



# **FAREWELL CHEVRON DEFERENCE, HELLO LOPER BRIGHT & 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.*

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

## SUPREME COURT OF THE UNITED STATES

## Syllabus

LOPER BRIGHT ENTERPRISES ET AL. *v.* RAIMONDO,  
SECRETARY OF COMMERCE, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA CIRCUIT

No. 22–451. Argued January 17, 2024—Decided June 28, 2024\*

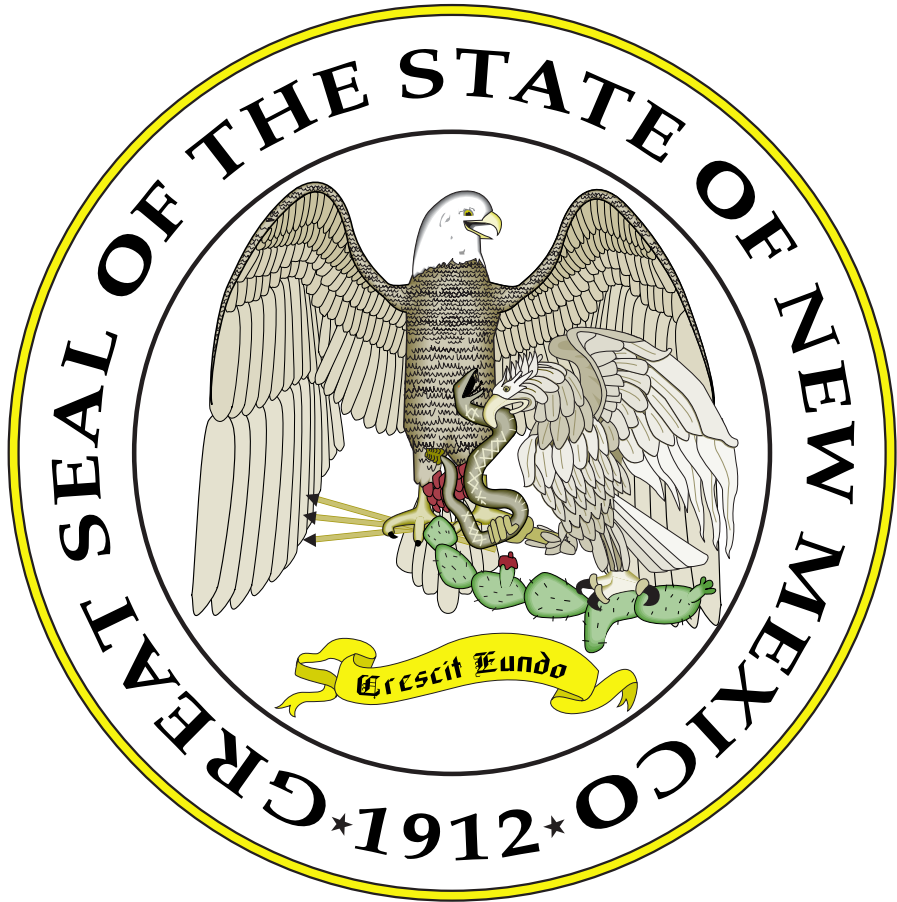
The Court granted certiorari in these cases limited to the question whether *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837, should be overruled or clarified. Under the *Chevron* doctrine, courts have sometimes been required to defer to “permissible” agency interpretations of the statutes those agencies administer—even when a reviewing court reads the statute differently. *Id.*, at 843. In each case below, the reviewing courts applied *Chevron*’s framework to resolve in favor of the Government challenges by petitioners to a rule promulgated by the National Marine Fisheries Service pursuant to the Magnuson-Stevens Act, 16 U. S. C. §1801 *et seq.*, which incorporates the Administrative Procedure Act (APA), 5 U. S. C. §551 *et seq.*

**Held:** The Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous; *Chevron* is overruled. Pp. 7–35.

(a) Article III of the Constitution assigns to the Federal Judiciary the responsibility and power to adjudicate “Cases” and “Controversies”—concrete disputes with consequences for the parties involved. The Framers appreciated that the laws judges would necessarily apply in resolving those disputes would not always be clear, but envisioned

\*Together with No. 22–1219, *Relentless, Inc., et al. v. Department of Commerce, et al.*, on certiorari to the United States Court of Appeals for the First Circuit.

