



# **CHEVRON DEFERENCE & THE FUTURE OF STATUTORY & REGULATORY INTERPRETATION**

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*The opinions expressed herein are solely the presenter's and do not reflect the opinions and beliefs of Xcel Energy of Southwestern Public Service Company.*

# Chevron Deference & the Future of Statutory and Regulatory Interpretation

## Separation of Powers

### The Government of the United States



Cite: Britannica Kids, <https://kids.britannica.com/students/article/separation-of-powers/630953/media?assemblyId=147837>

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## Separation of Powers



### Constitution of New Mexico

**Article III, Section 1. [Separation of departments; establishment of workers compensation body.]**

**The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this constitution otherwise expressly directed or permitted.** Nothing in this section, or elsewhere in this constitution, shall prevent the legislature from establishing, by statute, a body with statewide jurisdiction other than the courts of this state for the determination of rights and liabilities between persons when those rights and liabilities arise from transactions or occurrences involving personal injury sustained in the course of employment by an employee. The statute shall provide for the type and organization of the body, the mode of appointment or election of its members and such other matters as the legislature may deem necessary or proper.

Separation of Powers

# **Chevron Deference & the Future of Statutory and Regulatory Interpretation**

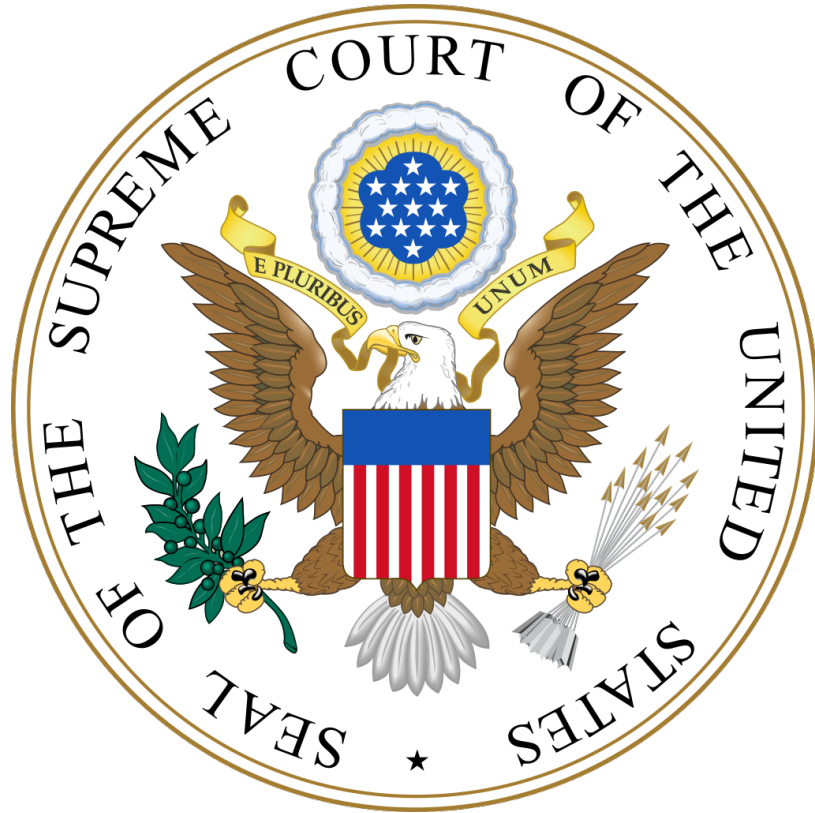
***Chevron USA Inc. v. Natural Resources Defense Council, Inc. 467 U.S. 837 (1984) (Chevron)***



- Clean Air Act (CAA) required polluters to obtain a permit from a state regulator before building any new or modified stationary sources of air pollution.
- The EPA promulgated a rule interpreting the term “stationary source” to include a “bubble policy.”
- The NRDC challenged this interpretation, arguing that the word “source” referred to each individual pollution-emitting piece of equipment, which meant that a plant would need to obtain a permit any time it created a new source of pollution or modified an existing source if the effect increased pollution.

