

THE U.S. SUPREME COURT OVERRULES THE *CHEVRON* DOCTRINE

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INTRODUCTION

In a highly consequential decision, on June 28, 2024, in *Loper Bright Enterprises, Inc. v. Raimondo* (*Loper Bright*) and *Relentless, Inc. v. Department of Commerce* (*Relentless*)¹ the Supreme Court overruled the *Chevron* doctrine, a decision rendered on ideological grounds, dividing the conservative supermajority and liberal justices on the Court.

On May 1, 2023, the Supreme Court granted a writ of certiorari to the D.C. Circuit in *Loper Bright*.² On October 13, 2023, the Court granted a writ of certiorari to the First Circuit in *Relentless*.³ In the litigation, Petitioners made concerted efforts to have the *Chevron* doctrine overruled. They were successful in this regard.

With its ruling, the Supreme Court has cast aside 40 years of administrative law, causing significant ramifications in the implementation of federal statutes for executive agencies and industry sectors.

The Supreme Court’s June 28, 2024 decision goes beyond the fact-based merits of the two cases of how a federal statute impacts the financial interests of commercial fishermen. The central holding, as a matter of law, in *Loper*

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1. *Loper Bright Enters., Inc. v. Raimondo*, 144 S. Ct. 2244 (2024).

2. *Loper Bright Enters., Inc. v. Raimondo*, 143 S. Ct. 2429 (2023) (granting certiorari).

3. *Relentless, Inc. v. Dep’t of Com.*, 144 S. Ct. 325 (2023) (granting certiorari).

Bright and *Relentless* exemplifies the Supreme Court's view that the *Chevron* doctrine was contrary to the role of the judiciary under Article III of the U.S. Constitution and statutory mandate under the Administrative Procedure Act (APA). These were fatal flaws in the doctrine, and the Court rejected outright, in the context of deference under *Chevron*'s two-step framework, the notion of congressional delegation of interpretive authority to agencies for ambiguous statutes. The Court set forth principles to apply, elevating the role of courts to exercise their independent judgment to construe statutes. Thus, Article III courts are the ultimate deciders of what statutes mean.

The *Chevron* doctrine was announced in 1984 by the Supreme Court in *Chevron, U.S.A. Inc. v. Natural Resources Defense Council (Chevron)*.⁴ There, the Court established a two-step framework for courts to follow when interpreting ambiguous legislation enacted by Congress. For 40 years, the *Chevron* doctrine, a judge-made rule, has been the bedrock of administrative law, impacting a swath of industries, including the health sector and those entities affected by environmental regulatory regimes. The Court's June 28 decision jettisoned the two-step framework that the courts have used to interpret federal regulatory statutes. In doing so, the Court ushered in a new era of administrative law.

The purpose of this Article is to frame the fact-based inquiry arising from the D.C. Circuit and First Circuit opinions in *Loper Bright* and *Relentless*, respectively, and to provide an analysis of the Supreme Court's June 28 decision to overrule the *Chevron* doctrine. The Article will conclude with observations.

I. BACKGROUND

Under the U.S. Constitution, there are three co-equal branches of government. Article I sets forth the duties of the legislative branch wherein Congress is granted "[a]ll legislative [p]owers."⁵ Article II empowers the executive branch to "faithfully execute[]" the laws enacted by Congress,⁶ and Article III provides that judicial power "shall be vested" in "one supreme Court" and "inferior Courts" to adjudicate "Cases" and "Controversies."⁷

Tensions arise between the three branches of government. No other area of law exemplifies the dueling powers and duties of the three branches that exist in the enactment, implementation, and interpretation of laws passed by Congress. As noted, the role of judges under Article III is to decide cases and

4. 467 U.S. 837 (1984).

5. U.S. CONST. art. I, § 1.

6. *Id.* art. II, § 3.

7. *Id.* art. III, §§ 1–2.

controversies. Congress further ensured the role of courts in the Administrative Procedure Act (APA), enacted in 1946.⁸ There, under § 706, it is explicitly mandated that “the reviewing court shall decide all relevant questions of law,” and “interpret constitutional and statutory provisions.”⁹ Thus, by constitutional and statutory design, it is clear that the judiciary has a distinct function. It is against this backdrop that sets the inquiry on the role of courts to interpret statutes enacted by Congress which are administered by federal agencies.

The seminal case of *Chevron* has been viewed as the bedrock of administrative law. In that case, the U.S. Environmental Protection Agency (EPA) was required by Congress under the Clean Air Act Amendments of 1977 to regulate the amount of air pollutants from “stationary sources.”¹⁰ Exercising its authority, the EPA undertook notice-and-comment rulemaking wherein it defined the statutory term “stationary source.” The final rule was challenged in federal court.¹¹ Reversing the D.C. Circuit, the Supreme Court ruled in favor of the agency’s definition of “stationary source,” concluding that EPA’s reading of the statute was reasonable.¹²

In its decision, the Supreme Court established a two-step framework for courts to apply when an agency’s final rule is challenged as exceeding statutory authority. In construing a statute, the Court in *Chevron* instructed that “[f]irst . . . 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.”¹³ Second:

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.¹⁴

8. 5 U.S.C. § 706 (2018).

9. *Id.*

10. 42 U.S.C. § 7502(b)(6) (1982).

11. *Nat. Res. Def. Council v. Gorsuch*, 685 F.2d 718 (D.C. Cir. 1982), *rev’d* 467 U.S. 837 (1984).

12. *Chevron*, 467 U.S. at 859–66 (1984).

13. *Id.* at 842–43.

14. *Id.* at 843.

This two-step framework has been known as “*Chevron* deference” or the “*Chevron* doctrine.” The doctrine requires deference to an agency’s construction of an ambiguous statute that is deemed reasonable, even if a court believes that there is a preferred reading of the statute.¹⁵

In *Chevron*, the Court went further, explaining how best to apply the two-step test. It instructed that the authority of an administrative agency to administrate a program created by Congress may require policy choices.¹⁶ Thus, whether Congress intended to expressly or implicitly delegate authority to an agency to interpret a statute has played a part in navigating the balance of power between the judicial and executive branches. Congress may enact legislation that leaves a gap in the text of the law suggesting that it intended a delegation to an agency to exercise its expertise in the interpretive function, particularly when it pertains to a complex regulatory regime that an agency with expertise is best equipped to undertake.¹⁷ Importantly, a principle premise for the rule of deference announced by the Supreme Court in *Chevron* was that “policy choices” should be left to executive branch officials directly accountable to the people, rather than to the judiciary.¹⁸

Through the years there has been simmering criticism of the *Chevron* doctrine. It has been argued that the doctrine has led to the abdication by courts of their role to rigorously apply traditional tools of statutory construction to interpret statutes.¹⁹ Those who have leveled attacks against the *Chevron* doctrine have vehemently contended that courts have too hastily found ambiguity in a statute, and thus have deferred to the agency’s reading of the law, thereby giving rise to the “administrative state.”²⁰ It has been argued that this is contrary to constitutional and statutory dictates.²¹ Those

15. *Id.* at 843 n.11; *see also* *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208, 218 (2009); *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 980 (2005).

16. *Chevron*, 467 U.S. at 843.

17. *Id.*

18. *Id.* at 865.

19. *See* Jack M. Beermann, *End the Failed Chevron Experiment Now: How Chevron Has Failed and Why It Can and Should Be Overruled*, 42 CONN. L. REV. 779, 784 (2010). In his article, Professor Beermann expressed the view that *Chevron* “encourages irresponsible . . . judicial behavior.” *Id.* He wrote that reviewing courts “can brush off serious challenges to agency decisions by invoking *Chevron* without engaging whether the agency is thwarting imperfectly expressed congressional intent.” *Id.*

20. *See* *Buffington v. McDonough*, 143 S. Ct. 14, 18 (2022) (Gorsuch, J., dissenting) (denying cert. to *Buffington v. McDonough*, 7 F.4th 1361 (Fed. Cir. 2021)). Justice Gorsuch wrote that *Chevron*, as construed by some courts, presents “a serious threat to . . . fundamental commitments as judges . . .” *Id.* He explained that “[t]oday, administrative law doesn’t confine itself to the regulation of large and sophisticated entities. Our administrative state touches almost every aspect of daily life.” *Id.* at 21 (internal quotation marks and citations omitted).

21. *Id.* at 16, 18–19.

less inclined to criticize *Chevron* deference have suggested that, assuming a delegation by Congress to an agency, interpretation by the agency of statutory terms where the statute is ambiguous or where gaps exist in the law, allows an agency to exercise its expertise which a court may lack.²² *Chevron* deference thus allows for more national uniformity in the interpretation and implementation of a statute. This view is consistent with the Supreme Court's rationale expressed in its *Chevron* decision.