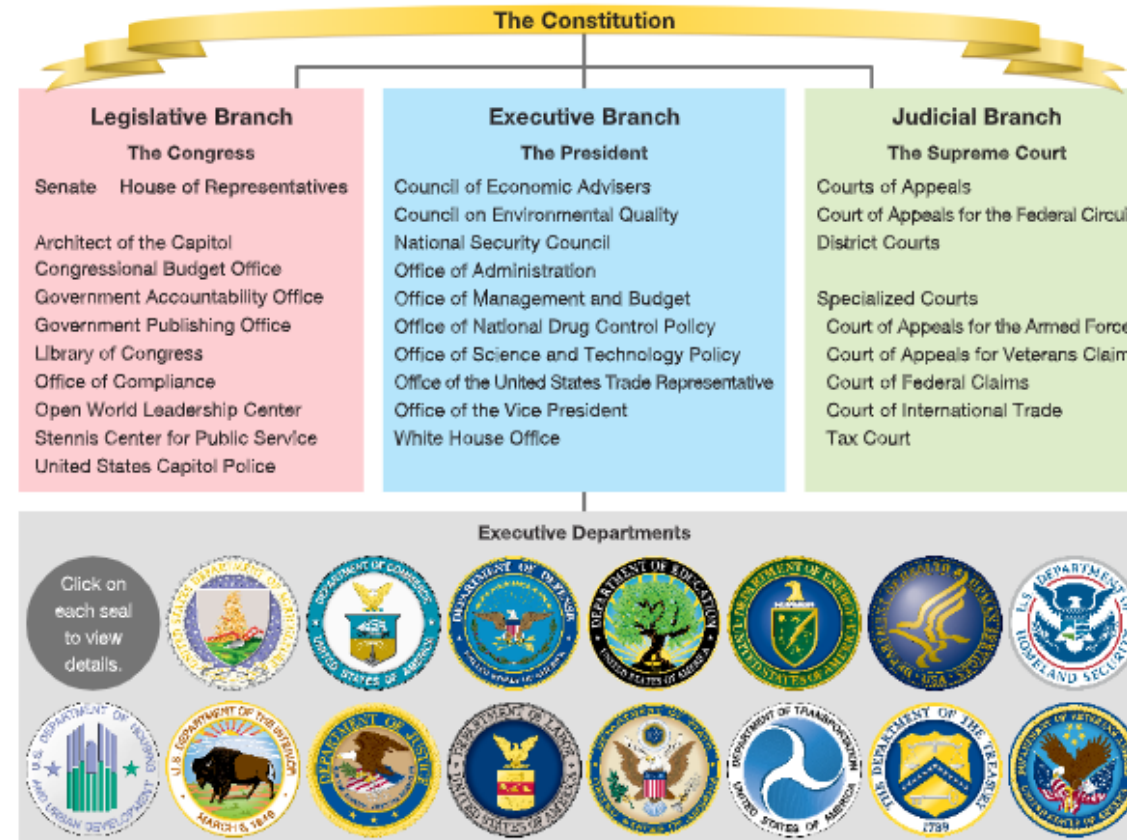
## New Mexico Deference Remains the Same



- 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."

# 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>

## Stare Decisis

- **Definition:** Stare decisis is a Latin term meaning "to stand by things decided." It is a legal doctrine that obligates courts to follow historical cases when making a ruling on a similar case
  - ***Horizontal stare decisis*** refers to a court adhering to its own precedent
  - ***Vertical stare decisis*** refers to a court adhering to precedent from a higher court.
- Courts seldom overrule precedent; however, the U.S. Supreme Court in *Seminole Tribe of Florida v. Florida* explained that stare decisis is not an "inexorable command." When prior decisions are "unworkable or are badly reasoned," then the Supreme Court may not follow precedent, and this is "particularly true in constitutional cases."
- For example, in deciding *Brown v. Board of Education*, the U.S. Supreme Court explicitly renounced *Plessy v. Ferguson*, thereby refusing to apply the doctrine of stare decisis.



