08-klee-chevron-checks-and-balances/.
[67] 5 U.S. Code § 706 - Scope of review, LII / LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/uscode/text/5/706.
[68] *Marbury*, 5 U.S. at 177.
[69] *Id.*
[70] *Id.*
[71] *Loper Bright Enters. v. Raimondo*, 601 U.S. ___, slip op. at 6 (2024).
[72] *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).
[73] *See* Abstract: Cass R. Sunstein, *Chevron as Law*, GEORGETOWN LAW JOURNAL, 1613, 1625, (2018).

consequence. Under Chevron, the agency's interpretation prevailed as long as it was deemed reasonable and Congress had not clearly addressed the issue.[74] The binding rules and regulations issued by agencies carried powers similar to congressional statutes; however, unlike congressional statutes, they were subject to a more deferential form of judicial review under Chevron.[75] Article I established that Congress was to make laws, not the executive.[76] This demonstrates that Chevron was a constitutionally unstable framework that attempts to outweigh judicial independence for agency expertise.[77]

Proponents of Chevron often make the case that deference is necessary because statutory ambiguity involves agency expertise and experience.[78] However, this argument is undermined by several significant issues. Most principally, the concept of "expertise" is very susceptible to politicization, as statutory interpretation, and thus federal policy and enforcement, can vary widely by administration.[79] For example, in 2017 the Trump administration's EPA proposed to repeal the Clean Power Plan, arguing that it exceeded the agency's statutory authority under Section 111(d) of the Clean Air Act and revising the scientific and economic assumptions underpinning the earlier rule.[80] Examining agency regulations broadly, there is often a significant shift when a new executive administration comes into power, especially when that administration differs politically.[81] The most plausible reason for this shift is the politicization of those agencies

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[74] *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).
[75] *Id.*
[76] U.S. CONST. art. I, § 1
[77] Supra note at 7
[78] Allison Kernisky, *Chevron Deference Running on Fumes? | Insights | Holland & Knight*, HKLAW.COM (2023), https://www.hklaw.com/en/insights/publications/2023/05/chevron-deference-running-on-fumes (last visited Oct 12, 2025). at 1
[79] Zachary Price, *Expertise and Polarization, by Zachary Price - Yale Journal on Regulation*, YALE JOURNAL ON REGULATION (2023), https://www.yalejreg.com/nc/expertise-and-polarization-by-zachary-price/ (last visited Oct 12, 2025).
[80] KATE C. SHOUSE, *EPA's Proposal to Repeal the Clean Power Plan: Benefits and Costs*,1, 2&7 (2018).
[81] Sharece Thrower, *Regulatory delay across administrations*, BROOKINGS (2019), https://www.brookings.edu/articles/regulatory-delay-across-administrations/.

exerted by different administrations. Therefore, because there is a tremendous political influence on these regulations,[82] automatically deferring to an agency's interpretation of a statute on the basis of expertise alone is a fundamentally unstable framework by which to make judicial decisions.

In addition, Chevron incentivized executive overreach by allowing agencies to achieve political goals through statutory interpretation.[83] Legislators, aware that controversial details might draw more opposition, often draft legislation with broad and vague language to ensure it is passed.[84] This allowed executive agencies to carry out the real intentions of the legislators and fill in the blanks under the protection of Chevron.[85] Legislators frequently encounter bills that are drafted with deliberate ambiguous language, so rather than bipartisan cooperation, this practice contributes to gridlock and distrust between political parties.[86]

Proponents of the doctrine often contend that there is a significant institutional reliance on the doctrine.[87] As noted by Justice Kagan in the dissenting opinions in *Loper Bright*, there are thousands of cases, procedures, and systems that have relied on Chevron.[88] Overturning that ruling may cause instability in the court system, or, as Justice Kagan put it, "a jolt to the legal system."[89] Additionally, she criticized the majority opinion for disregarding the doctrine of *stare*

