

Expert Insights

Loper Bright's Impact on Statutory and Regulatory Interpretation in Administrative Law

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Administrative law is a dynamic and ever-changing field. As a matter of administrative law doctrine, however, [Loper Bright Enterprises v. Raimondo](#), 603 U.S. 369 (2024), is arguably the Supreme Court's most impactful administrative law decision in several decades. The simple holding of the case was to overturn *Chevron* deference as inconsistent with the Administrative Procedure Act. But the decision did much more than that. In one fell swoop, the Court swept away much of forty years of jurisprudence regarding judicial review of agency interpretations of statutes and raised many adjacent legal issues.

Courts and scholars will be pondering what to make of *Loper Bright* for years to come. We can begin that process by exploring the decision's many statements concerning the

judicial role in reviewing agency statutory interpretations.

Chevron and its precursors

Some amount of ambiguity in statutory meaning is inevitable. Some statutes are ambiguous by design, but other ambiguities result from inherent limitations of legislative drafting. Courts routinely confront statutory ambiguities and resolve statutory meaning in deciding cases. Meanwhile, Congress commonly tasks agencies with implementing and administering statutes, which in turn requires agencies to interpret those statutes. Historically, courts have reviewed agency interpretations of statutes under evolving standards. Prior to *Chevron*, judicial review of agency statutory interpretations was marked by inconsistency.

Courts sometimes deferred to agencies and other times substituted their own interpretations without explaining why.

The Supreme Court's decision in [Chevron USA Inc. v. Natural Resources Defense Council, Inc.](#), 467 U.S. 837 (1984), introduced a two-step framework for evaluating agency interpretations of statutes: first, courts would determine whether Congress had clearly spoken to the interpretive question at issue; if the statute was ambiguous, courts would defer to any reasonable agency interpretation. Justice Stevens, who authored the *Chevron* opinion, did not intend to create a new doctrine. Nevertheless, *Chevron* grew to dominate judicial review of agency actions. Over time, however, the doctrine was plagued by internal disagreements among the Justices, inconsistency in its application, and confusion over its operation and scope. All of these issues contributed to the *Chevron* doctrine's eventual decline and ultimate rejection in *Loper Bright*.

See Administrative Law Treatise, [Chapter 3A](#).

A statutory holding rather than a constitutional one

The opinion of the Court in *Loper Bright* is notable in part for its emphasis on separation of powers principles, the judicial role under the U.S. Constitution, and the

Key Takeaways

- *Chevron USA Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), established a two-step framework calling upon courts to defer to reasonable agency interpretations of ambiguous statutes.
- *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), overruled *Chevron* deference, rejecting the idea that statutory ambiguity implies a delegation of policymaking discretion to agencies and emphasizing the importance of judicial independence.
- *Loper Bright* preserved the *Skidmore* standard, under which courts give agency interpretations "respect" or "weight" based on contextual factors like thoroughness, formality, validity, consistency, expertise, longevity, and contemporaneity.

need for courts to exercise independent judgment in evaluating statutory meaning to effectuate both. Notwithstanding that rhetoric, however, the Court's holding was statutory: that *Chevron* deference was incompatible with the Administrative Procedure Act (APA), particularly Section 706, which mandates that courts—not agencies—"decide all relevant questions of law" and "interpret ... statutory provisions." Whereas the Court in *Chevron* identified statutory ambiguities as delegations of policymaking discretion to agency officials, the Court in *Loper Bright* rejected that premise and identified the resolution of questions regarding statutory meaning as a judicial function. Accordingly, rather than deferring to agency interpretations of statutes, courts must exercise independent judgment using traditional tools of statutory interpretation to determine the best reading of a statute.

See Administrative Law Treatise, [Section 3A.4.1](#).