Detractors of the *Chevron* doctrine have emphasized that the two-step framework, grounded in a finding of statutory ambiguity, is not practicable in the sense that courts frequently disagree on when the text of a law is ambiguous. This has resulted in a lack of uniformity in deriving a statute's meaning. Justice Scalia, an early champion of the doctrine, spoke to this when he opined that "battles . . . will be fought" over the "ambiguity" of the *Chevron* test.²³ Justice Kavanaugh expressed a similar concern, writing that "different judges have wildly different conceptions of whether a particular statute is clear or ambiguous."²⁴ In his view, the inconsistency in applying the two-step model under *Chevron* is often "antithetical to the neutral, impartial rule of law."²⁵

II. THE LITIGATION

The matter in *Loper Bright* and *Relentless* involved the Magnuson-Stevens Fishery Conservation and Management Act (MSA or the Act), which designates implementation and delegation authority under the Act to the Secretary of Commerce.²⁶ The Act sets forth the role of the National Marine Fisheries Service (Fisheries Service or the Service), in conjunction with regional councils, to approve fishery management plans mandating certain practices.²⁷ The MSA grants authority to undertake rulemaking to implement fishery management plans.²⁸ Congress enacted the Act to maintain the fisheries as a marine ecosystem, for economic, recreational, and nutritional benefits.²⁹

22. *Chevron*, 467 U.S. at 865–66 (1984).

23. Antonin Scalia, *Judicial Deference to Administrative Interpretations of Law*, 1989 DUKE L.J. 511, 520–21 (1989).

24. Brett Kavanaugh, *Fixing Statutory Interpretation*, 129 HARV. L. REV. 2118, 2152 (2016) (reviewing ROBERT KATZMANN, *JUDGING STATUTES* (2014)).

25. *Id.* at 2154.

26. See generally 16 U.S.C. §§ 1801–1891(d) (2018).

27. 16 U.S.C. §§ 1801(a)(6), 1801(b)(1), 1852(h)(1), 1854, 1855(d) (2018).

28. *Id.* § 1853(a)(11) (specifying contents of fishery management plans); see also 16 U.S.C. §§ 1853(c), 1854 (2018).

29. *Id.* § 1801.

At issue in both *Loper Bright* and *Relentless* was the Atlantic herring fishery management plan, developed by the New England Fishery Management Council and approved by the Fisheries Service.³⁰ Rulemaking was undertaken to generally put in place a process for administering future industry-funded monitoring for certain New England fisheries.³¹ Part of the implemented regulation mandated industry-funded monitoring for the Atlantic herring fishery was under direct challenge in the litigation. The Atlantic herring fishery was one of several fisheries governed by the New England Fishery Management Council.³²

The 2020 final rule that was promulgated provided for the cost of at-sea monitoring to be shared between the federal government and the industry on a target percentage of designated fishing trips, subject to the herring fishery management plan.³³ The requirement that the fishing companies contribute to the cost of the wages paid to the monitors who accompany the fishing trips was the focus of the lawsuits' challenge.³⁴ Under this industry-funded scheme, the fishing vessels directly pay the wages of at-sea monitors.³⁵ The appellants (the fishing companies) asserted that these imposed payments assumed by fishing vessels were contrary to the MSA, and would cause extreme economic hardship for the fishing companies.³⁶ In the rulemaking, the Fisheries Service acknowledged that industry funding for at-sea monitors would have "direct economic impacts" on the fishermen of a significant nature.³⁷

The issue presented in the litigation, industry-funding for monitor wages, has contextual reference to distinct provisions under the MSA. Aside

30. Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Industry-Funded Monitoring, 83 Fed. Reg. 47326 (proposed Sept. 19, 2018) (to be codified at 50 C.F.R. pt. 648); Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Industry-Funded Monitoring, 83 Fed. Reg. 55665 (proposed Nov. 7, 2018) (to be codified at 50 C.F.R. pt. 648); Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Industry-Funded Monitoring, 85 Fed. Reg. 7414 (Feb. 7, 2020) (to be codified at 50 C.F.R. pt. 648).

31. Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Industry-Funded Monitoring, 85 Fed. Reg. at 7414.

32. *Id.* at 7417.

33. *Id.* Under limited circumstances, a waiver or an exemption from the duty to assume the cost of a monitor may be available. *See* 50 C.F.R. §§ 648.11(m)(1)(ii), (m)(1)(iii), (4)(ii) (2023).

34. Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Industry-Funded Monitoring, 85 Fed. Reg. at 7417.

35. *Id.* at 7417–18.

36. *Loper Bright Enters. Inc. v. Raimondo*, 45 F.4th 359, 364, 370–71 (D.C. Cir. 2023).

37. Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Industry-Funded Monitoring, 85 Fed. Reg. at 7418. The agency estimated that the "industry's cost responsibility" would be \$710 per day, reducing annual returns for the vessel owner by "up to approximately 20 percent." *Id.*

from the Atlantic herring fishery management plan, the Act specifically mandates three other fishery management programs that provide for funding of monitors by owners of vessels. They are: (i) the limited access privilege program,³⁸ (ii) the North Pacific Council monitoring program,³⁹ and (iii) the foreign fishing vessel monitoring program.⁴⁰ These statutorily mandated plans will be discussed herein as part of the statutory analysis.

A. Loper Bright

A divided panel of the D.C. Circuit in *Loper Bright* upheld the rule that mandated fishing companies governed by the Atlantic herring fishery management plan pay the wages for at-sea monitors. In doing so, it affirmed the district court's decision which concluded that the rule was a lawful exercise of agency authority.⁴¹ The D.C. Circuit engaged in extensive analysis of the statutory text.⁴² In ruling against appellants (the fishing vessels) the court of appeals concluded that the MSA was ambiguous on whether Congress intended to mandate that fishing companies directly assume the cost of hiring monitors.⁴³ Thus, applying the *Chevron* doctrine, The D.C. Circuit deferred to the interpretation of the Act by the Fisheries Service since the government's reading of the statute was reasonable.

The Fisheries Service argued that the Act unambiguously grants it the authority to implement industry-funded monitors for the Atlantic herring fishery.⁴⁴ The court rejected this position. In its analysis, the D.C. Circuit in *Loper Bright* considered the text of the Act, its structure, and purpose.⁴⁵

Citing various statutory provisions, the D.C. Circuit concluded that the Act lacked sufficient clarity, such that the relevant text was ambiguous.

38. 16 U.S.C. § 1853(a)(e) (2018). The limited access privilege program allows program fees to cover management, data collection, and enforcement costs. *Id.* While not explicitly mandated, monitoring may be considered part of "data collection and analysis." *Id.* Vessel owners must pay fees to the government under this program. *Id.*

39. *Id.* § 1862. The North Pacific Council monitoring program requires observers be stationed on fishing vessels and owners of vessels are required to pay fees to the government to cover the cost of onboard observers. *Id.*

40. *Id.* §§ 1821(h)(4), (6). The foreign fishing vessel monitoring program authorizes the imposition of a surcharge, paid by vessel owners to the government, to cover the costs of observers on foreign vessels. *Id.* The statute also allows for a "supplementary observer program" by which fees are established to be paid by foreign fishing vessels directly to observers, an industry-funded mechanism. *Id.*

41. *Loper Bright Enters. Inc. v. Raimondo*, 544 F. Supp. 3d 82 (D.D.C. 2021), *aff'd*, 45 F.4th 359 (D.C. Cir. 2022), *vacated*, 144 S. Ct. 2244 (2024).

42. *Loper Bright Enters. Inc. v. Raimondo*, 45 F.4th 359 (D.C. Cir. 2022), *vacated*, 144 S. Ct. 2244 (2024).

43. 45 F.4th 359, 366.

44. *Id.* at 365.

45. *Id.* at 365–70.

Specifically, the court of appeals referenced § 1853(b)(8) of the Act.⁴⁶ Under that provision, plans may “require . . . observers be carried on board a vessel . . . for the purpose of collecting data . . . for the conservation and management of the fishery.”⁴⁷ The court of appeals explained that the text states that fishery management plans may mandate at-sea monitors, but is entirely silent whether the Service may impose the costs for the monitors as an obligation of the fishing vessels.⁴⁸

The D.C. Circuit then observed that § 1853 contains two “necessary and appropriate” clauses. For example, § 1853(b)(14) allows for plans approved by the Service to prescribe such “other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.”⁴⁹ Moreover, a penalty clause in the Act, § 1858(g)(1)(D), allows the Service to impose permit sanctions for failure to make “any payment required for observer services provided to or contracted by an owner or operator.”⁵⁰ Citing *Michigan v. EPA*, the court of appeals suggested that the “necessary and appropriate” clause allows an agency to impose compliance costs on regulated parties.⁵¹ This, together with the Act’s requirement that the Service under § 1851(a)(8) “minimize adverse economic impacts,”⁵² could imply that fishing vessels would assume at least some of the costs of hiring at-sea monitors.

The D.C. Circuit concluded, though, that the Act does not “definitively establish[] whether at-sea monitors are the type of regulatory compliance cost” that would be assumed by fishing vessels.⁵³ Thus, there could be no presumption that § 1853(b)(8), coupled with the “necessary and appropriate” clauses and the penalty provisions under the Act “unambiguously affords” authority by the Service to mandate that vessels pay wages for the monitors.⁵⁴ The court wrote that the text of the Act “does not compel the Service’s interpretation . . . as granting authority by omission to require industry-funded monitoring. Courts construe [a statute’s] silence as exactly that: silence.”⁵⁵ Significantly, quoting *Michigan v. EPA*, the court of appeals recognized that the “necessary and appropriate” clauses in the Act afford a

46. 16 U.S.C. § 1853(b)(8) (2018).