## Looking back at Statutory and Regulatory Interpretation

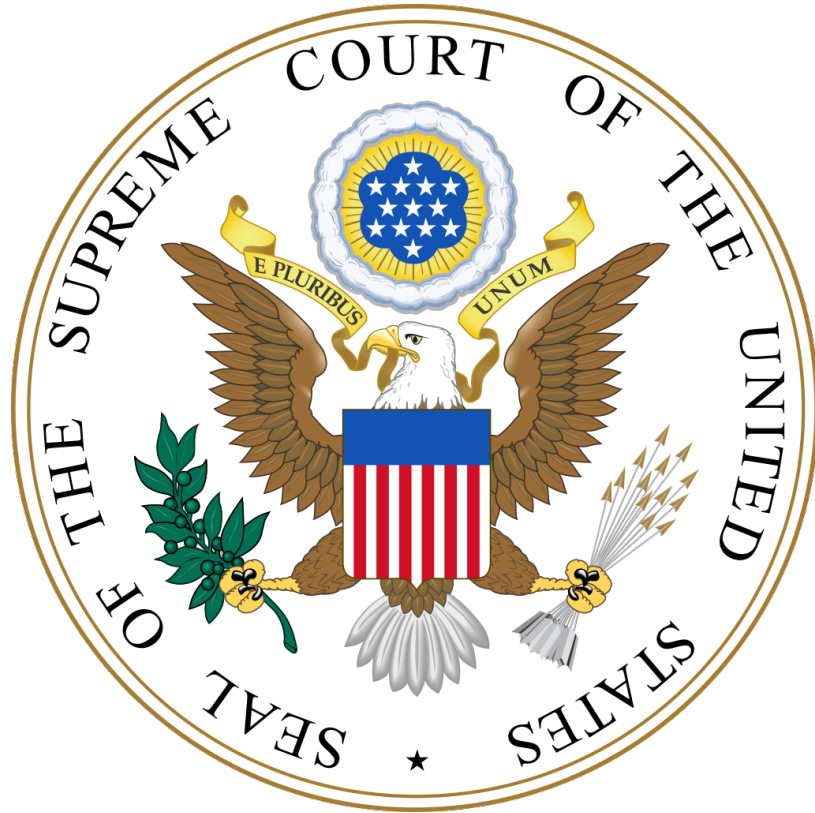
***Chevron USA Inc. v. Natural Resources Defense Council, Inc. 467 U.S. 837 (1984) (Chevron)***



- 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.

