K&L GATES

THE POST-*CHEVRON* TOOLKIT

A New Era for Regulatory Review

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INTRODUCTION

In a landmark ruling on 28 June 2024, the US Supreme Court expressly overruled the 40-year-old *Chevron* doctrine with its decision in *Loper Bright Enterprises v. Raimondo*,[1] eliminating the requirement that courts defer to federal agencies' interpretations of ambiguous statutes.

Congress cannot implicitly delegate authority through ambiguous terms, agencies no longer have a thumb on the scale when construing unclear statutes, and the courts have reasserted their role as the ultimate arbiter of what federal laws mean. The resulting effects are far-reaching. The *Loper Bright* decision affects every industry that is regulated by US federal agencies, and it is expected to usher in more frequent judicial challenges to agency rules, greater scrutiny of agency actions, and a different approach to lawmaking by Congress.

To help our clients understand, anticipate, and navigate the full impact of the Supreme Court's decision, we have developed *The Post-Chevron Toolkit: A New Era for Regulatory Review* (Toolkit). This Toolkit is designed to be a basic primer on the ramifications of *Loper Bright* on the regulated community. While this Toolkit is not meant to be a definitive catalog of every possible implication of the Supreme Court's decision, we have endeavored to highlight the core regulatory issues faced by our clients and the industries that we serve.

Inside this Toolkit, you will find:

- A primer on the "administrative state" and how *Loper Bright* fits into it.
- A one-pager on the *Loper Bright* decision and what it means.
- Frequently asked questions on what has (and has not) changed because of *Loper Bright*.
- A step-by-step checklist to the questions you should now ask when reviewing regulations.
- A refresher on statutory construction in the post-*Loper Bright* era.
- A glossary of frequently used terms and phrases.

We hope you find this Toolkit useful and always welcome your feedback.

KEEP UP TO DATE ON THE LATEST DEVELOPMENTS

For further analyses on *Loper Bright* and how it will affect your business, visit our series page, **The Administrative State.**

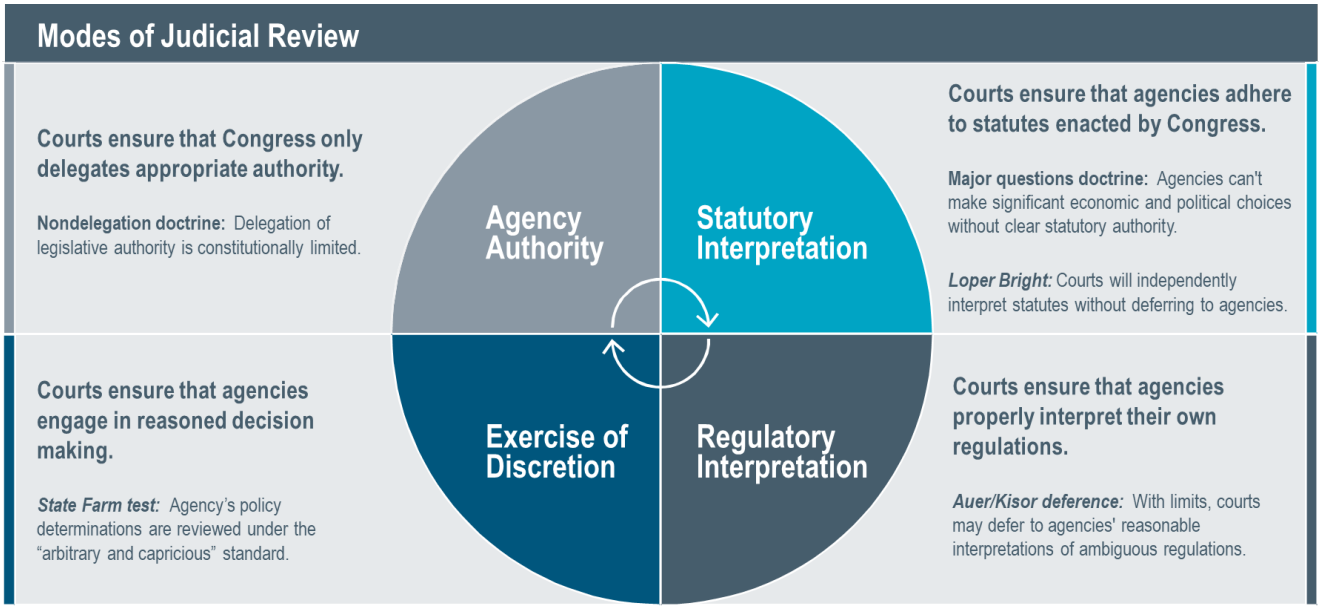
JUDICIAL REVIEW OF THE ADMINISTRATIVE STATE

The Administrative State

The combination of federal agency overreach and congressional inaction have created a controversial dynamic in the current landscape of administrative law. In short, as Congress became less involved with detailed rules and regulations, administrative agencies picked up the mantle. The Supreme Court is now responding to that dynamic by attempting to reinforce the powers of each branch of government and limit agency actions that wade too far into lawmaking territory. Over the years, the Supreme Court has taken steps to limit the power of the so-called "administrative state"—i.e., the large array of administrative agencies that wield substantial authority over the daily activities of individuals and businesses. The Supreme Court has done so through the judicial review of agency actions.

Judicial Review of Agency Action

Typically, federal courts review agency actions when they are enforced against, or challenged by, individuals or entities. In turn, there are different categories of challenges that courts review, including claims that: (1) Congress improperly delegated regulatory authority to the agency to begin with; (2) the agency deviated from the authority that Congress gave it; (3) the agency deviated from its own regulations; and (4) the agency improperly executed lawfully obtained authority by making a policy decision that is arbitrary and capricious. These modes of judicial review are depicted below:



For more information on the caselaw supporting these different modes of judicial review, see the "QUICK GUIDE: AGENCY DEFERENCE CASELAW AND THE EFFECT OF *LOPER BRIGHT*" chart beginning on page 19.

Recently, with a conservative supermajority, the Supreme Court has issued several decisions—with *Loper Bright* at the forefront—that have significantly altered the balance of authority between the branches. As discussed in this Toolkit, the *Loper Bright* decision will impact how federal courts review agency interpretations of statutes. Depicted under the Statutory Interpretation quadrant above, the decision is primarily aimed at ensuring that agencies adhere to the relevant statutes and that the courts independently interpret the text of those statutes.