47. *Id.*

48. 45 F.4th at 365 (D.C. Cir. 2022).

49. *Id.* § 1853(b)(14); *see also id.* § 1853(a)(1)(A) (requiring “measures . . . necessary and appropriate for the conservation and management of the fishery.”).

50. *Id.* § 1858(g)(1)(D); *see also id.* § 1857(1)(L).

51. 576 U.S. 743, 752 (2015).

52. 16 U.S.C. § 1851(a)(8) (2018).

53. *Loper Bright*, 45 F.4th at 366 (D.C. Cir. 2022), *vacated*, 144 S. Ct. 2244 (2024).

54. *Id.*

55. *Id.* at 368.

“capacious” grant of authority that “leaves agencies with flexibility.”⁵⁶ In sum, the D.C. Circuit held that where Congress “has not ‘directly spoken to the precise question at issue,’” then the agency “may fill this gap,” as was the case here, with a “reasonable interpretation” of the statute.⁵⁷ This is particularly so since, in the court’s view, the Act lacked any restriction on the Service to impose on vessels the duty to pay wages for at-sea monitors.

Separately, the fishing vessels (appellants) argued that three other programs to protect fisheries covered by the MSA, unrelated to the jurisdiction of the New England Fishery Management Council, explicitly provide in the statute for the funding of monitors by owners of vessels.⁵⁸ Appellants were referring to statutorily specified programs: (i) the limited access privilege program, (ii) the North Pacific Council monitoring program, and (iii) the foreign fishing vessel monitoring program.⁵⁹ Appellants argued Congress’s failure to explicitly incorporate in the MSA industry-funded monitors for the New England fisheries, including the Atlantic herring fishery implies that Congress did not intend to impose industry-funded at-sea monitors on that class of fisheries.⁶⁰ The D.C. Circuit rejected this argument as unpersuasive.⁶¹ The court of appeals explained that the other three programs explicitly mentioned in the Act have different purposes, with different statutory funding mechanisms via fees.⁶² The court succinctly stated that just because the provision for funding applied to other programs in the Act, it does not suggest Congress “implicitly intended to preclude” the Service from mandating that the herring fishing vessels directly pay the wages for at-sea monitors.⁶³

The D.C. Circuit’s applied mode of analysis in *Loper Bright* conformed with the two-step framework under the *Chevron* doctrine. The court of appeals, having determined the Act was ambiguous regarding whether the Service had statutory authority to require the vessels to pay the wages for at-sea monitors, then addressed whether the rule itself was reasonable under *Chevron* Step Two. The requirement under scrutiny, imposed on the Atlantic herring fishery need not be the best choice of agency decision-making. Rather, the court must affirm the agency’s action as long as the agency’s

56. *Id.* at 366 (quoting *Michigan v. EPA*, 576 U.S. 743, 752 (2015)).

57. *Id.* at 365 (quoting *Chevron U.S.A., Inc., v. Nat. Res. Def. Council*, 467 U.S. 837, 842 (1984)).

58. *See* 16 U.S.C. §§ 1853a(e), 1862(b), 1821(h)(4), (6) (2018).

59. *See supra* notes 38, 39, 40.

60. *Loper Bright Enters., Inc. v. Raimondo*, 45 F.4th 359, 366 (D.C. Cir. 2022), *vacated*, 144 S. Ct. 2244 (2024).

61. *Id.* at 367–68.

62. *Id.*

63. *Id.* at 366–68.

interpretation is a “reasonable resolution of an ambiguity” in the statute⁶⁴ and the agency has offered “a reasoned explanation” of the choices made.⁶⁵

Under *Chevron* Step Two, the D.C. Circuit upheld the Service’s rule. The Act’s very text that the court of appeals found lacked clarity under *Chevron* Step One provided the basis for the court to find that industry-funded monitors was a reasonable reading of the statute under *Chevron* Step Two’s deferential standard.

Specifically, the court observed that under § 1853(b)(8), and the “necessary and appropriate” clauses, the Service deemed the monitoring of fishing vessels to comport with the Act’s conservation and management goals.⁶⁶ On that basis, it was a reasonable inference by the Service that it had the latitude under the “necessary and appropriate” clauses to implement cost-shifting by imposing industry-funded at-sea monitors.⁶⁷

In *Loper Bright*, the fishing vessels argued that the rule requiring industry-funded monitors in the Atlantic herring fishery would be financially crippling.⁶⁸ The D.C. Circuit reviewed the record, and it concluded that the Service considered the important factors, including cost to the vessels.⁶⁹ It noted that a waiver or exemption was potentially available to redress hardships.⁷⁰ The court of appeals concluded that the rule was legally binding, and was not arbitrary or an abuse of discretion under § 706(2)(a), the APA standard governing judicial review of agency action.⁷¹

There was a dissenting opinion in *Loper Bright*. In his dissent, Circuit Judge Justin Walker agreed that the two-step framework under *Chevron* was the appropriate analytical tool to use in the case.⁷² Judge Walker took issue, though, with how the majority applied the framework. Specifically, under *Chevron* Step Two, where a statute is ambiguous, an agency can have the explicit or implicit authority, delegated to it by Congress, to interpret the law.⁷³ Judge Walker took issue, though, where a statute is silent on a particular topic. He wrote that a statute’s “silence

64. *Id.* at 369 (internal quotation marks and citation omitted) (quoting *Michigan v. EPA*, 576 U.S. 743, 751 (2015)).

65. *Id.* (internal quotation marks and citation omitted) (quoting *Cigar Ass’n of Am. v. FDA*, 5 F.4th 68, 77 (D.C. Cir. 2021)).

66. *Id.* at 369.

67. *Id.* at 370.

68. *Id.* at 370–71.

69. *Id.*

70. *Id.* at 371.

71. 5 U.S.C. § 706(2)(a) (2018); *see also Loper Bright Enters., Inc. v. Raimondo*, 45 F.4th 359, 370–71 (D.C. Cir. 2022), *vacated*, 144 S. Ct. 2244 (2024).

72. *Loper Bright*, 45 F.4th at 374 (Walker, J., dissenting).

73. *Id.*

on a given issue does not automatically create such ambiguity or give an agency carte blanche to speak” under the notion of delegated authority.⁷⁴ He explained that “silence indicates a lack of authority.”⁷⁵ Where the law is silent, there can be no assumption that Congress intended to implicitly delegate interpretive authority to an agency. Thus here, since the Act is silent on the duty of herring vessels to assume the cost of wages for monitors, then that ends the matter. Judge Walker construed the MSA such that there were no provisions that could be read to implicitly delegate authority to the Service to exercise an interpretive function. The D.C. Circuit disagreed and pointed out that *Chevron* Step Two directs judicial deference to an agency where the statute is ambiguous or silent regarding an issue.⁷⁶ Thus, the dissent’s insistence that deference is appropriate only where the statute is ambiguous, is misguided. Further, the court viewed the Act’s silence on industry-funded monitors “in the context of a comprehensive statutory fishery management program,” to be implemented by the Service, coupled with a broad “necessary and appropriate” clause, amounted to a lawful delegation to the agency.⁷⁷

B. Relentless

The challenge brought by the herring fishing vessels in *Relentless* was based on similar facts and raised similar legal issues that were faced by the D.C. Circuit in *Loper Bright*. The First Circuit in *Relentless* held that the imposition of industry-funded monitors for the herring fishery under the New England Fishery Management Council plan was a permissible exercise of agency authority.⁷⁸ In so ruling, the three-judge panel affirmed the district court’s decision to uphold industry funding for at-sea monitors.⁷⁹

The First Circuit in *Relentless* referred generally to the two-step framework under *Chevron*. Although the D.C. Circuit did not explicitly state whether its analysis was driven by Step One or Step Two under *Chevron*, it explained its view on the standards to apply in review of agency action generally.⁸⁰ Specifically, when determining the meaning of a statute, traditional tools of statutory construction are applied. The First Circuit

74. *Id.*; see also 5 U.S.C. § 706(2)(a) (2018).

75. *Loper Bright*, 45 F.4th at 374.

76. *Id.* at 369.

77. *Id.* at 370.

78. *Relentless, Inc. v. Dep’t of Com.*, 62 F.4th 621, 633–34. (1st Cir. 2023).

79. *Relentless, Inc. v. Dep’t of Com.*, 561 F. Supp. 226 (D.R.I. 2021), *aff’d*, 62 F.4th 621 (1st Cir. 2023).