***Skidmore* "respect" or "weight" remains**

Despite rejecting *Chevron* deference, the Court preserved the *Skidmore* standard, which allows courts to give agency interpretations "respect" or "weight" based on their persuasiveness. The Court particularly noted the potential relevance of the contemporaneity of an agency interpretation with the enactment of the statute in question and the consistency of the agency's application of a particular interpretation of a statute over a long period of time. Other factors commonly identified with *Skidmore* analysis include the thoroughness and validity of an agency's reasoning in support of its interpretation, the formality with which the agency communicated its interpretation, and the relationship

between the interpretation in question and the agency's subject matter expertise. Consideration of these factors is optional, not required. Although many cases have indicated that some amount of statutory ambiguity is required before a court may turn to *Skidmore*'s factors, ambiguity for *Skidmore* purposes more closely resembles the sort of ambiguity courts often acknowledge before applying substantive canons of construction than *Chevron*'s first step.

"Historically, courts have reviewed agency interpretations of statutes under evolving standards."

See Administrative Law Treatise, [Section 3A.5](#).

Deference under the arbitrary and capricious standard continues

The Court also acknowledged that some statutes expressly delegate discretionary authority to agencies. Some authorize agencies to give meaning to statutory terms. Others empower agencies to adopt rules and regulations to "fill up the details" of statutory requirements and programs or to regulate subjects within the limits of open-ended terms like "appropriate" or "reasonable." In such cases, the Court described the judiciary's role as more limited: ascertaining the constitutionality and defining the boundaries of statutory delegations and then considering whether the agency engaged in reasoned decision-making within those parameters consistent with the APA's arbitrary and capricious standard.

Statutory *stare decisis* prevails

The Court in *Loper Bright* emphasized that its decision to overturn *Chevron* deference did not automatically overturn prior cases that relied on *Chevron*. Holdings that specific agency actions were lawful would be subject to statutory *stare decisis* principles, which strongly caution courts against overruling precedents interpreting statutes in favor of allowing Congress to amend statutes if it disagrees with case outcomes. According to the Court, mere reliance on *Chevron* is insufficient to justify overruling statutory precedent. Of course, even if the lower federal courts continue to follow Supreme Court precedents relying on *Chevron* for statutory *stare decisis* reasons, the Supreme Court is not similarly bound by lower court decisions upholding agency interpretations under *Chevron*. Nor are federal circuit courts of appeals bound by interpretations upheld by other circuits or by federal district courts. Accordingly, the Court's statements in *Loper Bright* regarding statutory *stare decisis* are of limited reach.

See Administrative Law Treatise, [Section 3A.4.2](#).

Does major questions doctrine remain relevant?

Loper Bright has potential implications for two other doctrines associated with judicial review of agency statutory and regulatory interpretations. One is the major questions doctrine, which the Supreme Court has elevated in recent terms. The other, which goes by several names, is the deferential standard governing judicial review of agency interpretations of regulations.

Key Themes And Developments

Chevron Deference

- *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.* (1984) established a two-step framework calling upon courts to defer to reasonable agency interpretations of ambiguous statutes.
- *Christensen v. Harris County* (2000) and *United States v. Mead Corp.* (2001) narrowed the scope of *Chevron's* applicability to agency actions carrying the force of law, particularly notice-and-comment rulemaking and formal adjudication.
- *National Cable & Telecomm. Ass'n v. Brand X Internet Services* (2005) allowed agencies to claim *Chevron* deference and override judicial interpretations of statutes unless courts found statutes unambiguous.
- *Loper Bright Enterprises v. Raimondo* (2024) overruled *Chevron* deference, rejecting the idea that statutory ambiguity implies a delegation of policymaking discretion to agencies and emphasizing the importance of judicial independence.

Skidmore Standard

- Derives from *Skidmore v. Swift & Co.* (1944), among other cases.
- Courts give agency interpretations “respect” or “weight” based on contextual factors like thoroughness, formality, validity, consistency, expertise, longevity, and contemporaneity.
- Post-*Loper Bright*, *Skidmore* remains valid, but courts may avoid the term “deference” and apply the doctrine’s contextual factors more cautiously.