But the decision may have further effects. *Loper Bright* is potentially emblematic of how the Supreme Court will view its position with respect to all the modes of judicial review of agency decisions. With the Supreme Court more actively policing the boundaries of authority between the branches, it seems more likely than ever that the federal judiciary will continue placing limits on the administrative state.

AT A GLANCE: THE *LOPER BRIGHT* DECISION

"*Chevron* Is Overruled"

The *Chevron* doctrine, established by the Supreme Court in 1984, directed courts to defer to a federal agency's reasonable interpretation of an ambiguous statute that the agency administers.[2] A cornerstone of modern administrative law, *Chevron* assumed that an ambiguous statute could have multiple meanings, and it gave agencies the power to choose among them. *Loper Bright* decisively overruled *Chevron*, signaling a fundamental shift in courts' oversight of federal agencies.

The Supreme Court's Holding

In *Loper Bright*, the Supreme Court held that the Administrative Procedure Act (APA) requires courts to exercise "independent judgment" in determining whether an agency's actions align with its statutory authority. In other words, courts must "independently" interpret the statute and effectuate the will of Congress. Going back to basics, courts must use the "traditional tools of statutory construction" to resolve statutory ambiguities and find the "single, best meaning" of the statute. In overturning *Chevron*, the Supreme Court returned to "the traditional understanding of the judicial function." Courts may still look to an agency's interpretation of a statute for guidance, particularly if it is long-standing or rests on "factual premises" within the agency's expertise. But courts will always have the final say about what the law means; the agencies will, at most, be given "respectful consideration" under *Skidmore v. Swift & Co.*,[3] a pre-*Chevron* mode of analysis that left the ultimate interpretive authority with the courts.

Near-Term Impacts

Empowering Regulated Entities

The *Loper Bright* interpretative methodology levels the playing field, allowing regulated entities to offer interpretations of ambiguous statutes that may now compete equally against agency interpretations. It empowers regulated entities to challenge agency decisions with reasoned arguments.

More Precision Needed From Congress

Under *Loper Bright*, Congress still retains the ability to delegate authority to agencies, but it must do so expressly. Courts will no longer infer delegation from statutory silence or ambiguity, and they will "police" the outer boundaries of any express delegations to ensure that agencies remain within them. The Supreme Court's ruling thus demands a more precise approach by Congress and is likely to discourage broad, vague grants of authority to agencies.

Settled Expectations May Become Unsettled

Loper Bright allows courts to play a more active role in scrutinizing federal regulations. But despite overturning *Chevron*, the Supreme Court emphasized that the ruling does not automatically invalidate prior cases decided under the *Chevron* framework. The specific holdings of those cases remain valid under the principle of stare decisis. Stare decisis is not an insurmountable obstacle, but it creates an additional hurdle for challenging old statutory interpretations previously upheld by the courts.

FREQUENTLY ASKED QUESTIONS IN THE AFTERMATH OF *LOPER BRIGHT*

1. Does *Loper Bright* apply to state laws?

No*. Loper Bright* applies to the interpretation of federal law. The *Chevron* doctrine was a rule about how courts should interpret ambiguous federal statutes and the weight given to the federal agencies' interpretation of those statutes. *Loper Bright* overruled *Chevron* and held that courts must independently interpret federal laws without giving controlling weight to agency interpretations.

State courts have varying approaches to the deference given to state agencies interpreting state laws. States have developed their own approaches to the judicial deference owed to state administrative agencies that attempt to fill interpretive gaps in state law. A significant number of states have implemented rules of deference that parallel the *Chevron* rule of deference.[4] It is possible, however, that some states may consider changing their approach after *Loper Bright*, particularly where the state judicial doctrines were intentionally patterned off *Chevron*. Pennsylvania is just one example, because its "notion of 'special deference' is taken from the United States Supreme Court's decision in *Chevron*[.]"[5] A recent decision from the US District Court for the Western District of Pennsylvania suggested that, "[w]ith the recent demise of *Chevron*, . . . it seems likely that any remaining vestiges of Pennsylvania's 'special deference' doctrine will soon follow."[6]

2. Does *Loper Bright* affect interpretations of federal regulations and executive orders?

Not directly. In *Loper Bright*, the Supreme Court was only asked to decide whether to overrule the *Chevron* doctrine, which was a rule about courts deferring to agency interpretations of federal *statutes*.

***Auer* deference was not overruled**. Where an agency's own regulation is ambiguous, an agency may interpret the regulation through official policy guides, handbooks, memorandum, or other public documents. Under a doctrine called *Auer* (or *Seminole Rock*) deference, courts may defer to an agency's reasonable interpretation of its regulations, but only after the court first deploys all the traditional tools of statutory interpretation.[7] While there is speculation about whether *Loper Bright*'s reasoning might also be used to limit *Auer* deference,[8] for now that doctrine of deference remains.

Deference to an agency's interpretation of an ambiguous executive order similarly remains, where warranted. The courts have previously deferred to an agency's expertise when interpreting an executive order that it is charged with administering.[9] As with *Auer* deference, *Loper Bright* did not address this form of deference.

3. Will courts still defer to an agency's fact-finding and policy judgments?

The so-called arbitrary and capricious standard of review was not disturbed by *Loper Bright*. Courts generally defer to agency decisions that are based on factual and technical judgments, so long as there is a clear delegation from Congress to exercise that discretion. Under the long-standing arbitrary and capricious standard of review, an agency's policy decisions will be upheld if they are "reasonable and reasonably explained." An agency's factual and discretionary determinations will be deemed "arbitrary and capricious" only if they: (1) rely on factors that Congress did not intend; (2) fail

to consider an important aspect of the problem; and (3) offer an explanation that is implausible or contrary to the evidence.[10]

But courts may soon begin demanding more clarity from agencies when applying the arbitrary and capricious standard of review. While *Loper Bright* did not affect the measure of deference that courts give to agency fact-finding and policy judgments, there has been speculation that the Supreme Court is otherwise trending toward a more rigorous application of the arbitrary and capricious standard of review. For example, in a case decided the day before *Loper Bright*, the Supreme Court found that an agency's failure to respond to a significant comment would make the agency's decision arbitrary and capricious—a ruling that drew sharp criticism from Justice Amy Coney Barrett and others on the Supreme Court.[11]

4. What will happen in the cases that were previously decided under *Chevron*?

***Loper Bright* emphasized that prior cases that relied on the *Chevron* framework are not overruled**. The *Loper Bright* majority said that statutory stare decisis principles would normally limit a court that had upheld an agency action under *Chevron* from considering a new challenge to that action after *Loper Bright*. Instead, some special justification beyond the decision in *Loper Bright* would be needed for overturning prior decisions that had interpreted statutes and deferred to agencies. While this represents an additional hurdle, it would not seem to be insurmountable, as the *Loper Bright* dissenters pointed out. Moreover, there are limits to stare decisis, as a court's earlier ruling would not be binding on courts in other circuits.