80. 62 F.4th at 621, 628.

explained that the terms of a statute should not be read in isolation.⁸¹ Rather, the statutory text is to be read in context, with a view to the statutory scheme.⁸² Under these interpretive rules, if it is concluded that a statute is ambiguous, the court of appeals wrote that then, the agency has “leeway to enact rules that are reasonable in light of the text, nature, and purpose of the statute.”⁸³

The primary principle argued by the vessel owners in *Relentless* was the absence of any authority in the MSA that empowered the Fisheries Service, via rulemaking, to impose industry-funded monitors.⁸⁴ The court of appeals disagreed. It cited § 1853(b)(8) of the Act.⁸⁵ The court emphasized that Congress expressly provided that fishery management plans for the herring fishery may “require . . . observers be carried on board a vessel . . . for the purpose of collecting data . . . for the conservation and management of the fishery.”⁸⁶ The appellants, though, asserted that the text of § 1853(b)(8) speaks of provisions for only “observers,” and not “at sea monitors” which is the subject of the challenged agency rule.⁸⁷ The court of appeals was not persuaded. The First Circuit referenced § 1802(31)⁸⁸ of the Act, which provides for an expansive definition of the term “observer” to include “any person required or authorized to be carried on a vessel for conservation and management.”⁸⁹ Thus, the court concluded that at-sea monitors were included under that definition and were authorized by regulation.⁹⁰

The appellants were not deterred, and insisted that the Act was silent, “contain[ing] no language” that allowed the agency to “force” vessel owners to fund the monitors.⁹¹ Here too, the court of appeals disagreed, and made reference to a “default norm” as applied to federal regulatory mandates generally.⁹² Simply put, the First Circuit observed that “the government does not reimburse regulated parties for the cost of complying with properly enacted regulations.”⁹³ Thus, the expectation is that, unless otherwise stated, the regulated party will cover the costs of complying with a rule’s mandate.⁹⁴

81. *Id.* at 628.

82. *Id.*

83. *Id.* (quoting *Cuozzo Speed Techs. v. Lee*, 579 U.S. 261, 277 (2016)).

84. *Relentless*, 62 F.4th at 628–29.

85. *Id.* at 629.

86. 16 U.S.C. § 1853(b)(8) (2018).

87. *Relentless*, 62 F. 4th at 629.

88. 16 U.S.C. § 1802(31) (2018).

89. *Id.*

90. See 50 C.F.R. § 648.11(m)(i) (2023).

91. *Relentless*, 62 F.4th at 629 (1st Cir. 2023).

92. *Id.*

93. *Id.*

94. *Id.*

The court of appeals concluded that there was no basis to assume that Congress meant something other than that the regulated party assumes the cost incurred to comply with the challenged rule.⁹⁵ Further, there was separate statutory support for industry-funded monitors. The First Circuit pointed to the penalty clause in the Act under § 1858(g)(1)(D).⁹⁶ There, the Service has the authority to impose permit sanctions for failure to make “any payment required for observer services provided to or contracted by an owner or operator”⁹⁷ The court construed that text as congressional intent for imposing punitive measures where vessel owners failed to fund monitors.⁹⁸

Separately, in *Relentless*, the appellants argued that under the MSA, Congress explicitly legislated for funding of monitors by the owner of vessels for three statutorily designated fishery programs that are not within the jurisdiction of the New England Fishery Management Council.⁹⁹ Those programs are (i) the limited access privilege program, (ii) the North Pacific Council monitoring program, and (iii) the foreign fishing vessel monitoring program.¹⁰⁰ The appellants emphasized that provisions for funding of those fishery programs in the MSA, where there is no funding for monitor wages in the statutory text for vessels governed by the New England Fishery Management Council, must be construed to suggest that Congress did not intend the herring vessels to assume the cost for monitors.¹⁰¹ The First Circuit rejected this argument. It made clear that there is statutory text under the MSA, accounting for the Act’s structure and purpose, to conclude that requiring herring vessels to assume the direct cost for wages of monitors is a reasonable construction of the statute.¹⁰² Thus, to suggest that explicit provision in the Act for monitor funding under three unrelated programs, with different purposes and funding mechanisms via fees, precludes industry-funded monitors by herring vessels, in the court’s view, lacked merit.¹⁰³ The appellants in *Loper Bright* made a similar argument, but to no avail.¹⁰⁴

The First Circuit concluded that, as a matter of law, the agency’s decision to require herring vessels to assume the cost of at-sea monitors was

95. *Id.* at 630.

96. *Id.* at 630–31.

97. 16 U.S.C. § 1858(g)(1)(D) (2018).

98. *Relentless*, 62 F. 4th at 630–31.

99. See 16 U.S.C. §§ 1853a(e), 1862(b), 1821(h)(4), (6) (2018).

100. See *supra* notes 38, 39, 40.

101. *Relentless*, 62 F. 4th at 631–32.

102. *Id.* at 633–34.

103. *Id.* at 631–32.

104. *Loper Bright Enters., Inc. v. Raimondo*, 45 F.4th 359, 366–68 (D.C. Cir. 2022), *vacated*, 144 S. Ct. 2244 (2024).

permissible, and that imposition of such costs was reasonable.¹⁰⁵ The waiver and exemption features of the challenged rule, while not affording financial relief as contended by the appellants, were also upheld as meeting the arbitrary and capricious standard of review under the APA for agency action.

III. ARGUMENTS BEFORE THE SUPREME COURT

On writs of certiorari, the Supreme Court granted review of the D.C. Circuit and First Circuit decisions in *Loper Bright* and *Relentless*.¹⁰⁶ The Court limited its review to two issues. Those issues were (i) whether the Court should overrule *Chevron*, and (ii) under *Chevron* Step Two, where a statute is “silent,” how best to construe the Magnuson-Stevens Fishery Conservation and Management Act (MSA) on whether vessel owners for the Atlantic herring fishery must pay the wages of at-sea monitors.¹⁰⁷ The two companion cases involved the same federal statute, implementing rules, and had substantially the same facts.¹⁰⁸

Petitioners, the fishing vessels, in *Loper Bright* and *Relentless* made a concerted effort to argue that the *Chevron* doctrine should be overruled by the Supreme Court, or at a minimum, the doctrine should be narrowed in its scope.¹⁰⁹ Alternatively, Petitioners sought to have the rule imposing industry-funding for the herring fishery at-sea monitors invalidated as an unlawful exercise of agency authority under the Administrative Procedure Act (APA).¹¹⁰ Importantly, attempts made in the litigation to overrule *Chevron* were directed to the two-step methodology announced by the Supreme Court in that case, and not to disturb, or challenge, the underlying substantive decision upholding the EPA’s rule defining “stationary source” under the Clean Air Act Amendments of 1977.¹¹¹

For context, there were dueling schools of thought regarding the historical record on the role of federal courts in the exercise of their

105. *Relentless*, 62 F. 4th at 634.

106. See *Loper Bright Enters. v. Raimondo*, 143 S. Ct. 2429 (granting certiorari); *Relentless, Inc. v. Dep’t of Com.*, 144 S. Ct. 325 (granting certiorari).

107. *Loper Bright*, 144 S. Ct. at 2257.

108. References to “Petitioners” in this section are meant collectively, rather than to specific parties either in *Loper Bright* or *Relentless*. Specific cites to the main briefs filed in the case before the Supreme Court by *Loper Bright* and *Relentless* are denoted as “BL” and “BR,” respectively. Specific cites to the brief filed by the government as Respondents in *Loper Bright* are denoted as “BL-G.”

109. Brief for Petitioner, *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024) (No. 22–451) at 18–43 [hereinafter *BL*]; Brief for Petitioner, *Relentless Inc. v. Dep’t of Com.*, 144 S. Ct. 325 (2024) (No. 22–1219) at 14–40 [hereinafter *BR*].

110. 5 U.S.C. § 706(2)(A) (2018); *BL*, *supra* note 109 at 4, 28–29; *BR*, *supra* note 109 at 23, 28.

111. *Loper Bright*, 144 S. Ct. at 2273.

Article III duties.¹¹² In the litigation, Petitioners emphasized that in the late 19th century, federal courts were granted general federal question jurisdiction to decide cases.¹¹³ When reviewing agency action, courts had the duty to construe statutes.¹¹⁴ According to Petitioners, the predominant view was that deference to agency action was not favored as a standard of review. The notion of delegation of authority to a federal agency to construe federal law, and deference to agency action was not the norm. Petitioners further argued that in 1946, Congress enacted the APA. There, under § 706, it is declared that “the reviewing court shall decide all . . . questions of law,” and “interpret . . . statutory provisions.”¹¹⁵ Under the APA, legal interpretations were for independent judicial resolution. Petitioners thus made efforts to cast the *Chevron* doctrine as contrary to the traditional role of federal courts, and argued that the judge-made rule announced in 1984 by the Supreme Court in *Chevron* lacked legitimacy.¹¹⁶

The government took issue with Petitioners’ suggested historical perspective of the authority of federal courts.¹¹⁷ It explained that in certain cases, federal courts like the Supreme Court gave deference to agency views on the meaning of statutes the agency was charged with administering.¹¹⁸ This was so both before and after Congress enacted the APA, expressly codifying the province of federal courts to interpret laws.¹¹⁹ The Supreme Court confirmed this in its *Chevron* decision.¹²⁰ Thus, the government argued that the announcement by the Supreme Court of the *Chevron* doctrine in 1984 did not usher in a new-found acceptance of granting deference to agencies. Rather, in view of past practice pre-dating *Chevron*, some have argued that the two-step framework under *Chevron* provided a more predictable, uniform structure for determining the meaning of federal statutes.¹²¹

Through the years, there has been simmering criticism of the *Chevron* doctrine.¹²² Petitioners argued that the doctrine has been viewed as contrary to the principle of separation of powers enshrined in the U.S. Constitution,

112. BL, *supra* note 109 at 23–25; BR, *supra* note 109 at 20–21, 23–24.

113. BL, *supra* note 109 at 3; BR, *supra* note 109 at 20–21.

114. BL, *supra* note 109 at 3; BR, *supra* note 109 at 20–21.

115. 5 U.S.C. § 706 (2018).