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***Chevron USA Inc. v. Natural Resources Defense Council, Inc. 467 U.S. 837 (1984) (Chevron)***

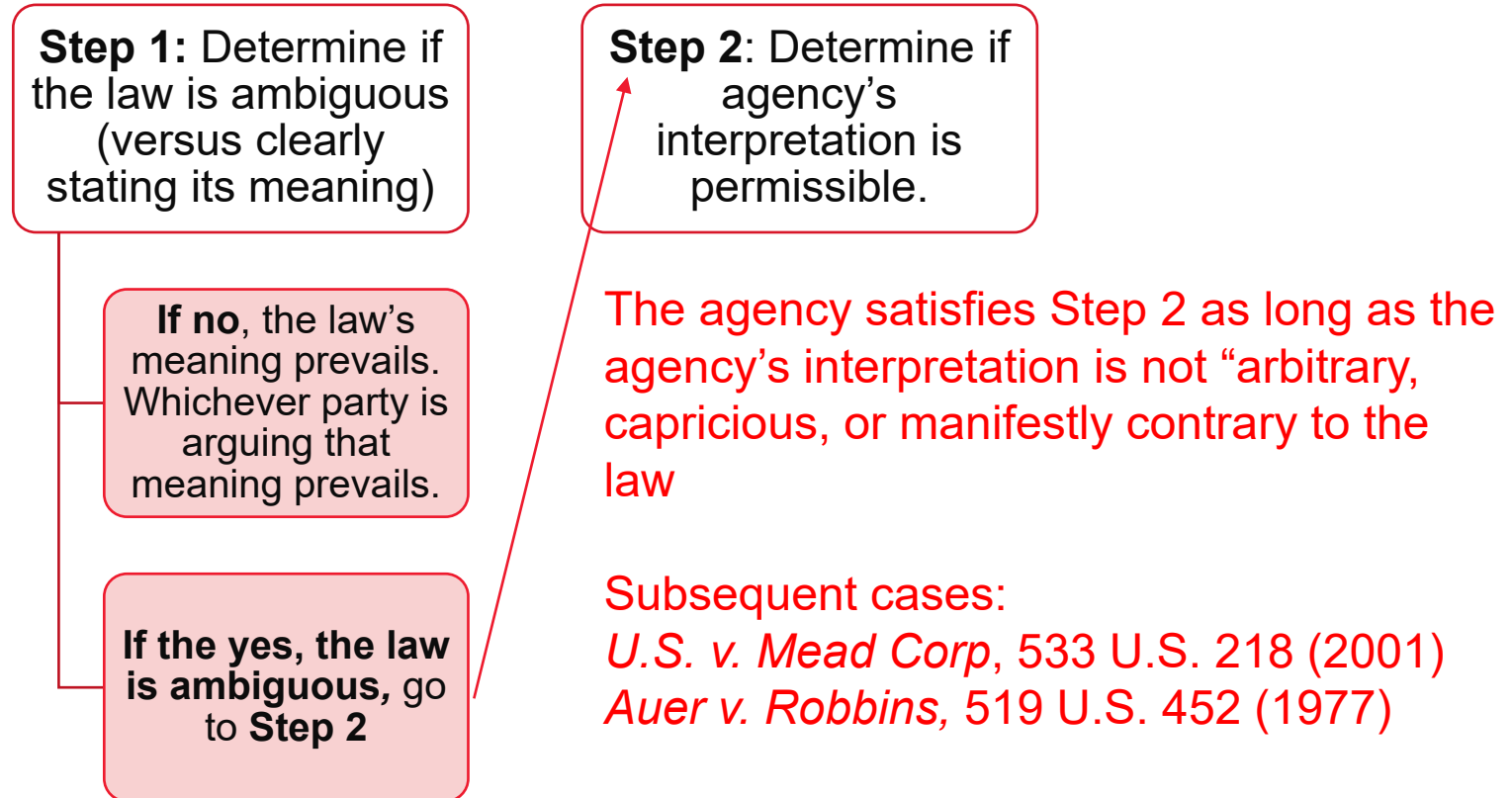


- The Court ruled in favor of the EPA, and the precedent of *Chevron deference* was born.
- The justices decided Chevron was a case about the separation of powers. The pivotal question wasn't which side had the better interpretation of the statute, but rather *who gets to decide*.