5. Will *Loper Bright* have an immediate retroactive effect?

Not exactly. Judges will need to apply the new standard on a case-by-case basis going forward. The *Chevron* doctrine was simply a tool of statutory analysis that the courts applied in the cases before them. After *Loper Bright*, courts will no longer apply *Chevron* and instead will exercise independent judgment when they review cases involving questions of statutory analysis. The decision will not result in the automatic invalidation of any old rules or agency interpretations, but it could be applied in future cases about some old rules.

6. Will old rules and adjudications be vulnerable to new challenges under the new standard?

Yes, some old rules will be vulnerable to challenge. In addition to all pending and future rules and adjudications, there will be a universe of already-existing rules and adjudications for which the statute of limitations has not yet run and to which a court would apply the standard in *Loper Bright*. Whether old rules and adjudications could be challenged will also turn on other routine jurisdictional issues, such as whether a plaintiff or petitioner has standing to sue, has exhausted arguments before the agency, and has preserved issues as needed.

7. How far back will *Loper Bright*'s reach be? Is there a statute of limitations on rule challenges?

The statute of limitations will need to be assessed on a case-by-case basis. Some statutory schemes have special review provisions that limit the timing and venue for challenges to agency actions. (For example, Section 307(b) of the Clean Air Act provides 60 days to challenge a rule.) When there is no special review provision, the APA usually applies, for which courts apply the catch-all six-year statute of limitations found in 28 U.S.C. § 2401(a). In *Corner Post v. Board of Governors of*

the Federal Reserve System, the Supreme Court recently clarified that the six-year statute of limitations for APA challenges "accrues"—that is, the clock starts ticking for limitations purposes—when the plaintiff suffers harm, not when the federal rule issues.[12]

There is a distinction between facial and as-applied challenges to an agency's interpretation. Unless there is a special review provision governing the particular rule, facial challenges to rules under the APA are generally subject to a six-year statute of limitations. By contrast, in the as-applied context, regulated parties may be able to later raise arguments against an agency's statutory interpretation when defending against an enforcement action brought by the government. Regulated parties may also be able to petition the agency to amend or repeal an old rule under the APA.[13]

8. What about the "major questions" doctrine? How does *Loper Bright* affect that doctrine?

The major questions doctrine is stronger than ever, and the tension that it had created with *Chevron* is now gone. The major questions doctrine provides that when there is a question of "deep economic and political significance," regulatory authority can be granted to the agencies only by express congressional delegation, if at all.[14] There remains little guidance from the Supreme Court on how to determine exactly when a statute involves a major question.

In *Loper Bright*, the lower court quickly concluded that the rule at issue (governing fisheries) did not present a major question, and the Supreme Court did not invoke the major questions doctrine in its decision. That may suggest that there will still be many "minor" questions of statutory interpretation following *Loper Bright* that will involve the application of traditional tools of construction.

9. Can Congress still delegate interpretive authority to agencies?

Yes, Congress can still delegate interpretive authority to agencies, consistent with constitutional limits. *Loper Bright* made clear that while the courts decide a statute's meaning, sometimes the best meaning of a statute is that Congress did delegate discretionary authority to the agency. In those cases, the courts will review whether the delegation is itself constitutional and whether the agency has acted reasonably within the boundaries of that delegated authority.[15]

Appropriate delegations of authority will be respected. The Supreme Court pointed to a few types of delegations that the courts "must respect," consistent with constitutional limits:[16]

- **Express delegations to the agency to define terms**. Congress can "expressly delegate" to an agency the authority to give meaning to particular statutory terms. Congress might use express delegatory language like "as such terms are defined and delimited by regulations of the Secretary."[17]

- **Express delegations to agencies to fill gaps and set standards**. The Supreme Court noted that some statutes appropriately empower the agency to prescribe rules to "fill up the details" of a statutory scheme. For example, Congress might use language requiring an agency to establish standards or limitations whenever "in the judgment" of the agency the standard is needed to satisfy some purpose, such as "protection of public health."[18]

- **Express delegations to agencies to regulate in an area, subject to limits**. The Supreme Court also noted that some statutes explicitly empower the agency to regulate something subject to limits imposed by a term or phrase that leave agencies with flexibility. Congress

might use language directing an agency to regulate specific conduct as “appropriate” and “reasonable.”[19]

10. Could Congress step in and reinstate *Chevron* deference?

Some in Congress have already taken steps to overturn *Loper Bright*, but their likelihood of success remains to be seen. After *Loper Bright*, several senators introduced the Stop Corporate Capture Act to codify the *Chevron* doctrine. It seems unlikely that such a measure would gain traction in Congress. Moreover, it is unclear how the courts would respond to an across-the-board legislative attempt to delegate to agencies the authority to fill legislative gaps where Congress is silent. While the majority opinion in *Loper Bright* did not address this possibility, the reasoning of the concurring opinions suggested that a wholesale delegation to agencies would be unconstitutional.

FRAMEWORK FOR EVALUATING AGENCY REGULATIONS IN THE POST-*CHEVRON* ERA

Under *Loper Bright*, courts may no longer automatically defer to agency interpretations of ambiguous statutes. Instead, courts must exercise independent judgment in determining the best meaning of the law. This presents a new landscape of opportunities for challenges to agency regulations that can impact your businesses or interests. The following checklist provides a framework for how to think about agency regulations in a post-*Chevron* environment. The steps outlined below provide a starting point for identifying and spotting issues to help you evaluate the viability of regulatory regimes in this new era.