116. See BL, *supra* note 109, at 4–7; BR, *supra* note 109, at 13.

117. Brief for Respondents, *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024) (No. 22–451) at 22–26.

118. *Id.*

119. *Id.* at 25.

120. *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984) (collecting cases).

121. Scalia, *supra* note 23, at 521.

122. BL, *supra* note 109, at 23–26; BR, *supra* note 109, at 15.

diminishing the role of Congress to legislate and the role of the courts to construe statutes, in favor of the executive branch.¹²³ It was contended that this shifting of roles enhances the power of federal agencies, and thus raises due process concerns for litigants.¹²⁴ Affording deference to an agency's reading of a statute under *Chevron* Step Two bestows to the agency, as a litigant, a role normally assumed by a court, to the detriment of the opposing party. Due process is implicated since there is no level playing field for litigants challenging agency action. Additionally, Petitioners questioned the feasibility of the doctrine, observing that courts have struggled to apply the doctrine in "a principled way."¹²⁵ This includes the inherent fault under the doctrine that results in courts reaching inconsistent views on when a particular statute is ambiguous.

Further, assuming, without conceding that the *Chevron* doctrine has applicability in some form, Petitioners objected to the analysis by the lower courts that resulted in upholding the rule imposed on the herring vessels under the New England Fishery Management plan.¹²⁶ Here, the dispute centered on the framework under *Chevron* that speaks to instances where a statute is either silent or ambiguous about an aspect of the law enacted by Congress.¹²⁷ As noted previously, under *Chevron*, where a statute is either silent or ambiguous, courts must defer to an agency's reasonable interpretation of the law. Petitioners, though, argued that the MSA was silent regarding industry-funded monitors for the herring fishery.¹²⁸ Thus, Petitioners insisted that, as applied to the facts in *Loper Bright* and *Relentless*, silence in the MSA does not create an ambiguity in the statute that would justify *Chevron* deference for the agency's reading of the law.¹²⁹ According to Petitioners, this is so in that Congress statutorily provided under the MSA for the funding of monitors under three other distinct programs mentioned previously, (i) the limited access privilege program, (ii) the North Pacific Council monitoring program, and (iii) the foreign fishing vessel monitoring program. Petitioners contended that the failure of Congress to explicitly legislate for the funding of monitors applicable to the herring fishery infers that no such funding was intended by Congress.¹³⁰ Thus, the rule imposing

123. BL, *supra* note 109, at 23–27; BR, *supra* note 109, at 15–20.

124. BL, *supra* note 109, at 27–28; BR, *supra* note 109, at 30–32.

125. BL, *supra* note 109, at 16.

126. *Id.* at 39–40; BR, *supra* note 109, at 51.

127. BL, *supra* note 109, at 24; BR, *supra* note 109, at 34.

128. BL, *supra* note 109, at 43–44.

129. BL, *supra* note 109, at 43–46; BR, *supra* note 109, at 7–8, 48–49.

130. BL, *supra* note 109, at 47–48; BR, *supra* note 109, at 50–52.

industry funding for at-sea monitors for that class of fishery should be invalidated as an unlawful exercise of agency authority under the APA.

Assuming the Supreme Court declines to overrule *Chevron*, the Petitioners argued that the Court should narrow its scope.¹³¹ Petitioners challenged the notion of implied delegation under *Chevron*, empowering an agency to pursue policy goals when interpreting an ambiguous statute.¹³² Petitioners viewed implied delegation as a “fiction[,]” and not grounded in law.¹³³ An ambiguous statute raises questions of law, not policy. Courts, not agencies, are better suited to undertake the interpretive function. Further, as applied to the two cases before the Court, the MSA is silent on the authority to impose industry-funding for at-sea monitors for the herring fishery. Thus, silence must be construed as a lack of delegation by Congress of law-making powers to an agency to impose its will through rulemaking.

Petitioners’ view of the MSA is more closely aligned with the dissent by Circuit Judge Walker in *Loper Bright*, wherein he wrote that a statute’s silence on an issue cannot always equate to an ambiguity, and an implicit delegation to the agency to assume an interpretive function.¹³⁴ Where a statute is silent, an agency lacks such authority.

IV. THE SUPREME COURT’S DECISION

Chief Justice Roberts wrote the Court’s majority opinion, with Justices Thomas, Alito, Gorsuch, Kavanaugh and Barrett joining.¹³⁵ Justices Thomas and Gorsuch each filed concurring opinions.¹³⁶ Justice Kagan filed a dissenting opinion, joined by Justice Sotomayor, and Justice Jackson joined in *Relentless* only.¹³⁷ Justice Jackson took no part in the *Loper Bright* case before the Court.

In a broad sweep, the Supreme Court rejected the entirety of the *Chevron* doctrine of deference. The Court addressed the doctrine in the context presented by *Loper Bright* and *Relentless*, namely the fiction of implied delegation of agency authority by Congress to interpret ambiguous statutes. The Court identified the doctrine’s infirmities and concluded that it must be cast aside in its entirety.¹³⁸ Most fundamental to its ruling, the Supreme Court

131. BL, *supra* note 109, at 43–46; BR, *supra* note 109, at 47.

132. BL, *supra* note 109, at 36–37; BR, *supra* note 109, at 34–36.

133. BL, *supra* note 109, at 25, 43–46; BR, *supra* note 109, at 33–34.

134. BL, *supra* note 109, at 46–50.

135. *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2253 (2024).

136. *Id.*

137. *Id.*

138. *Id.* at 2263.

took great effort to emphasize that the *Chevron* doctrine was contrary to the role of Article III courts under the Constitution and could not be reconciled with § 706 of the Administrative Procedure Act (APA).

For historical context, the Court traced the history of the authority and practice of courts under Article III, and cited the seminal case *Marbury v. Madison* as establishing the quintessential authority of the federal judiciary.¹³⁹ Chief Justice Roberts emphasized that in that case, Chief Justice Marshall clearly stated that “[i]t is emphatically the province and duty of the judicial department to say what the law is.”¹⁴⁰ The judiciary was to fulfill its function using independent judgment. The Court acknowledged, though, that Congress may pass statutes that are ambiguous. Under these circumstances, it would be appropriate to give “due respect” to interpretations by the executive branch.¹⁴¹ Such weight afforded by federal courts was particularly appropriate where an agency’s interpretation was contemporaneous with the statute’s enactment and was consistently adhered to by the agency. As such, an interpretation by the executive branch “can inform” and even be entitled to “great weight” but “not supersede,” the court in determining the meaning of a statute.¹⁴²

Chief Justice Roberts canvassed the case law during the New Deal period. He referenced instances where Congress had, on occasion, explicitly delegated interpretive authority to an agency in the text of the statute. This is distinctly different from a situation where Congress enacts a law that is ambiguous on its face, without any explicit delegation to an agency to perform an interpretive function. The Court acknowledged that an explicit delegation by Congress to interpret a specific term in the statute commands deference to the agency’s view of the meaning of the statutory term. This would apply where the agency is authorized by Congress to determine how a broad statutory term applies to a set of facts found by the agency. Deference to the agency would apply if the agency’s decision reflected “a sensible exercise of judgment.”¹⁴³ The Court cited two cases that exemplified this explicit delegation with a deferential standard of review. Those cases are *Gray v. Powell*¹⁴⁴ and *National Labor R Board v. Hearst Publications, Inc.*,¹⁴⁵ decided in 1941 and 1944, respectively.

139. 5 U.S. (1 Cranch) 137, 177 (1803).

140. *Loper Bright*, 144 S. Ct. at 2257 (quoting *Marbury*, 5 U.S. (1 Cranch) at 177).

141. *Loper Bright*, 144 S. Ct. at 2257.

142. *Id.* at 2258–59.

143. *Id.* at 2259 (quoting *Gray v. Powell*, 314 U.S. 402, 412–13 (1941)).

144. 314 U.S. 402 (1941).

145. 322 U.S. 111 (1944).

In these situations, such as those in *Gray* and *Hearst*, a deferential standard applies in cases where Congress makes an explicit delegation of interpretive authority to an agency. As the Court emphasized, the statutory term is “sufficiently intertwined with the agency’s factfinding,” where the agency’s interpretation has a “reasonable basis in law.”¹⁴⁶ Here, it is important to pause to emphasize the nuanced approach embraced by the Court. The deference extended to an agency, as just noted, “was cabined to factbound determinations” made by an agency.¹⁴⁷ The Court in *Loper Bright* and *Relentless* made clear that the *Gray* and *Hearst* decisions must not be construed as changing the judicial approach to pure questions of law. For questions of law, there is no basis for conferring on the agency a deferential standard. Rather, for questions of law, the courts must assume the interpretive function using independent judgment. The Court, though, was not consistent in its later decisions in that, for factbound determinations, it simply interpreted the statute on its own, rather than defer to an agency’s view.¹⁴⁸

As the Supreme Court observed in its decision, the evolution of court applied standards of review for agency decision-making is punctuated by the Court’s 1944 ruling in *Skidmore v. Swift & Co.*¹⁴⁹ and the enactment by Congress in 1946 of the APA.