Major Questions Doctrine

- Emerged from *Chevron* jurisprudence first as an assumption, but eventually as a more robust requirement, that agencies need clear congressional authorization before imposing regulations of vast economic or political significance.
- Applied in high-profile cases like *King v. Burwell* (2015), *West Virginia v. Environmental Protection Agency* (2022), and *Biden v. Nebraska* (2023).
- As a tool of statutory interpretation, some see the doctrine as a textual or semantic canon, others as a substantive canon of construction.
- Post-*Loper Bright*, some question the doctrine’s continued relevance.

Auer/Seminole Rock/Kisor Deference

- Counsels giving agency interpretations of their own regulations “controlling weight” unless those interpretations are plainly erroneous or inconsistent with the regulations.
- *Kisor v. Wilkie* (2019) retained but narrowed this standard by requiring that the regulations be genuinely ambiguous and that the agency’s interpretation be authoritative or official and reflect the agency’s expertise and considered judgment.
- Courts continue to apply *Kisor's* version of the controlling weight standard, but some judges have questioned whether *Loper Bright's* reasoning undermines the doctrine’s validity.

For additional Analysis, please see [Administrative Law Treatise-Hickman and Pierce](#).

The major questions doctrine was initially developed within the *Chevron* framework but in recent years has evolved into a separate canon of statutory interpretation. The doctrine holds that agencies require clear congressional authorization to regulate on issues of vast economic or political significance. The Court applied the doctrine in *King v. Burwell*, 576 U.S. 473 (2015), declining to apply *Chevron* deference but nevertheless upholding the Internal Revenue Service’s extension of health care premium credits to participants on health care exchanges established by the federal government as consistent with statutory text and congressional intent. By contrast, the Court relied on the major questions doctrine to reject the Environmental Protection Agency’s Clean Power Plan in *West Virginia v. EPA*, 597 U.S. 697 (2022), and the Education Department’s student debt relief program in *Biden v. Nebraska*, 600 U.S. 477 (2023), among other applications. Both *Loper Bright* and the major questions doctrine generally prioritize judicial independence over deference to agency interpretations of statutes. The major questions doctrine remains a tool in the judicial statutory interpretation toolbox, but some have questioned how much it will factor into future cases in light of *Loper Bright*.

See Administrative Law Treatise, [Section 3A.6](#).

Kisor deference called into question

Judicial review of agency interpretations of regulations historically assumed a deferential posture under Supreme Court decisions in *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945), and *Auer v. Robbins*, 519 U.S. 452 (1997). Both of those decisions counseled reviewing courts to give an agency’s interpretation of its own regulation “controlling weight” unless that interpretation was plainly erroneous or inconsistent with the regulation. In

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Kisor v. Wilkie, 588 U.S. 558 (2019), the Court narrowed the circumstances under which such deference would be appropriate, emphasizing that deference would only be appropriate if the regulation in question was genuinely ambiguous and the agency's interpretation was authoritative or official and reflected the agency's expertise and considered judgment. Nevertheless, the *Kisor* Court rejected the suggestion that it overturn the controlling weight standard altogether. Although the Court's *Kisor* decision predates *Loper Bright* by only a few years, both judges and commenters have questioned whether *Loper Bright*'s reasoning undermines *Kisor* and its watered-down version of the controlling weight standard.

See Administrative Law Treatise, [Section 3A.7](#).

Conclusion

The *Loper Bright* decision marks a fundamental reorientation of judicial review of federal agency action. It reaffirms the judiciary's role in interpreting statutes, limits the scope of agency discretion, and emphasizes the importance of clear congressional authorization for agency policymaking. The **Administrative Law Treatise** provides a comprehensive framework for understanding statutory and regulatory interpretation after both *Chevron* and *Loper Bright*, grounded in the principles of the APA and constitutional separation of powers.