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[82]The Regulatory Review, *Chevron Undermines Checks and Balances | The Regulatory Review*, WWW.THEREGREVIEW.ORG (2014), https://www.theregreview.org/2014/09/08/08-klee-chevron-checks-and-balances/.
[83]Christina Pazzanese, *"Chevron deference" faces existential test*, HARVARD GAZETTE (2024), https://news.harvard.edu/gazette/story/2024/01/chevron-deference-faces-existential-test/? (last visited Oct 12, 2025).
[84]Jeff Grabmeier , *What U.S. Legislators Do When They Can't Pass Laws*, OSU.EDU (2024), https://polisci.osu.edu/news/what-u.s.-legislators-do-when-they-cant-pass-laws.
[85]Frederick Liu, *Chevron as a Doctrine of Hard Cases*, 66 SSRN ELECTRONIC JOURNAL, 285, 286-287 (2011).
[86]Victoria Nourse & Jane Schacter, *The Politics of Legislative Drafting: A Congressional Case Study*, 77 N.Y.U. L. Rev. 575, 596 (2002).https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-77-3-Nourse-Schacter.pdf (last visited Oct 12, 2025).
[87]*See* Chevron, *supra* note 53
[88]Bright, infra note 89: (dissent) at 2
[89]LOPER BRIGHT ENTERPRISES ET AL. v. RAIMONDO, SECRETARY OF COMMERCE, ET AL., (2023), https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf. at 30 (dissent)

decisis.[90] Kagan criticized the ruling using a prior decision of *Kisor v. Wilkie*, 588 U.S. ___ (2019)[91], in which the Court decided not to overrule the Auer doctrine in large part because it had a significant and extensive reliance on the Courts, Congress, and agencies together.[92] The Auer doctrine, or deference, established that judges must give controlling weight to an agency's interpretation of its own regulation under certain conditions.[93] Kagan also mentioned in the dissent that ambiguities are inevitable in the discipline of law and American government.[94] Wherever there is a complex issue at hand, it can be nearly impossible to define it in words, permitting the executive to fill in the blanks.[95] However, many of the framers of this country knew that law would evolve and ambiguities of their own words would be inevitable, but these ambiguities were always expected to lie within the bounds of the Constitution they established.[96] In Federalist No. 78, Hamilton argued that courts should exercise "neither force nor will, merely judgment," stating that it's the principal role of the judiciary to exercise its independent judgment for decisions.[97]

Justice Kagan's reliance on The Federalist Papers[98] misses the overarching idea from the work, which is the separation of powers.[99] As noted by Hamilton, Madison, and Jay, the primary role of the executive branch is to enforce laws, not to impose a degree of legislative authority.[100] Ergo, when the law is ambiguous, it's expected to be interpreted within the constraints explicitly

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[90] *Id*, at 24 (dissent)
[91] *Kisor v. Wilkie*, 588 U.S. ___ (2019).
[92] *See* Bright, *supra* note 80, at 2&30 (dissent)
[93] *Id.* at 24 (dissent)
[94] *Id.* 2 (dissent)
[95] *Id.* 2-5
[96] SCOTUS, supra note 59: Syllabus pg. 5
[97] The Federalist No. 78 (Alexander Hamilton)
[98] *See* Bright, supra note 92 (dissent)
[99] *Id.*
[100] Joseph Story, *Commentaries on the Constitution of the United States* § 541 (Carolina Academic Press 1987) (1833).

laid out under the Constitution.[101] In addition, Kagan's view of institutional reliance is also flawed. While reliance merits consideration, it does not outweigh the practical and constitutional flaws.[102] Interestingly, Justice Kagan cited *Kisor* as a reason why the majority did not consider *stare decisis*.[103] However, a clear distinction made in the *Kisor* case is that the Auer deference gives controlling weight to an agency's interpretation of its own regulation under certain conditions.[104] Chevron, by contrast,[105] is a much broader doctrine that applies to all agencies' interpretations of congressional statutes,[106] which is far less narrow and not as technically limited as the Auer deference, as mentioned in the *Kisor* case.

Additionally, Kagan also argued that old issues that were previously deferred under the doctrine could retroactively come back to the Courts, which would put an undue burden on the legal system.[107] However, the majority argued that cases decided under Chevron will not come back retroactively.[108] For example, if someone lost a case 20 years ago under Chevron, they will need more than the fact that their interpretation was deferred to come back to the case.[109] In this regard, the Court compensated for a significant overhaul of the legal system.