1. Identify the Problematic Regulation

- ☐ Consider how your client or industry is practically impacted by regulations and identify those regulations that impose burdens or otherwise significantly affect the way your client or industry operates.
- ☐ Carefully review the regulation in question.
- ☐ Identify the specific provisions that you believe may be problematic, overreaching, or inconsistent with the underlying law.
- ☐ Identify and consider the agency's explanation for the regulation.
    - Consider whether there are countervailing arguments that could have justified the agency taking a different approach.
    - Note whether the agency acknowledged such arguments or relied on its general expertise or *Chevron* deference when issuing the rule.
    - Assess whether there has been any litigation and resulting judicial interpretations of the regulation and underlying statute and, if so, whether a court deferred to the agency on the issue at hand or provided a definitive interpretation.

2. Identify the Sources of Potential Statutory Authority

- ☐ Identify the specific laws that give the agency the power to create the regulation in question. The specific laws are often identified in the underlying agency notice of proposed rulemaking, in the final rule, or in the relevant legal decision. Often, an agency will identify several different statutory provisions as the source of its authority. Some sources may provide very general authority, while others are more specific.

3. Statutory Interpretation

- ☐ Review the agency's authority to take the actions in its regulation.
    - Review the statute to understand the contours of the authority that Congress gave the agency.

☐ Conduct a substantive analysis of the relevant statutory provisions. Carefully examine the statute to determine whether it authorizes the agency action in question. Use the traditional tools of statutory interpretation to determine the "best" meaning of the statute:

- Plain Meaning: Start with the ordinary meaning of the words. Are there any ambiguities or open-ended terms?
- Context: Consider the meaning of words and phrases in relation to the surrounding provisions.
- Structure: Look at the overall organization and structure of the statute to see how the provision fits into the broader scheme.
- Canons of Construction: Apply established legal principles for interpreting statutes (e.g., the rule against superfluities; *noscitur a sociis*: the meaning of a word or phrase is determined by the words around it—context matters; *expressio unius est exclusio alterius*: if a statute lists specific things, it implies that things not listed are excluded).
- Review the Legislative History: Although different judges place different weight on specific elements of legislative history, research the legislative history of the statute.
  - Committee Reports: Look for reports that explain the purpose of the statute and the intent behind the relevant provisions.
  - Floor Debates: Review transcripts of debates to understand the concerns and arguments raised by lawmakers.
  - Amendments: Analyze any changes made to the statute during the legislative process to see how they might inform the meaning of the final version.
  - Consider whether there have been failed attempts to change the statute in a way that would have altered the relevant provision.

☐ Consider the applicability of the major questions doctrine. The Supreme Court has recently emphasized the "major questions doctrine," which requires clear and express congressional authorization for agency actions that have vast economic and political significance. If the regulation in question falls under this category, consider incorporating this broader statutory interpretation argument into your advocacy.

☐ Compare the regulation to the statute. Using the above, ask these core questions regarding a post-*Chevron* challenge.

- Does the regulation track the best meaning of the statutory provision? Is there a better meaning, or does the regulation contradict or expand upon any specific provisions of the statute?
- Does the regulation fall within the scope of some express delegation of discretion granted by the statute?
  - Did Congress expressly delegate to the agency the authority to give meaning to a particular term (i.e., footnote 5 of the *Loper Bright* majority opinion)?

- Did Congress expressly delegate to the agency the authority to set certain standards or otherwise fill up the details of a statutory scheme (i.e., footnote 6 of the *Loper Bright* majority opinion)?

- Does the regulation implement the statute in a way that is consistent with its overall purpose and intent?

4. Develop Potential Legal Arguments

☐ Based on your analysis, formulate initial legal arguments for challenging the regulation.

☐ Consider whether the regulation exceeds the agency's statutory authority, misinterprets the statute, or is inconsistent with legislative intent.

☐ Consider additional legal arguments, such as constitutional challenges, if applicable.

5. Consider the Appropriate Forum for Advocacy

☐ If you think the client or industry is potentially harmed by the problematic regulation, consider whether a legal challenge to the regulation may be viable and appropriate, consulting with outside counsel and litigation experts as needed. You will need to consider whether various threshold requirements could be met, including the statute of limitations, exhaustion of administrative remedies, standing, and other jurisdictional hurdles.

☐ Alternatives to federal litigation may include petitioning the agency for reconsideration (if there has been an administrative determination applying the regulation to a party) or petitioning the agency to amend or repeal the rule.

☐ If a legal challenge is not available or desired, consider how the arguments developed above could be strategically used in other forums, including in advocating for legislative reform, interacting with agency officials on individual assessments, and pursuing new rulemaking or guidance from the agency.

6. Other Important Considerations

☐ The role of *Skidmore* deference: While *Chevron* deference is no longer applicable, courts may still give some consideration to agency interpretations under the *Skidmore* deference doctrine. This doctrine considers factors such as the thoroughness of the agency's reasoning, its expertise, and the consistency of its interpretation. Be prepared to address these factors in your arguments.

☐ The role of *Auer* deference: When reviewing an agency's interpretation of its own regulations (as opposed to statutes), agencies have historically received a separate form of deference known as *Auer* deference. That doctrine considers factors such as whether the agency's interpretation is official, implicates its substantive expertise, and reflects the agency's fair, considered, and consistent judgment.

☐ Deferential standard of review for agency fact-finding: *Loper Bright* leaves undisturbed the traditional deference—under the so-called arbitrary and capricious standard of review—that courts give to agency decisions that are based on factual and technical judgments, so long as there is a clear delegation from Congress.

STATUTORY INTERPRETATION: A REFRESHER ON THE TRADITIONAL TOOLS OF CONSTRUCTION

The Evolving Importance of the Tools of Statutory Construction

Chevron deference required courts to defer to an expert agency's reasonable interpretation of a statutory provision if that provision was ambiguous. In doing so, the doctrine created its own ambiguities: namely, when was a statutory provision unclear enough to require a court to defer to a federal agency's interpretation? In attempting to answer that question, *Chevron* introduced a two-step framework:

1. First, courts would deploy all the "traditional tools of statutory construction" to determine what the statute meant, and if a clear interpretation emerged, the analysis would end and the clear meaning controlled.[20]

2. Second, if the statute was ambiguous, the courts would show deference to the expert agency. An agency's preferred interpretation would control as long as that interpretation was one of several "permissible" reasonable interpretations.[21]

In overturning *Chevron*, *Loper Bright* jettisoned the concept of multiple "permissible" interpretations and, with it, *Chevron*'s second step.[22] Under *Loper Bright*, there is one permissible interpretation of a statute: the best one. Many interpretations may be reasonable, but one interpretation must be better than its rivals. Courts hold the unique duty of making those determinations.