## Looking back at Statutory and Regulatory Interpretation

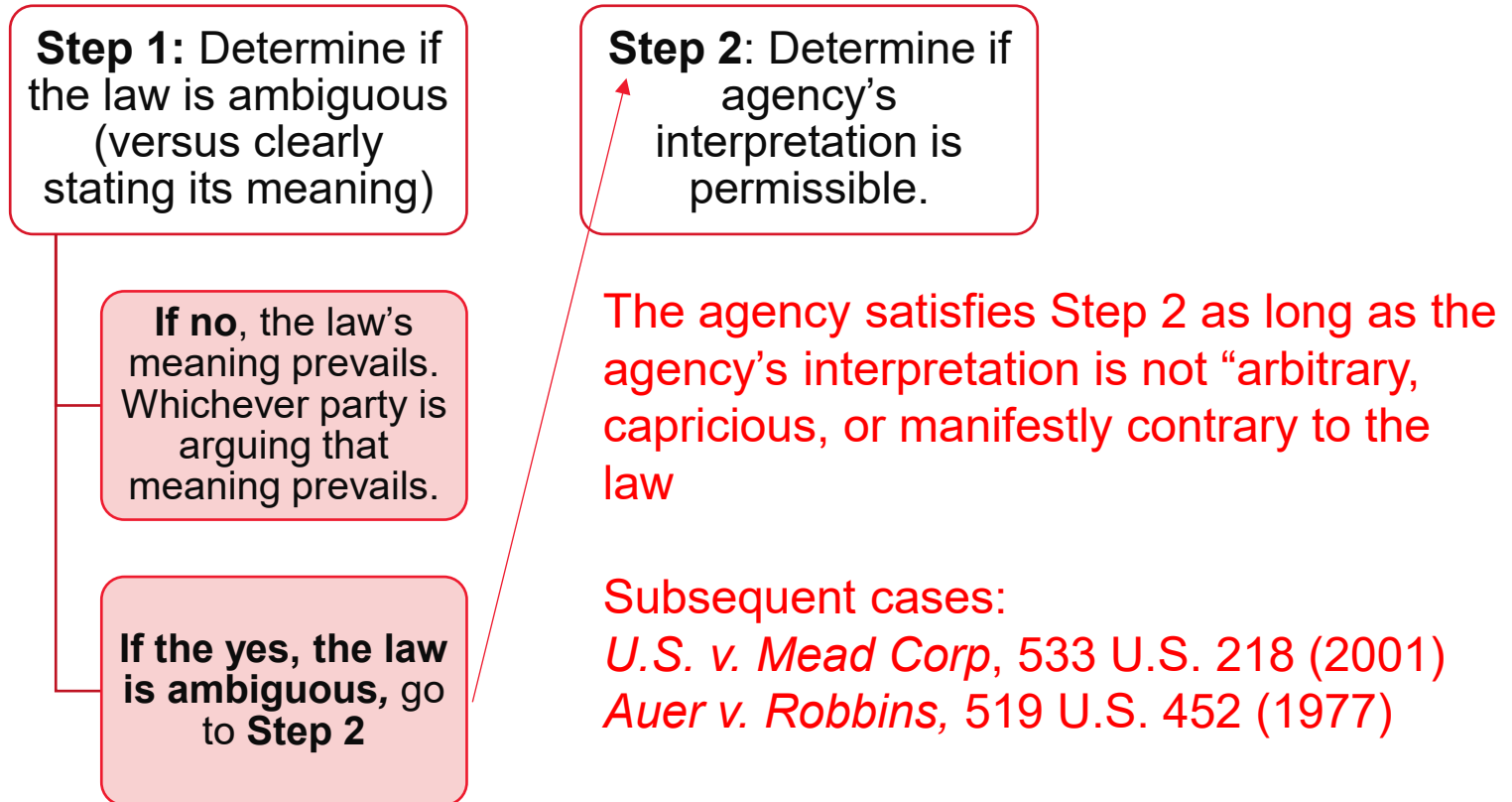
***Chevron USA Inc. v. Natural Resources Defense Council, Inc.* 467 U.S. 837 (1984) (Chevron)**



- 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*.

## Looking back at Statutory and Regulatory Interpretation

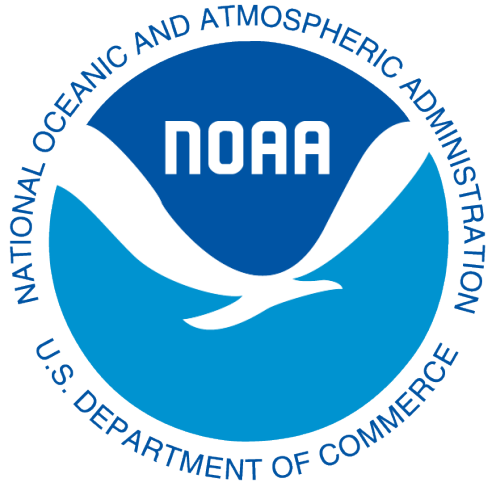
If the agency is designated to interpret a law, the court will follow a two-step process:





# ***Loper Bright Enterprises v. Raimondo, Case No. 22-451, 603 U.S. \_\_\_\_ (2024), 144 S. Ct. 2244***

**The case that Overturned Chevron Deference**

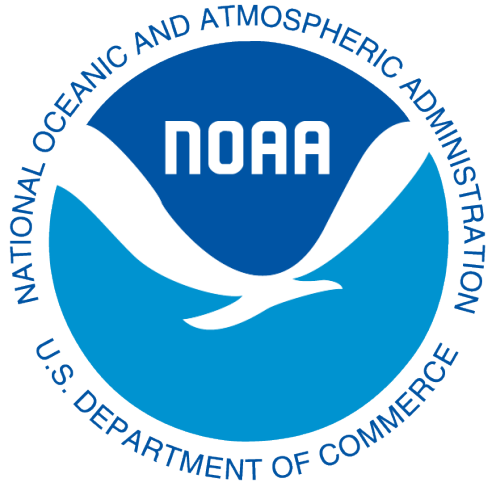


**NOAA  
FISHERIES**

- *Loper Bright Enterprises v. Raimondo* presented the court with an opportunity to overturn the *Chevron* doctrine and it did.
- The case pitted 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.
- The Act grants the NMFS authority to “implement a comprehensive fishery management program” through the promulgation of fishery management plans and amendments.