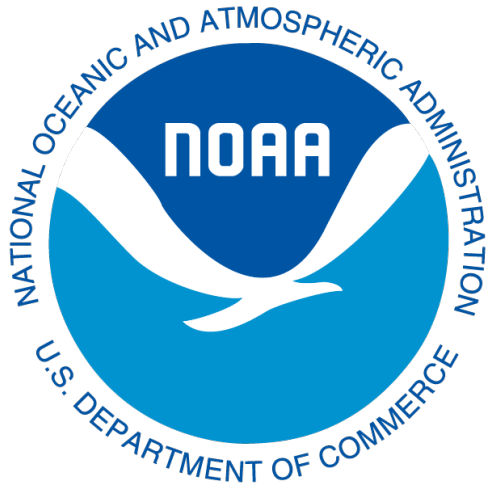
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If the agency is designated to interpret a law, the court will follow a two-step process:



# Chevron Deference & the Future of Statutory and Regulatory Interpretation

## *Loper Bright Enterprises v. Raimondo*: The Case that could undo *Chevron* deference

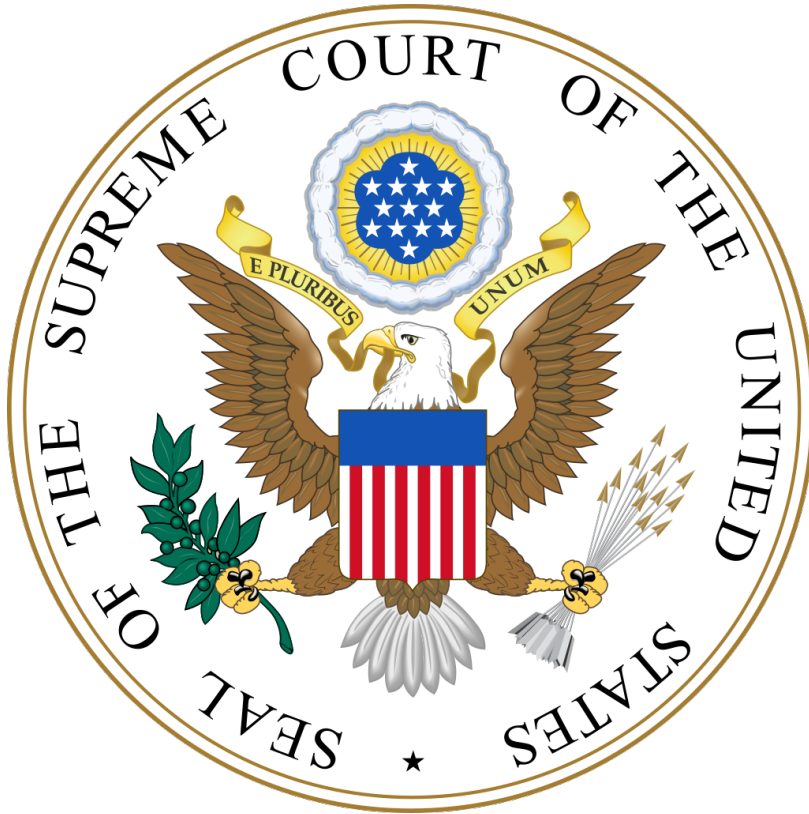


**NOAA**  
**FISHERIES**

- *Loper Bright Enterprises v. Raimondo* presents the court with an opportunity to weaken the *Chevron* doctrine significantly, or perhaps even do away with it altogether.
- The case pits the owners of a New England fishing company against the National Marine Fisheries Service (NMFS).
- The Magnuson-Stevens Act sets catch limits to help prevent overfishing and requires fishing boats to have a government-appointed inspector onboard to monitor compliance.
- Fishing companies incur the cost of these monitors—in plaintiff Loper Bright’s case, about \$700 a day—but the company has argued that NMFS has no authority to force it to do so.

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## WHAT WILL SCOTUS DO!?!