That is not to say that, in practice, there is no such thing as an ambiguous statute. As the *Loper Bright* dissent recognized, the US Code is full of them:

- Under the Public Health Service Act, when does an alpha amino acid polymer qualify as a "protein?" Must it have a specific, defined sequence of amino acids?

- Under the Medicare program, how should HHS measure a "geographic area?" By city? By county? By metropolitan area?

- Under the 1987 Overflights Act, how much noise is consistent with "the natural quiet?" And how much of Grand Canyon National Park must be that quiet for the "substantial restoration" requirement to be met?[23]

Despite the crowd of ambiguous statutes, the core of *Loper Bright* is resolute: "[S]uch statutes, no matter how impenetrable, do—in fact, must—have a single, best meaning."[24] Thus, while under *Chevron*, the traditional tools of statutory construction were an important first step when courts analyzed statutes, now after *Loper Bright*, the traditional tools of statutory construction are the only step.

Loper Bright stands for the proposition that each statutory provision has one permissible interpretation—the best one—and it is the unique duty of courts to determine which interpretation is best. In discharging that duty, *Loper Bright* (like *Chevron*) instructs courts to exhaust the traditional tools of statutory construction as they weigh possible interpretations. But, unlike *Chevron*, *Loper*

Bright does not provide courts with an off-ramp or a tie breaker. Courts must simply "use every tool at their disposal to determine the best reading of the statute and resolve the ambiguity."[25]

In this environment, the traditional tools of statutory interpretation take on added significance. As regulated industries try to navigate the post-*Loper Bright* landscape, businesses should familiarize (and refamiliarize) themselves with the traditional tools of statutory interpretation. These tools will be essential in both litigation and ordinary course of business, as businesses wade into the new regulatory environment.

Applying the Traditional Tools of Statutory Construction After *Loper Bright*

The "tools of statutory construction" are simply a body of interpretive methods used to find the "best reading" of a statute. While judges often differ on application, they typically rely on five core interpretive tools: (1) ordinary meaning; (2) statutory context; (3) legislative history; (4) evidence of the way a statute is implemented; and (5) canons of construction.

1. Ordinary Meaning

Textualism emphasizes the ordinary meaning of statutory text as understood by a reasonable person at the time the statute was enacted. It focuses on the plain language of the statute, i.e., the words chosen by Congress. As the Supreme Court noted in *Loper Bright*, "the whole point of having written statutes [is that] 'every statute's meaning is fixed at the time of enactment.'"[26] Courts routinely use standard dictionary definitions that were contemporaneous with the statute's enactment to uncover the plain, commonly understood, meaning of the statute. Indeed, the use of dictionaries by the Supreme Court has increased more than 300% since 1985, and that trend will continue.[27] Dictionaries thus provide a common reference for construing terms in a statute.

2. Statutory Context vs. Custom and Usage

A statute should be read as a whole, so the interpretation of one provision of a statute should be consistent with the rest of the statute. Custom and usage of a term is also instructive to interpret a word or term within other contexts outside the statutory scheme, such as "industry practices."

3. Legislative History and Intent

Courts may consider the legislative history of a statute—including committee reports, floor debates, and amendments—to discern the intent of Congress. Not all judges give legislative history and intent equal weight. Some judges emphasize that certain forms of legislative history are more persuasive, while others eschew legislative history altogether.

4. Statutory Implementation

Courts also consider the practical consequences of their given interpretations. By examining how a statute operates as a whole—including how Congress addressed specific issues and the overall statutory scheme—courts will consider unintended or perverse consequences of possible interpretations of a statute.

5. Canons of Construction

Canons of construction are guiding principles or rules of thumb that provide default assumptions about how to read ambiguous provisions of the law.[28] There are numerous canons that courts apply when approaching different textual scenarios. The following is a nonexhaustive list of some key canons:

a. **Semantic or linguistic canons focus on text and grammar. Examples include:**

- *Expressio unius est exclusio alterius*: The inclusion of one thing implies the exclusion of another. For example, a prohibition on domesticating a horse, cow, pig, and chicken, should not apply to donkeys because they were excluded from the list of farm animals.
- *Rule against surplusage*: Every word in a statute should have meaning and should not be rendered superfluous.
- *Ejusdem generis*: General words following specific words are limited to that class created by the specific words. For example, when listing "horse, cow, pig, chicken, and other animals," the "other animals" portion means other similar animals like farm animals, not all other animals like pandas.
- *Noscitur a sociis*: A word is known by the company it keeps. For example, the term "domesticated" can be read to mean commodified farm animals when read alongside "horse, cow, pig, and chicken," as opposed to domesticated dogs or cats.
- *Presumption of consistent usage*: The same word used throughout a statute should mean the same thing throughout.

b. **Substantive canons focus on pragmatic presumptions about outcomes. Examples include:**

- *Elephants in mouseholes and other major questions*: Seemingly insignificant provisions should not affect major policy changes because Congress "does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes."[29] This canon often arises or justifies courts in rejecting agency actions that concern "major questions" or issues of vast economic and political significance.
- *Presumption against implied repeals*: Newer laws should not repeal older laws unless explicitly stated.
- *Rule of lenity*: Ambiguities in criminal law favor the defendant.
- *Presumption against extraterritoriality*: Courts should presume, absent a clear statement from Congress, that federal statutes do not apply outside the United States.
- *Presumption against retroactive legislation*: Courts read laws as prospective unless Congress has unambiguously instructed retroactivity.