III. Conclusion

Due to the complex nature of the *Loper Bright* decision, legal experts and scholars have an enigmatic view on the future of administrative deference.[110] *Loper Bright* keeps some aspects

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[101] *See Marbury v. Madison,* (1803) at 177
[102] *Infra* note 103
[103] *See* Bright, supra note 76: (dissent) at 25
[104] Kisor v. Wilkie, 139 S. Ct. 2400 (2019).
[105] *See* Chevron, *supra* note 53
[106] *Id.*
[107] *See* Bright, *supra* note 89, at 33-34 (dissent)
[108] *Id. at 8 (*majority)
[109] *Id.*
[110] Christopher J. Walker, *What Loper Bright Enterprises v. Raimondo Means for the Future of Chevron Deference - Yale Journal on Regulation*, YALE JOURNAL ON REGULATION (2024), https://www.yalejreg.com/nc/what-loper-bright-enterprises-v-raimondo-means-for-the-future-of-chevron-deference.

of the Chevron doctrine in place—courts are still required to ask whether the statute in question is ambiguous, but they are not required to automatically defer to the agency's interpretation simply because it is "reasonable."[111] Therefore, courts are still expected to exercise their independent legal judgment to choose the best interpretation, while giving weight to agency expertise.[112]

The subsequent question is whether courts will return to the Skidmore standard (which gives a degree of weight to an agency's interpretations of a statute).[113] Chief Justice Roberts, writing for the majority, argued that overturning Chevron would reaffirm the relevance of Skidmore.[114] If the Skidmore Standard is used, courts will give a certain kind of weight or extra persuasiveness instead of automatic deference to agencies' interpretations.[115] While proponents of Chevron make a case that Skidmore is a weakened version of Chevron that strips the executive of the ability to function,[116] this argument is fundamentally unsupported. The Skidmore standard establishes a middle ground between agency expertise and judicial independence, allowing for experience, knowledge, and authority to be given weight–without agencies winning by default.[117] Therefore, Skidmore provides a far more flexible, consistent, and fair framework by which judges are allowed to use deference and bridge the tension between expertise and independence.[118]

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[111] *See* Chevron, *supra* note 53
[112] *See* Bright, *supra* note 89
[113] *See supra* 5
[114] *Id. at* 25
[115] Id. at 19
[116] Jack Fitzhenry, *After Chevron, a New Birth of Deference for the Administrative State?*, THE HERITAGE FOUNDATION (2019), https://www.heritage.org/courts/commentary/after-chevron-new-birth-deference-the-administrative-state.
[117] Skidmore v. Swift and Company, (1944).
[118] Kristin E. Hickman, *Anticipating a New Modern Skidmore Standard*, 74 Duke L.J. Online 111, 117–18 (2025); Jim Rossi, *Respecting Deference: Conceptualizing Skidmore within the Architecture of Chevron*, 42 Wm. & Mary L. Rev. 1105, 1110–1111 (2001).

Loper Bright put an end to a doctrine that had fueled legal inconsistency, political gridlock, and breached the separation of powers.[119] Throughout the forty-year history of the Chevron Era, federal agencies have drastically changed administrative policy from presidencies because of Chevron.[120] The doctrine has invited legislative manipulation and undermined the role of judicial independence.[121] *Loper Bright* was an inherently sound decision by the Supreme Court, as it will see a return to a more accurate view of how agencies should act according to administrative law and the Constitution. It provides a middle ground for agency expertise and judicial independence by giving legal clarity and placing more responsibility on the Courts for their actions, rather than hiding behind the shield of the executive.[122] Interpretations of congressional statutes are no longer widely shifting from administration to administration.[123] The end of Chevron provides lawmakers and the judiciary with a far more workable framework for the future.

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[119] *See supra* 7-11

[120] The Supreme Court's Double Hammer to Agencies: Loper Bright and Corner Post Set New Precedents for Challenging Federal Agency Action, CROWELL & MORING - THE SUPREME COURT'S DOUBLE HAMMER TO AGENCIES: LOPER BRIGHT AND CORNER POST SET NEW PRECEDENTS FOR CHALLENGING FEDERAL AGENCY ACTION, https://www.crowell.com/en/insights/client-alerts/the-supreme-courts-double-hammer-to-agencies-loper-bright-and-corner-post-set-new-precedents-for-challenging-federal-agency-action.

[121] *See supra* 7-9

[122] *See supra* 10-11

[123] *See supra* 8-9