# ***Loper Bright Enterprises v. Raimondo***

## **The case that Overturned Chevron Deference**



**NOAA**  
**FISHERIES**

- NMFS issued a regulation under Magnuson-Stevens Act that
  - Required the fishing industry to pay for the costs of the observers
  - Typical cost was around \$710 a day
  - The statute is silent on who pays for the costs of observers
- U.S. Court of Appeals upheld the regulation
  - D.C. Circuit and First Circuit
  - Regulation is a reasonable interpretation of a federal statute under Chevron

# ***Loper Bright Enterprises v. Raimondo***

## **The Questions Presented**

Whether the court should overrule *Chevron v. Natural Resources Defense Council*, or at least clarify that statutory silence concerning controversial powers expressly but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency?



# *Loper Bright Enterprises v. Raimondo*

## Plaintiff's arguments

- **Excessive Power:** Loper argued that Chevron grants too much power to federal administrative agencies, allowing them to effectively create laws without proper oversight.
- **Judicial Responsibility:** APA Section 706 provides that “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.” *Chevron* did not cite the APA.
- **Stare Decisis:** *Stare decisis* does not apply because Chevron deference is a rule of interpretation rather than a substantive holding.
- **Separation of Powers:** The Constitution provides that the judiciary determines what the law is, citing *Marbury v. Madison*. Chevron deference gives too much power to the executive branch, undermining the separation of powers.

# *Loper Bright Enterprises v. Raimondo*

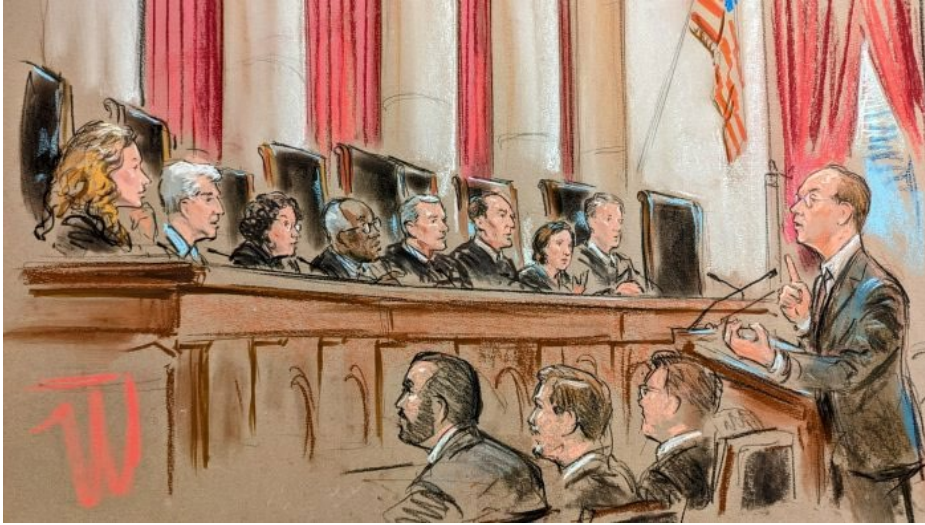
## Government Defendant's arguments

- **Chevron's Importance:** Raimondo argued that Chevron deference is essential for effective regulation, allowing agencies with expertise to interpret ambiguous statutes.
- **Stare Decisis:** Raimondo emphasized the importance of adhering to precedent, noting that *Chevron* has been a cornerstone of administrative law for decades.
- **Separation of Powers:** Raimondo contended that Chevron respects the separation of powers by allowing Congress to delegate interpretive authority to agencies, which are better equipped to handle complex regulatory issues.