Construing Statutory Delegations of Authority

Even as courts reclaim authority over matters of statutory interpretation, expert agencies are not left toothless. While it is true that *Loper Bright* held that each statute has a fixed meaning, the Supreme Court also acknowledged that sometimes the meaning of a statute is that Congress intended to delegate a degree of interpretive authority to an agency. *Loper Bright* identified at least three categories of such delegations, along with the statutory language that would be construed as making such delegations:

1. Definitional Authority

Congress may delegate to an agency the authority to give meaning to a particular statutory term by using "express" delegatory language. The Supreme Court identified the following examples:

- The Fair Labor Standards Act exempts certain categories of workers from the minimum wage and maximum hour requirements, including certain employees "employed on a casual basis in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary)." By clearly indicating that this type of domestic service employment will be further "defined and delimited by regulations of the Secretary," Congress has delegated interpretive authority to the agency.[30]

- Congress imposes civil penalties on certain officers of facilities regulated under the Atomic Energy Act. The law requires that these officers notify the Nuclear Regulatory Commission when a facility or activity "contains a defect which could create a substantial safety hazard, as defined by regulations which the Commission shall promulgate." By expressly indicating that the type of hazardous defect will be "defined by regulations which the [agency] shall promulgate," Congress has essentially delegated to the agency the authority to further define the scope of the conduct that can be penalized under federal law.[31]

In discussing this type of delegation, *Loper Bright* cited a pre-*Chevron* case, which explained that when Congress "expressly delegate[s]" to the agency the "power to prescribe standards," the court is not "free to set aside those regulations simply because it would have interpreted the statute in a different manner."[32] Instead, the regulation would be set aside by a court only if it was found "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[33] Thus, *Loper Bright* indirectly suggested that deference to agency interpretations—and even the possibility of agency flip-flops between differing reasonable interpretations—may survive in those areas where Congress has expressly delegated definitional authority to an agency.[34]

2. Authority to Establish Standards

Congress may also delegate to the agency the authority to "fill up the details" of a statutory scheme. To illustrate, *Loper Bright* pointed to language in the Clean Water Act, where Congress empowered the Environmental Protection Agency (EPA) Administrator to establish water quality standards. The text of the statute provided that whenever "in the judgment of the Administrator" pollutants from point sources would interfere with assuring the "protection of public health" and "public water supplies," then "effluent limitations . . . shall be established."[35]

3. Specific Regulatory Authority

Loper Bright also recognized that Congress may delegate to agencies broader regulatory authority in a particular arena, subject to limits. As an example, the Supreme Court looked to the Clean Air Act, where the statute directs the EPA to "regulate" emissions of hazardous air pollutants from power plants "if the Administrator finds such regulation is appropriate and necessary."

This type of regulatory delegation is likely to be among the most litigated, however, given its potential breadth. Indeed, in reference to such delegated authority, *Loper Bright* cited *Michigan v. EPA*, where the Supreme Court recognized inherent limits on the Clean Air Act's seemingly broad delegation to the EPA Administrator to regulate power plants and held that "appropriate and necessary" plainly encompasses considerations of cost.[36]

Implications for the Regulated Community

Loper Bright will likely lead to increased litigation over statutory interpretation, as agencies will no longer enjoy the same level of deference, and those opposing agency interpretations may be more likely than before to advance the winning interpretation. In the post-*Loper Bright* world, what is now solely material is the usage and emphasis of the statutory tools in a court's toolbox.

Regulated entities should closely monitor how courts apply these tools in relevant cases, as it may impact regulatory compliance and legal strategies. Our firm is closely tracking developments in statutory interpretation and stands ready to assist clients in navigating this evolving legal landscape. Please contact us if you have any questions or concerns about how this decision may affect your interests.

QUICK GUIDE: AGENCY DEFERENCE CASELAW AND THE EFFECT OF *LOPER BRIGHT* [37]

This chart provides a top-line summary of the key cases that have informed how courts review agency decisions—from agencies' policy judgments to their interpretations of governing statutes and regulations. This chart includes *Loper Bright* and its possible implications going forward.

Key

- Agency interpreting statute
- Agency interpreting regulation
- Agency exercising policy judgment

CASE	PRINCIPLE	EFFECT OF *LOPER BRIGHT*
***Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)**	Agency interpretations of statutes are entitled to respectful consideration by courts; they are not controlling but will receive deference to the extent they are persuasive. "The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control."	*Loper Bright* cited *Skidmore* approvingly as the appropriate mode for considering agency interpretations of statutes (instead of *Chevron* deference).
***Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945)**	An agency interpretation of its own regulation receives "controlling weight" by courts unless that interpretation is "plainly erroneous or inconsistent with the regulation." (Later known as *Auer* deference after a 1997 case that reaffirmed the doctrine.)	See entry and *Loper Bright* update on *Auer v. Robbins* below.
***Motor Vehicle Mfrs. v. State Farm*, 463 U.S. 29 (1983)**	Agency's factual and discretionary determinations are reviewed under the "arbitrary and capricious" standard, where courts ask whether the agency: (1) relied on factors that Congress did not intend; (2) failed to consider an important aspect of the problem; or (3) offered an explanation that is implausible or contrary to the evidence.	*Loper Bright* did not directly address judicial review of an agency's exercise of discretion. However, the Supreme Court did cite the *State Farm* review approvingly, as among the ways that courts will continue to police congressional delegations of interpretive authority to agencies.

CASE	PRINCIPLE	EFFECT OF *LOPER BRIGHT*
	An agency's decision will be upheld if it is "reasonable and reasonably explained." *FCC v. Prometheus Radio Project*, 592 U.S. 414 (2021).	See the entry on *Ohio v. EPA* below for more.
***Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984) (*overruled by Loper Bright Enters. v. Raimondo*, 603 U.S. ___ (2024))**	Agencies (not courts) should fill interpretive gaps in statutes they administer; courts will defer to agency's reasonable interpretation of ambiguous statutes. *Chevron* Two-Step Inquiry: (1) Applying traditional tools of statutory construction, does the statute directly answer the issue at hand? (2) If the statute permits more than one meaning, the court gives controlling weight to the agency's reasonable interpretation, when the interpretation results from the agency's considered judgment (through a deliberative process, such as notice-and-comment rulemaking).	*Loper Bright* update: *Loper Bright* explicitly overrules *Chevron.* This marks a significant shift in administrative law, requiring courts to exercise "independent judgment" in statutory interpretation without deferring to agency interpretations of ambiguous statutes.
***Auer v. Robbins*, 519 U.S. 452 (1997)**	Reaffirmed *Seminole Rock*: Courts must defer to an agency's interpretation of its own regulation unless the regulation is "plainly erroneous or inconsistent" with the language of the regulation itself.	*Loper Bright* did not address *Seminole Rock/Auer* deference and focused solely on the deference given to agencies when interpreting statutes (*Chevron* deference). As some courts have begun to note, however, *Loper Bright*'s reasoning could extend to an agency's interpretation of regulations. *Loper Bright* reasoned that Section 706 of the APA requires courts to decide all "relevant questions of law." That aspect of the APA is arguably equally applicable to interpreting regulations as well as statutes. Thus, there may be reason to think that courts will begin to give less deference to an agency's interpretation of its own regulations after *Loper Bright. See,* e.g., *United States v. Boler*, No. 23-4352, 2024 WL 3908554, at *3 (4th