11/10/2022  
Petition for  
Writ of  
Certiorari  
filed

Oral  
Arguments  
in January  
2024

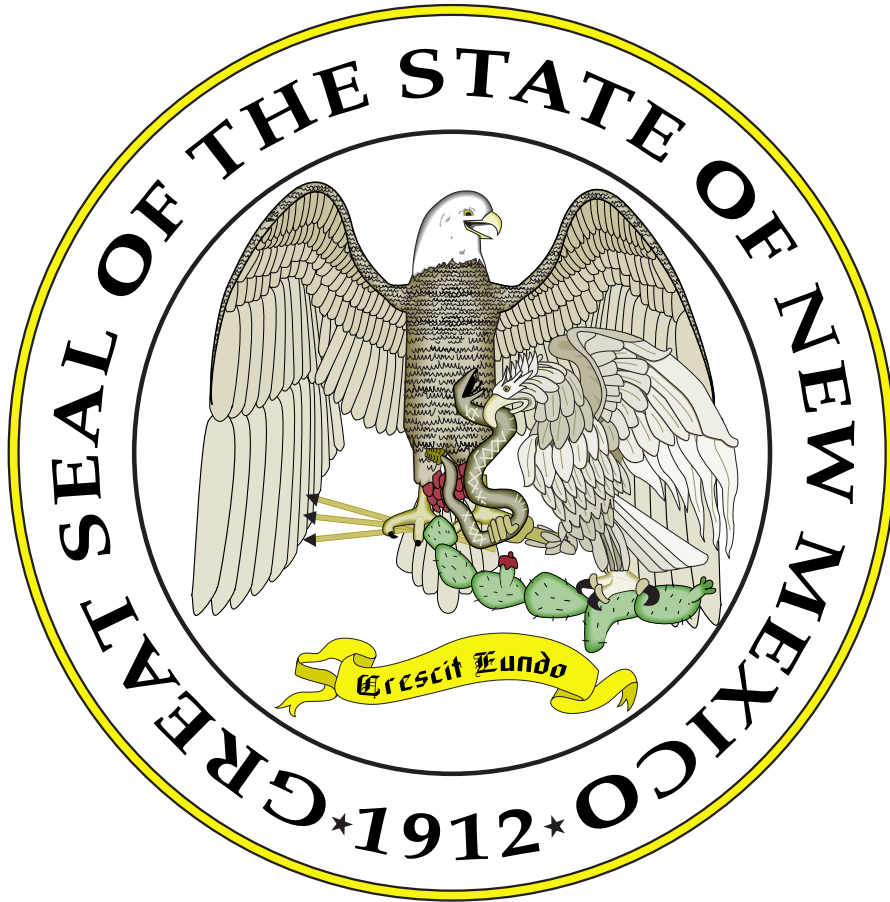
May 1,  
2023  
Petition for  
Cert  
granted





# Chevron Deference & the Future of Statutory and Regulatory Interpretation

## New Mexico Deference



- New Mexico Courts, along with twenty-four other states, follow a de novo review standard. The New Mexico Supreme Court has said that it will not defer to an agency's statutory interpretation, as that is a matter of law that the court reviews. (*N.M. Att'y Gen. v. N.M. Pub. Reg. Comm'n*, 309 P.3d 89, 93 (N.M. 2013))
- When reviewing an agency decision, the NM Supreme Court will "determine if it is arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or, otherwise not in accordance with law." *Rio Grande Chapter of Sierra Club v. N.M. Mining Comm'n*, 2003-NMSC-005, ¶ 17, 133 N.M. 97, 61 P.3d 806; accord Rule 1-075(R) NMRA.
- New Mexico has retained language that mirrors the Chevron-type deference standard, with an emphasis on agency expertise. New Mexico courts "defer to an agency interpretation if the relevant statute is unclear or ambiguous" and will confer a heightened degree of deference on legal questions that "implicate special agency expertise or the determination of fundamental policies within the scope of the agency's statutory function."

# **Chevron Deference & the Future of Statutory and Regulatory Interpretation**

## **Implications if Chevron is overturned**



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- It would shrink the power of federal agencies, such as the EPA, to set rules and enforce environmental protections
- More challenges to federal and state regulations
- Could implicate separation of powers
- Confusion until the Supreme Court clarifies new test
- More challenges to deference in State Courts

**THANK YOU!**