# *Loper Bright Enterprises v. Raimondo*

## Oral Arguments held January 17, 2024



- Clear divide between conservative and liberal justices
- Justice Brett Kavanaugh: *Chevron* “ushers in shocks to the system every four or eight years when a new administration comes in.”
- Justices Elena Kagan, Ketanji Brown Jackson, and Sonia Sotomayor expressed support for *Chevron*
  - Justice Kagan: Congress “knows there are going to be gaps because Congress can hardly see a week in the future.”
- Debate on what the practical impact of overruling *Chevron* would be
  - Justice Amy Coney Barrett: “the door [is] then open for litigants to come back”, potentially “inviting a flood of litigation”

Above: Paul Clement argues for *Loper Bright Enterprises* (William Hennessy)  
Below: Solicitor General Elizabeth Prelogar argues on behalf of the federal government (William Hennessy)

## ***Loper Bright Enterprises v. Raimondo***

### **The Court's Conclusion**

**“Chevron is overruled.** Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires. Careful attention to the judgment of the Executive Branch may help inform that inquiry. And when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect this delegation, while ensuring that the agency acts within it. But courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.”

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

# *Loper Bright Enterprises v. Raimondo*

## The Court's Reasoning

- **Chevron Deference:** The Court found that the Chevron deference doctrine was fundamentally flawed. The majority opinion argued that this deference undermines the judiciary's role in interpreting the law.
- **Separation of Powers:** The Court emphasized the importance of maintaining a clear separation of powers. By deferring to agencies, the judiciary was effectively ceding its interpretive authority to the executive branch.
- **Judicial Responsibility:** The decision reinforced the idea that it is the judiciary's responsibility to interpret the law. The Court argued that judges, not administrative agencies, should have the final say on the meaning of ambiguous statutes.
- **Precedent and Stare Decisis:** While acknowledging the principle of stare decisis, the Court determined that Chevron was "egregiously wrong" and its practical consequences warranted overturning the precedent.

# *Loper Bright Enterprises v. Raimondo*

## Separation of Powers

- Article III of the Constitution assigns to the Federal Judiciary the responsibility and power to adjudicate “Cases” and “Controversies”—concrete disputes with consequences for the parties involved.
- The Framers appreciated that the laws judges would necessarily apply in resolving those disputes would not always be clear, but envisioned that the final “interpretation of the laws” would be “the proper and peculiar province of the courts.” The Federalist No. 78, p. 525 (A. Hamilton).
- “[i]t is emphatically the province and duty of the judicial department to say what the law is.” *Marbury v. Madison*, 1 Cranch 137, 177



## *Loper Bright Enterprises v. Raimondo*

### **Judicial Review: APA mandates courts, not agencies conduct judicial review**

- 1946: Congress enacted the Administrative Procedures Act (APA) “as a check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices.” *Morton Salt*, 338 U. S., at 644.
- **Statutory Interpretation:** The APA guides judicial review of agency actions, emphasizing that courts must interpret statutes independently rather than deferring to agencies’ interpretations.
  - The Act “codifies for agency cases the unremarkable, yet elemental proposition reflected by judicial practice dating back to *Marbury*: **that courts decide legal questions by applying their own judgment.**”
- **Chevron is inconsistent with the APA Framework:** the APA specifies that courts, not agencies, will decide “all relevant questions of law” arising on review of agency action, including those involving ambiguous laws. The APA directs courts to “interpret constitutional and statutory provisions” without differentiating between the two, thus agency interpretations of statutes—like agency interpretations of the Constitution—are not entitled to deference.
- **Legislative Intent:** The analysis also considered Congress’s intent when enacting the APA, suggesting that the legislative history supports a more active judicial role in reviewing agency interpretations.



# *Loper Bright Enterprises v. Raimondo*

## Stare decisis

- Court stated that *stare decisis* does not require the Court to continue following the Chevron doctrine. “The stare decisis considerations most relevant here—’the quality of [the precedent’s] reasoning, the workability of the rule it established, . . . and reliance on the decision,’ *Knick v. Township of Scott*, 588 U. S. 180, 203 (quoting *Janus v. State, County, and Municipal Employees*, 585 U. S. 878, 917)—all weigh in favor of letting Chevron go.”
  - **Quality of reasoning:** Did not consider Administrative Procedures Act
  - **Unworkable:** Court has consistently limited application and have had to repeatedly clarify the doctrine. Concept of “ambiguity” has always evaded meaningful definition and “cannot stand as an every-day test for allocating interpretive authority between courts and agencies.”
- **What about the thousands of cases that relied on *Chevron*?** The holdings of those cases are lawful . . . and still subject to statutory stare decisis despite our change in interpretive methodology.” Reliance on Chevron does not, in and of itself, constitute “special justification” for overruling a case. *Loper Bright*, 144 S. Ct. at 2266.