In *Skidmore*, the Court recognized that an agency may express opinions and interpretations regarding the meaning of statutes that courts may look to as “guidance.”¹⁵⁰ For this to apply, the agency must be acting in the course of its official duties, relying on its expertise. The relevant factors to consider are those that would give the agency’s view the “power to persuade,” including the “thoroughness evident in its consideration, the validity of its reasoning, [and] its consistency with earlier and later pronouncements.”¹⁵¹ Here, where the relevant factors apply, the agency’s view helps to inform the court, but not to control, in the exercise of independent judgment, the court’s function to interpret the statute.

Further, as relevant here, Congress directed in § 706 of the APA that “the reviewing court shall decide all . . . questions of law,” and “interpret constitutional and statutory provisions.”¹⁵² Further, § 706(2)(A) directs courts to “hold unlawful and set aside agency action, findings, and

146. *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2259–60 (2024).

147. *Id.* at 2259.

148. *Id.* at 2260.

149. 323 U.S. 134 (1944).

150. *Loper Bright*, 144 S. Ct. at 2259 (quoting *Skidmore*, 323 U.S. at 139–40).

151. *Skidmore*, 323 U.S. at 140.

152. 5 U.S.C. § 706 (2018).

conclusions found to be . . . not in accordance with law.”¹⁵³ The Court specifically noted that § 706 “prescribes no deferential standard for courts to employ in answering . . . legal questions.”¹⁵⁴ That is the plain reading of the section’s text. Writing for the Court, Chief Justice Roberts further emphasized that the role of courts codified in § 706, as one of deciding questions of law, is confirmed by the legislative history of the APA.¹⁵⁵ The Chief Justice explained that the “traditional understanding” of the role of courts, the judicial function, is that courts “must exercise independent judgment” when determining the meaning of statutes.¹⁵⁶ There is “no deferential standard for courts to employ in answering . . . legal questions.”¹⁵⁷ That is clearly exemplified by the text of § 706 of the APA.

Significantly, Chief Justice Roberts distinguished instances where the matter under review by a court pertains to agency policymaking and fact-finding. In those latter cases, §§ 706(2)(A) and 706(2)(E)¹⁵⁸ of the APA mandate a degree of specified deference to the agency’s decisions.¹⁵⁹ The Court concluded that “[t]he deference that *Chevron* requires of courts reviewing agency action cannot be squared with the APA.”¹⁶⁰

Along these lines, Chief Justice Roberts cited to Justice Scalia’s concurring opinion in *Perez v. Mortgage Bankers Association*¹⁶¹ wherein he addressed the APA’s enactment, and its intended purpose. The APA was enacted in 1946 at a time of rapid growth of the administrative process, and thus was intended as “a check upon administrators whose zeal might otherwise have carried them to excesses”¹⁶² The design and purpose of the APA are in direct tension with *Chevron* deference, defying the very intent of Congress when it enacted the APA.¹⁶³ Further, Justice Scalia wrote that it was telling that the Court’s 1984 *Chevron* decision never mentioned the APA, even as it approved the principle of deference for agency action under the two-step framework.¹⁶⁴ While Justice Scalia was an early advocate of the *Chevron* doctrine, he wrote in *Perez* that the Court, “[h]eedless of the original design of the APA,” developed in *Chevron* “an elaborate law of deference to

153. *Id.* § 706(2)(A).

154. *Loper Bright*, 144 S. Ct. at 2261.

155. *Id.* at 2262.

156. *Id.*

157. *Id.* at 2261.

158. 5 U.S.C §§ 706(2)(A), (2)(E).

159. *Loper Bright*, 144 S. Ct. at 2261.

160. *Id.* at 2263.

161. 575 U.S. 92, 108 (2015) (Scalia, J., concurring).

162. *Id.* at 109 (quoting *United States v. Morton Salt Co.*, 338 U.S. 632, 644 (1950)).

163. *Perez*, 575 U.S. at 109–10 (Scalia J., concurring).

164. *Id.*

agencies' interpretations of statutes"¹⁶⁵ Justice Scalia observed that the Court ignored the directive under § 706 of the APA that the courts interpret statutory provisions; in doing so the Court empowered agencies to resolve ambiguous statutes.¹⁶⁶

Lastly, the Supreme Court in *Loper Bright* and *Relentless* recognized that Congress may expressly delegate a degree of discretion for an agency to implement an enactment.¹⁶⁷ By way of example, the Court noted that Congress, in some instances, may expressly delegate in a statute authority to define a statutory term.¹⁶⁸ Congress may also give an agency the authority to prescribe rules to "fill up the details" of a statutory scheme or to regulate subject to the limits imposed by a term or phrase in a statute while conferring on the agency "flexibility" to do so.¹⁶⁹ This would apply when words such as "appropriate," "reasonable," or "necessary" are included in the statute.¹⁷⁰ Under these circumstances, the reviewing court must apply independent judgment when interpreting the law, but also consider the agency's views provided they reflect "reasoned decision making," and the agency has stayed within the boundaries of the congressional delegation of authority.¹⁷¹

The Supreme Court found vexing *Chevron's* two-step formula—which in the Court's view was fundamentally misguided. First, the Court rejected the argument that an ambiguity in a statute reflects a conscious decision by Congress to implicitly delegate to an agency the task of interpreting a statute rather than rely on a court to construe the statute¹⁷². The Court viewed this as a fiction, not grounded in reality.¹⁷³ This was so since many ambiguities may be unintentional, or simply reflect a failure by Congress to consider a particular issue with clarity when enacting a law.

Chief Justice Roberts explained that rather than relying on an agency's "permissible" reading of an ambiguous statute, as would be the case under *Chevron* Step Two, it is far better to allow a court to interpret the statute using the traditional tools available to it.¹⁷⁴ Courts are equipped to do this task. This is so even for highly technical statutory provisions.¹⁷⁵ The Court rejected the

165. *Id.* at 109.

166. *Id.* at 109–10.

167. *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2263 (2024).

168. *Id.*

169. *Id.* (citations omitted).

170. *Id.* at 2263 & n.6 (explaining the degree of discretion granted to the U.S. Environmental Protection Agency).

171. *Id.* at 2263 (citations omitted).

172. *Id.* at 2265.

173. *Id.*

174. *Loper Bright*, 144 S. Ct. at 2266.

175. *Id.* at 2267.

notion that only an agency has the competence, the expertise, to provide meaning to highly complex statutes.¹⁷⁶ The Chief Justice observed that courts routinely confront the task of interpreting complex statutes when there is no involvement of an agency under the statute at issue.¹⁷⁷ Ambiguous statutes, “no matter how impenetrable, do—in fact, must—have a single, best meaning.”¹⁷⁸ Thus, the Court explained that instead of concluding that an agency’s reading of the law is “permissible” under *Chevron* Step Two, it is far preferable for courts to employ all available tools to derive the “best reading” of the statute.¹⁷⁹ This was in recognition that agencies have no special competence in construing ambiguous statutes.¹⁸⁰ Courts, though, have the capability to do so.¹⁸¹ The Chief Justice suggested that courts can always “seek aid” from an agency on its views regarding technical aspects of a statute.¹⁸² Such information, constituting a “body of experience” from an agency, can influence a court’s independent judgment to the extent the agency’s views are entitled to that influence.¹⁸³ This is particularly so where an agency’s view “rests on factual premises” that arise from an agency’s expertise.¹⁸⁴ The Court recognized that an agency’s contemporaneous interpretations of a statute, if consistently adhered to, may well be useful as guidance to courts.¹⁸⁵

Proponents of agency deference argued that matters involving policymaking are most appropriately left to political agency officials, not to the courts.¹⁸⁶ The dissent pressed this point, but the majority disagreed.¹⁸⁷ The Court stated that judges have always been expected to render their judgments independent of the political branches when interpreting laws.¹⁸⁸

The Court also summarily rejected the argument that allowing agencies to interpret ambiguous statutes promotes uniformity in a statute’s meaning.¹⁸⁹ The Court mentioned that this was highly doubtful in that judges have inconsistently applied the Two-Step framework and uniformity was not the practice for agencies, which have routinely changed prior interpretations of

176. *Id.*

177. *Id.* at 2267.

178. *Id.* at 2266.

179. *Id.*

180. *Id.* at 2266.

181. *Id.* at 2266–67.

182. *Id.* at 2262.

183. *Id.*

184. *Id.* at 2267.

185. *Id.* at 2262.

186. BL-G, *supra* note 117, at 19–21.

187. *Loper Bright*, 144 S. Ct. at 2273.

188. *Id.* at 2273.

189. *Id.* at 2267.

statutes with a change in the political leadership of the executive branch.¹⁹⁰ This hardly promotes consistency.