CASE	PRINCIPLE	EFFECT OF *LOPER BRIGHT*
		Cir. Aug. 23, 2024) (observing the same). But for now, *Seminole Rock/Auer* remain good law.
***United States v. Mead Corp.*, 533 U.S. 218 (2001)**	Agency's interpretation (here, based on tariff classifications routinely issued through low-level agency decisions) is not entitled to *Chevron* deference if it does not have the force of law or represent the agency's considered decision at an appropriate level of formality, but it is eligible to claim respect according to its persuasiveness under *Skidmore*.	Because *Loper Bright* eliminates *Chevron* deference, all agency interpretations of statutes are given a *Skidmore*-type deference. Thus, to the extent that *Mead* provided one of the "many refinements" that courts made to *Chevron, see Loper Bright*, 144 S. Ct. at 2268, its distinction is no longer relevant.
***Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005)**	*Chevron* deference is appropriate where an agency reverses its interpretation of an ambiguous statute, even if a court has upheld the prior interpretation as reasonable, if the new interpretation is also reasonable. Agency deference thus does not depend on the order in which reasonable interpretations reach a court.	B*ecause Loper Bright* overrules *Chevron* deference, which was central to the *Brand X* decision, agencies will likely not be able to override a judicial interpretation of an ambiguous statute, absent an explicit delegation of authority by Congress. *See Mazariegos-Rodas v. Garland*, No. 21-4064, 2024 WL 4249450, at *12 (6th Cir. Sept. 20, 2024) (noting that agencies have no authority to disregard precedential decisions of the court based on *Brand X*, given that *Brand X* follows from the now-overruled *Chevron* doctrine).
***FCC v. Fox Television Stations*, 556 U.S. 502 (2009)**	Reaffirmed *State Farm*'s holding that the APA's arbitrary and capricious standard is a "narrow" standard of review and holds that changes in an agency's policy judgment are not subject to a more "searching" review, though the agency must acknowledge and explain the change.	Although *Loper Bright* does not directly impact an agency's exercise of policy judgment, the Supreme Court's recent emphasis on judicial independence may result in more rigorous judicial review of agency policy changes. See the entry on *Ohio v. EPA* below for more.
***Kisor v. Wilkie*, 588 U.S. 558 (2019)**	Upheld *Auer* deference but clarified its inherent limits—the Supreme Court defers to an agency's reasonable interpretation after conducting a careful inquiry into whether the regulation is genuinely ambiguous. To receive deference, the agency's	*Loper Bright* did not call *Kisor* into question, and indeed cited it repeatedly. Thus, courts are continuing to cite *Kisor* and to afford agencies limited deference where appropriate under *Seminole Rock/Auer. See,* e.g., *United*

CASE	PRINCIPLE	EFFECT OF *LOPER BRIGHT*
	interpretation must be its official position, implicating its substantive expertise and reflecting its fair, considered, and consistent judgment.	*States v. Trumbull*, No. 23-912, 2024 WL 3894526, at *3 (9th Cir. Aug. 22, 2024). At the same time, as noted above in the *Auer* entry, it is very possible that such deference will be scrutinized in the future.
***West Virginia v. EPA*, 597 U.S. 697 (2022)**	Announces the "major questions doctrine," under which a court can reject new claims of agency authority when—based on history, breadth, and "economic and political significance"—the agency is doing something "extraordinary" not clearly authorized by Congress.	*Loper Bright* reinforces *West Virginia v. EPA* by ensuring that courts independently verify whether an agency's actions are within its statutory authority.
***Loper Bright Enterp. v. Raimondo*, 144 S. Ct. 2244 (2024)**	Overrules the *Chevron* doctrine and instead requires courts to exercise "independent judgment" to resolve statutory ambiguities and find the "best meaning" of the statute. The holdings of prior cases relying on the *Chevron* framework—including the Clean Air Act holding of *Chevron* itself—remain lawful and subject to statutory stare decisis. The mere fact that a case relied on *Chevron* will not alone qualify as a "special justification," which is required before a court can overturn its own precedent.	N/A
***Ohio v. EPA*, 144 S. Ct. 2040 (2024)**	Applies a strong version of arbitrary and capricious review to stay an EPA rule pending appeal, concluding that the agency likely acted arbitrarily by failing to adequately respond to significant comments during rulemaking.	N/A