## ***Loper Bright Enterprises v. Raimondo***

### **Deference will continue to play a role**

- While *Loper Bright* ended Chevron deference, it did not eliminate all forms of deference to agency action and it is important to note that Courts are not required to *disagree* with agency interpretations.
  - The decision only affect rules or agency action based on statutory ambiguity or silence.
  - Clear grants of power to an agency remain in place.
- 80-year-old precedent in *Skidmore v. Swift & Co.*, 323, U.S. 134 (1944) still applies.
  - Chief Justice Roberts opinion favorably mentions *Swift* five times
  - Justice Kagan's dissenting opinion expressly notes that *Skidmore* will apply in future cases.
  - Under *Skidmore*, agency interpretations “made in pursuance of official duty” and “based upon . . . specialized experience” provide informed judgment to which courts . . . [can] properly resort for guidance.” When deciding the weight to be given to the interpretation, courts are to weigh various factors that include “the thoroughness evident in [the agency’s] consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it the power to persuade.”

# *Loper Bright Enterprises v. Raimondo*

## Other Limits to *Loper Bright* Decision

- **Judicial Review:** The decision empowers courts to independently interpret ambiguous statutes, but it does not grant courts the authority to override agency expertise in all contexts. The decision does not disturb the traditional judicial deference to agency factfinding.
  - Under APA, findings of fact in formal agency proceedings can be set aside only if the court finds they are “unsupported by substantial evidence.” *Loper Bright* only affects agency conclusions of law, so deferential standard of review of agency factfinding remains in place.
- **Statutory Agency Discretion:** *Loper Bright* doesn’t permit courts to reject discretionary determinations when Congress has conferred the power to make the determination on the agency.
  - A “statute’s meaning may well be that the agency is authorized to exercise a degree of discretion,” and “Congress has often enacted such statutes.”
- **Stare Decisis:** The decision acknowledges the importance of precedent, stating “[m]ere reliance on *Chevron* cannot constitute a special justification” that would justify “overruling such a holding.” Plaintiffs need to do more than simply rely on *Loper* if they are going to challenge a regulation that once relied on *Chevron*.

## *Loper Bright Enterprises v. Raimondo*

### The Dissent: Justices Kagan with Justices Sotomayor and Jackson joining

- **Stare Decisis:** The dissent emphasized the importance of adhering to precedent, arguing that *Chevron* has been a foundational principle in administrative law for decades and overturning it would create significant legal instability.
- **Agency Expertise:** The dissent argued that administrative agencies possess specialized expertise that courts lack, making them better suited to interpret ambiguous statutes within their regulatory domain.
- **Practical Consequences:** The dissent warned that removing *Chevron* deference could lead to increased litigation and uncertainty, as courts would now have to interpret complex regulatory statutes without the benefit of agency expertise.
- **Separation of Powers:** The dissent contended that *Chevron* deference respects the separation of powers by allowing Congress to delegate interpretive authority to agencies, which are part of the executive branch

# ***Loper Bright Enterprises v. Raimondo***

## **Post Decision activity**

- Three days *Loper Bright* decision, the Supreme Court held that the statute of limitations for challenges to agency rulemakings begins to run when the rule injures the plaintiff, not when the rule was adopted. *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, No. 22-1008, 2024 WL 3237691 (U.S. July 1, 2024). Many lawsuits to come.
- Washington Post recently reported on increased lawsuits:
  - Last month Federal Court of appeals ruled in favor of KalshiEx to allow the betting website to collect wagers on the outcome of the presidential election.
  - Insurance Marketing Coalition is arguing in federal court that Federal Communications Commission does not have delegation from congress to issues rules limiting robocalls.
  - There have been many challenges to the Labor Department rules issued under President Biden that aim to protect workers and wages and to NLRB authority.



**THANK YOU!**