By casting aside *Chevron* deference as a standard of judicial review, the Court emphasized the role of *Skidmore*, and the factors set forth therein, as a guide for courts to determine the validity of an agency's decision-making¹⁹¹. Under the *Skidmore* standard, deference to the agency's interpretation of a statute is not the standard to be applied.¹⁹² Rather, the inquiry for the reviewing court is the degree to which the agency's reading of the law is entitled to weight, the degree to which the agency's views have the "power to persuade."¹⁹³ Here, though, the reviewing court always retains its function to determine questions of law using independent judgment.¹⁹⁴

As to the principle of *stare decisis*, the majority of the Supreme Court ruled that *stare decisis* does not preclude overruling the *Chevron* doctrine.¹⁹⁵ The Court framed the analysis, noting that *stare decisis*, requiring adherence to judicial precedent, "is not an inexorable command."¹⁹⁶ Rather, there are certain factors to consider case-by-case. Those factors are: (i) the strength of the decision's reasoning, (ii) the rule's workability, and (iii) "reliance on the decision."¹⁹⁷

The Court viewed the *Chevron* doctrine as "fundamentally misguided."¹⁹⁸ This was particularly so in that in the past, there was no serious attempt to come to terms with its application vis-à-vis the APA.¹⁹⁹ Further, a history of the doctrine's application reveals attempts by the Court to continually adjust the two-step framework in response to difficulties in the methodology.²⁰⁰ To make matters worse, *Chevron* Step One, with the ambiguity criterion, led to more confusion, highlighting the difficulty faced by courts in applying that element with consistency.²⁰¹ Drawing from experience with the *Chevron* doctrine, the Court concluded that the doctrine was not workable, writing that "[f]our decades after its inception, *Chevron*

190. *Id.* at 2267, 2272.

191. *Id.* at 2267 (citing *Skidmore*).

192. *Id.*

193. *Id.*

194. *Id.* at 2262.

195. *Id.* at 2270.

196. *Id.* at 2270 (internal quotation marks and citation omitted).

197. *Id.*

198. *Id.*

199. *Id.* at 2265.

200. *Id.* at 2268–72.

201. *Id.* at 2270.

has . . . become an impediment . . . to accomplishing the basic judicial task of say[ing] what the law is.”²⁰²

Turning to the question of reliance interests, the Court likewise found this element lacking.²⁰³ Simply put, the doctrine does not allow for a “clear or easily applicable standard,” and it has been applied inconsistently by the courts, such as when agencies make decisions alerting their prior interpretations of a given statute.²⁰⁴ *Chevron* thus hardly allows for a basis of reliance by those who wish to plan their future conduct. The Court opined that the *Chevron* doctrine, as a fundamentally flawed judge-made rule, with all its instability, cannot provide a basis to proclaim justifiable reliance interests.²⁰⁵

The majority opinion was quick to emphasize, though, that by overruling the *Chevron* doctrine, the Court did not intend to question prior cases that applied the *Chevron* framework.²⁰⁶ Thus, those decisions that applied the *Chevron* methodology affirming an agency’s action as lawful are subject to *stare decisis*. This includes *Chevron* itself wherein the Court upheld the EPA’s definition of the term “stationary source” under the Clean Air Act Amendments of 1977.²⁰⁷

The majority opinion expressly overruled the *Chevron* doctrine.²⁰⁸ It thus vacated the D.C. Circuit and First Circuit judgments in *Loper Bright* and *Relentless*, respectively in that their analysis applied *Chevron*’s two-step framework. Further, it remanded the two cases for further proceedings in accordance with the Court’s decision.²⁰⁹

The essential principles arising from the Supreme Court’s decision are:

1. Courts must employ independent judgment free of agency deference when exercising their role under Article III of the Constitution and in accordance with the APA under § 706 when interpreting statutes.
2. Resort to an agency’s views is appropriate to inform the court on the meaning of a statute, and the degree of weight to be afforded to an agency’s reading of the law will vary depending upon factors

202. *Id.* at 2271 (internal quotation marks and citation omitted).

203. *Id.* at 2272.

204. *Id.* (citation omitted).

205. *Id.*

206. *Id.* at 2273.

207. *Id.* at 2273.

208. *Id.*

209. *Id.*

considered by the agency, its reasoning, and the agency's power to persuade.

3. Where Congress has expressly delegated to the agency a degree of discretion to interpret a statutory term, or to "fill up the details" of a statutory scheme, courts are to respect that delegation²¹⁰. This respect is due if the agency acts within the authority delegated by Congress, and the agency's views warrant weight or respect under traditional tools applied for review of agency action. The analysis includes the reasoning reflected in the agency's decision. Here, the reviewing court, when interpreting the law, must ultimately apply independent judgment.

4. Courts may not defer to an agency's interpretation of a statute merely because the statute is ambiguous.

Justice Thomas and Justice Gorsuch each wrote separate concurring opinions. Justice Thomas was compelled to emphasize the serious flaw in an implicit delegation of authority to agencies under the *Chevron* model. He viewed this as most serious in that it presented a direct challenge to the very design under the Constitution that embodied separation of powers between the three co-equal branches of government.²¹¹ He explained that the *Chevron* doctrine denied the judicial power of the courts and expanded the authority of the executive branch by anointing it with the power to legislate and perform a judicial function contrary to the Framers' intent.²¹² On this basis alone, Justice Thomas viewed *Chevron* as doomed to failure on constitutional grounds. Justice Thomas in his concurring opinion condemned the doctrine since the most pernicious impact, in practice, favored an agency's reading of an ambiguous statute, if found to be merely permissible, even though a court may believe a different interpretation was the more correct one.²¹³

Justice Gorsuch in his concurring opinion went to lengths to explore the historical treatment of *stare decisis* principles. He supported the Court's views on *stare decisis* and reliance interests.²¹⁴ His position was generally influenced by a few key factors. First, *Chevron* deference directly conflicted with the APA's governance of Article III courts to exercise independent

210. *Id.* at 2263.

211. *Id.* at 2274 (Thomas, J., concurring).

212. *Id.* at 2274–75.

213. *Id.*

214. *Id.* at 2281–82, 2288 (Gorsuch, J., concurring).

judgment in interpreting laws.²¹⁵ Second, *Chevron* deference reflected a disregard for the notion of separation of powers under the Constitution which, as designed, envisions three co-equal branches of government.²¹⁶ Third, the lack of workability under the *Chevron* framework, and its aberrations, had negative impacts, particularly for reliance interests.²¹⁷ Fourth, the doctrine embodied a “systematic bias,” thus depriving the party challenging agency action due process.²¹⁸

As for due process, Justice Gorsuch was adamant about *Chevron*’s shortcomings. He succinctly explained that *Chevron* deference, by preventing courts from fulfilling their function under Article III to determine a statute’s meaning, “forces judges to abandon the best reading of the law in favor of views of those . . . holding the reins of the Executive Branch.”²¹⁹ Further, courts are subject to the government’s changes in its interpretations of a statute at the government’s whim. There are concerns that arise from this. Instead of providing a fair adjudication in challenges brought against an agency’s actions, “insulate[d] . . . from power and politics,”²²⁰ *Chevron* deference “requires courts to place a finger on the scales of justice in favor of the most powerful of litigants, the federal government.”²²¹ Justice Kagan wrote a dissenting opinion, joined by Justice Sotomayor in both *Loper* and *Relentless* and Justice Jackson in the *Relentless* case.²²²

The substance of the dissent is that *Chevron* deference had, for 40 years, become interwoven in administrative law. *Chevron*’s two-step formula provided for a more natural recognition that where a statute is ambiguous or has gaps, then it is the agency’s reading of the law, assuming it is reasonable, that governed.²²³ This is particularly so in the enactments of complex and technical regulatory regimes. The dissent opined that it is understood that Congress does not always write clear statutory language addressing all issues. This could be either intentional or unintentional. The principle of implied delegation under *Chevron* reflected what Congress expected and wanted. Thus, *Chevron* deference “is rooted in a presumption of legislative intent,”²²⁴ an implied delegation of authority to the agency with expertise. Where there is ambiguity in the law or gaps, policy choices often need to be

215. *Id.* at 2281–82, 2285.

216. *Id.* at 2289.

217. *Id.* at 2286–88.

218. *Id.* at 2285 (internal quotation marks and citation omitted).

219. *Id.*

220. *Id.*

221. *Id.* (internal quotation marks and citation omitted).

222. *Id.* at 2294 (Kagan, J., dissenting).

223. *Id.*

224. *Id.*

made. Under implied delegation, those decisions naturally fall within the ambit of agency decision-making in the absence of an explicit delegation by Congress to an agency.²²⁵

Justice Kagan chastised the majority, observing that the Court reached its decision to jettison *Chevron* deference because it is contrary to the dictates of the APA. The dissent disagreed, writing that the APA is no impediment to a delegation of implied interpretive authority to agencies. Justice Kagan emphasized that *Chevron* is “entrenched precedent, entitled to the protection of *stare decisis*”²²⁶

Much of the dissent’s views pertained to the supposed expertise of agency officials in construing and implementing complex regulatory statutes. To this point, Justice Kagan explained that the presumption under *Chevron* was the recognition that resolving ambiguities in statutes often entails consideration of policy to balance competing goals.²²⁷ It is the agency, with the duty to administer the law, that has the expertise and knowledge on how to strike the best balance on issues of policy. Judges are not suited to engage in policy.

Chief Justice Roberts, though, addressed this argument in the majority opinion. He argued that courts have the sole duty to interpret the law, using traditional tools of statutory interpretation.²²⁸ Contrary to what the dissents suggests, courts have long been viewed as capable of interpreting statutes with complex, technical provisions. As noted in the majority’s opinion, the role of courts is to derive the best interpretation of the statutory text, even with highly technical statutes, shrouded in ambiguity.²²⁹

Further, an agency has the leeway to advise the court of the technical aspects of a statute, and the agency’s views may be entitled to respect, or weight—the power to persuade. Chief Justice Roberts addressed the view, pressed by the dissent, that ambiguous statutes involve policymaking, best left to political agency officials, and not to the courts.²³⁰ He wrote that Congress intends to leave matters of policy choices to agencies.²³¹ When it comes to resolving ambiguities in a statute, though, that task involves legal interpretation particularly suited for the courts. Chief Justice Roberts wrote that *Chevron* deference was fundamentally misguided, in that agencies “have

225. *Id.*

226. *Id.* at 2295.

227. *Id.* at 2299.

228. *Id.* at 2266 (majority opinion).

229. *Id.* at 2267.

230. *Id.* at 2267–68.

231. *Id.*

no special competence in resolving statutory ambiguities.”²³² Further, he made the point that where Congress intends to leave policy determinations to an agency, it can do so by delegating discretionary authority explicitly in the statute.²³³ This would not, though, amount to deference to an agency’s reading of the law that existed under the *Chevron* regime.²³⁴ Additionally, Congress could, of course, explicitly make policy choices itself when drafting legislation.

The dissent had a radically different view of § 706 of the APA, in direct conflict with the majority opinion. Section 706 was enacted to codify pre-existing law. Justice Kagan wrote that § 706 and pre-existing law are both compatible with *Chevron* deference.²³⁵ For sure, § 706 provides that a reviewing court “shall decide all . . . questions of law” and “interpret . . . statutory provisions.”²³⁶ The majority reads § 706 as an explicit command for courts and does not indicate that courts may also employ a deferential standard for agency actions. Justice Kagan objected to this reading of § 706, noting pointedly that the section does not provide for a *de novo* standard.²³⁷ In the dissent’s view, § 706 does not prescribe any standard of review. Thus, under the deferential *Chevron* framework, a reviewing court applying § 706 appropriately evaluates whether the agency’s interpretation of the law is reasonable.

In so doing, the court fulfills its function under § 706 to “decide all questions of law” and “interpret . . . statutory provisions.”²³⁸ To emphasize the point, the dissent wrote that § 706 “neither mandates nor forbids *Chevron*-style deference.”²³⁹ To complete the analysis, Justice Kagan wrote that § 706, when enacted, was meant to reflect the then current state of the practice by courts which generally tended to apply a deferential standard of review for agency actions.²⁴⁰ By way of example, the dissent cited the 1941 case *Gray v. Powell*²⁴¹ and the 1944 case *National Labor Relations Board v. Hearst Publications, Inc.*²⁴² Justice Kagan further expounded on the

232. *Id.* at 2266.

233. *Id.* at 2263.

234. *Id.* at 2666.

235. *Id.* at 2303–04 (Kagan, J., dissenting).

236. *Id.* at 2261 (majority opinion).

237. *Id.* at 2261 n.4; 5 U.S.C. § 706 (2018).

238. 5 U.S.C. § 706 (2018).

239. *Loper Bright*, 144 S. Ct. at 2303 (Kagan, J., dissenting).

240. *Id.* at 2304.

241. *Id.* at 2305; see *Gray v. Powell*, 314 U.S. 402 (1941).

242. *Loper Bright*, 144 S. Ct. at 2305; see *NLRB v. Hearst Publ’ns, Inc.*, 322 U.S. 111 (1944).

practice of favoring deference to agency interpretations of ambiguous statutes pre-dating the APA.²⁴³

As to *stare decisis*, here too, the dissent was critical of the majority decision. Justice Kagan wrote that *Chevron* deference was entitled to the “strongest form of protection” under *stare decisis*, and it cast a grim view of the majority’s holding.²⁴⁴ “*Stare decisis* promotes the even-handed, predictable, and consistent development of legal principles.”²⁴⁵ The dissent predicted that the majority’s decision “will cause a massive shock to the legal system” by creating doubt about established interpretations of statutes and impeding the interests of those who have relied on them.²⁴⁶ Tellingly, Congress could have taken action to alter or do away with the *Chevron* model, but has not done so. Justice Kagan presented a litany of objections arising from the majority’s decision to deny *stare decisis* for the *Chevron* doctrine.²⁴⁷

The dissent concluded by observing the frailties of the majority decision, a realignment of roles for the executive branch and the courts with negative consequence.²⁴⁸ Justice Kagan found essential fault with the majority’s decision which, in her view, ignored the wish of Congress.²⁴⁹ Executive agencies perform the functions as actors with expertise to implement complex regulatory regimes, resolve ambiguities and “fill the gaps” in statutes.²⁵⁰ Justice Kagan wrote that agencies are part of the political realm to weigh factors and make policy choices.²⁵¹ By overruling *Chevron*, the Court has ignored that dynamic—one that Congress would have chosen—rather than look to the judiciary to interpret regulatory statutes in the exercise of independent authority.²⁵²

V. OBSERVATIONS

Past commentary over the years on the *Chevron* doctrine was overwhelmingly negative. The most consistent focus, as expressed by members of the Supreme Court and others, has been separation-of-powers and non-delegation principles, rooted in the Constitution and codified under

243. *Loper Bright*, 144 S. Ct. at 2306.

244. *Id.*

245. *Id.* at 2307 (internal quotation marks and citation omitted).

246. *Id.*

247. *Id.* at 2306–07.

248. *Id.* at 2310–11.

249. *Id.* at 2311.

250. *Id.*

251. *Id.*

252. *Id.*

the Administrative Procedure Act. The Supreme Court, in its June 28 decision, came to terms with the infirmities of the doctrine. By its decision to overrule the doctrine in its entirety, the Court rewrote the landscape of modern administrative law. This will burden federal agencies with new realities in the implementation of congressional enactments that, as recognized, will be the responsibility of the courts, through the exercise of independent judgment, to interpret. Thus, the Court has put to rest what has been referred to as an experiment: the “*Chevron* project.”²⁵³

While casting aside the *Chevron* doctrine that raised a host of uncertainties in its application, the Supreme Court’s decision brings to the forefront new doubts as to how the courts—and interested parties—will interpret this decision. These doubts will be particularly great as to what standards to apply when reviewing actions taken by federal agencies to implement complex regulatory regimes.

As Chief Justice Roberts observed in the Supreme Court’s majority opinion, the Court has not applied the *Chevron* doctrine since 2016. Erosion of *Chevron* deference in recent years is perhaps best exemplified in two recent cases decided by the Supreme Court in 2022: *American Hospital Association v. Becerra*²⁵⁴ and *Becerra v. Empire Health Foundation*.²⁵⁵ Both of those decisions involved Medicare reimbursement to hospitals—a complex subject. In both of those cases, briefing papers filed with the Court mentioned the relevance of *Chevron*. The Supreme Court’s decisions, though, made no explicit reference to the *Chevron* framework.²⁵⁶ This was a conspicuous omission in the Court’s rulings since *Chevron*’s applicability was an issue.

In closing, the Supreme Court in its June 28, 2024 decision has cast aside 40 years of administrative law. In so doing, the Court has pivoted to another dynamic, re-establishing the role of courts to fulfill their duty to exercise independent judgment when interpreting the law, as Chief Justice Marshall envisioned in *Marbury v. Madison*.

VI. CONCLUSION

In a practical sense, now that the *Chevron* doctrine is overruled, federal agencies will be burdened with their newly defined, reduced authority to administer ambiguous statutes.

253. *Id.* at 2270 (majority opinion).

254. 596 U.S. 724 (2022).

255. 597 U.S. 424 (2022).

256. *See generally Am. Hosp. Ass’n*, 596 U.S. 724 (2022); *Becerra*, 597 U.S. 424 (2022).

In a post-*Chevron* era, a large swath of industries subject to regulatory statutes must now grapple with choices, assess risks, and strategically plan ahead for litigation challenging agency rulemakings. The actions taken by agencies will no longer enjoy the deferential standard of review once afforded under *Chevron*'s two-step formula. It is reasonable to conclude that the *Skidmore* standard of review, no stranger to the judiciary, will be more frequently applied by reviewing courts. Further, the courts will employ the standards set forth in the Administrative Procedure Act (APA) for review of agency action under § 706(2)(A). Not to be overlooked, the Supreme Court's decision also looks to Congress by placing the onus on legislators to be more mindful of the statutory text they consider and the complex technical aspects of the laws they draft and enact. The Court invited Congress to consider formal, explicit delegation to agencies of interpretive authority for certain provisions, or statutory terms, which may give rise to a degree of agency discretion requiring reasoned decision-making. It is the power to persuade, not the power to control, that would govern under these circumstances. Here, the courts retain ultimate authority, provided under the APA, to exercise independent judgment in construing statutes.

To be sure, it will take time for litigants and courts to navigate the uncertainties that the Supreme Court's June 28 decision brings to bear in review of agency actions. In this sense, it is a new day, and new landscape, in administrative law.

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