GLOSSARY

Administrative law	The body of law that governs the activities of administrative agencies, including rulemaking, enforcement of regulations, and administrative proceedings.
Administrative state	All of the authorities and operating units of the government except for the three constitutional (legislative, executive, and judicial) branches of government. This term generally refers to the large array of modern federal administrative agencies that, through regulations and policies, wields vast power and touches almost every aspect of daily life.
APA	The Administrative Procedure Act, 5 U.S.C. §§ 551–59 (1946), is a federal statute that governs the process by which federal administrative agencies make rules, the requirements for public participation in the rulemaking process, and how courts review agency decisions.
Arbitrary and capricious	A standard that courts use when reviewing administrative agency policy decisions, where courts generally defer to the agency's decision if it is "reasonable and reasonably explained." A policy decision is "arbitrary and capricious" when it: (1) relies on factors that Congress did not intend; (2) fails to consider an important aspect of the problem; or (3) offers an explanation that is implausible or contrary to the evidence.
Canons of construction	Guiding legal principles or rules of thumb that courts use for interpreting statutes. For example, the interpretive principle that "every word has meaning."
Chevron	*Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), is the now-overruled landmark Supreme Court decision that permitted administrative agencies—not courts—to fill interpretive gaps in the statutes they administer. Under *Chevron*, courts would defer to an administrative agency's reasonable interpretation of an ambiguous statute. *Chevron* was explicitly overruled by the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. ___, 144 S. Ct. 2244 (2024).
Construction	The process of interpreting the meaning of a legal text by using the tools of statutory construction.
Loper Bright	*Loper Bright Enterprises v. Raimondo*, 603 U.S. ___, 144 S. Ct. 2244 (2024), is the Supreme Court decision that overruled *Chevron* and now requires courts to exercise "independent judgment" to resolve statutory ambiguities and find the "best meaning" of the statute.
Major questions doctrine	The interpretive principle that, in matters involving significant economic and political choices, an administrative agency must point to express and "clear congressional authorization." The major questions doctrine was emphasized in *West Virginia v. EPA,* 597 U.S. 697 (2022).

Nondelegation doctrine	The principle that Congress cannot delegate its lawmaking power to administrative agencies without clear guidelines, so that significant policy decisions are only made by the legislative branch.
Stare decisis	A Latin phrase meaning “to stand by things decided.” It is a legal principle that generally requires courts to follow previous caselaw to promote stability and predictability.
Tools of statutory construction	Interpretive tools used to find the “best meaning” of a statute, including the five core interpretive tools: (1) ordinary meaning (using dictionaries); (2) statutory context; (3) legislative history; (4) evidence of the way a statute is implemented; and (5) canons of construction.

K&L GATES ADMINISTRATIVE LAW PRACTICE

In today's ever-evolving regulatory landscape, it can be challenging to navigate the vast administrative state that touches nearly every aspect of business and daily life. Our Administrative Law practice helps clients at each stage of the government policy life cycle, including all aspects of district and appellate court administrative litigation. Lawyers in the firm have been involved in hundreds of APA and other cases—both on behalf of and against the government. The firm's experience in the early stages of administrative matters—including legislative drafting in Congress and regulatory action before federal departments and agencies—combined with the industry-specific knowledge of a large global law firm offers a full-circle perspective on administrative actions involving the federal government.

Our Washington, D.C., office sits at the center of federal administrative law in the United States—in the shadow of the White House and federal departments and agencies; near Capitol Hill and the Congress; and blocks away from the federal courts that are home to a steady stream of administrative law cases, including recent landmark rulings from the US Supreme Court.

Our Capabilities

Administrative Litigation

The firm's administrative litigation experience is broad and deep—with experienced lawyers who have worked inside the government and out on hundreds of APA controversies, including industry-specific knowledge in many sectors. Recently, our lawyers have focused heavily on the implications of landmark Supreme Court decisions impacting administrative law, including *Loper Bright Enterprises v. Raimondo*, which overturned the landmark *Chevron* framework that has governed large swaths of administrative law for decades.

The firm begins with a commitment to helping its clients meet their objective and receive treatment from their government that is fair and just.

Regulatory Action

The foundation for successful administrative litigation is often laid during the regulatory process, when government agencies and departments implement laws enacted by Congress. Cases under the APA are often won or lost during the regulatory process. Our lawyers bring vast experience on regulatory matters, ranging from full notice and comment rulemakings to less formal subregulatory policy actions. Many of our lawyers draw on previous in-house federal agency experience when pursuing regulatory results for clients.

Legislative Activities

The administration law process, of course, begins with the enactment of laws in Congress. K&L Gates is home to one of the oldest and largest public policy groups in the United States. Its professionals have hundreds of years of collective service, including experience as members of Congress, committee counsel, congressional staffers, and others. The firm has significant experience in legislative drafting and related tools of statutory construction, which form the baseline on which administrative law actions begin.

We offer services at all stages of the policy life cycle—administrative litigation, regulation, and legislation. Our team of lawyers has vast experience both inside of government and out with active involvement in hundreds of administrative law controversies of all shapes and sizes and a commitment to helping our clients meet their objectives.

Among the first Capitol Hill-focused public policy groups to be part of a law firm, K&L Gates embraces the concept of the "three-dimensional chessboard," where actions by the judicial, executive, and legislative branches are interrelated. An action by one often affects the others. For example, skilled legislative drafting today can bear fruit in litigation results years later. Wise use of the regulatory process can set the stage for litigation success or even eliminate the need for it later. We believe that the best administrative law practices understand and appreciate the full interplay of the multiple parts of the public policy life cycle as they seek to help their clients achieve their goals and objectives.

Our Areas of Focus

- Administrative litigation
- Regulatory processes, including law implementation and enforcement
- Legislative activity, from bill drafting to enactment

ENDNOTES

[1] Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244 (2024).
[2] Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984), *overruled by Loper Bright*, 144 S. Ct. 2244.
[3] Skidmore v. Swift & Co., 323 U.S. 134 (1944).
[4] *See* Martha Kinsella & Benjamin Lerude, *Judicial Deference to Agency Expertise in the States*, STATE CT. REP. (Oct. 26, 2023), https://statecourtreport.org/our-work/analysis-opinion/judicial-deference-agency-expertise-states (providing overview of deference regimes in all 50 states, and noting that the judiciaries of 25 states provide robust deference to agencies' interpretation of state statutes).
[5] McGuire v. Nationwide Affinity Ins. Co. of Am., 2:23-CV-1347 WL 4150098 at n.9 (W.D. Pa. Sept. 11, 2024) (quoting Woodford v. Ins. Dep't, 663 Pa. 614, 243 A.3d 60 (2020) (Donohue, J., concurring)).
[6] *Id.*
[7] Auer v. Robbins, 519 U.S. 452 (1997). The Supreme Court more recently articulated limits to *Auer* deference in Kisor v. Wilkie, 588 U.S. 558 (2019).
[8] United States v. Boler, No. 23-4352, 2024 WL 3908554, at *3 (4th Cir. Aug. 23, 2024) (noting that the Supreme Court's recent ruling in *Loper Bright* "calls into question the viability of *Auer* deference").
[9] *See* Udall v. Tallman, 380 U.S. 1, 4 (1965) (holding that courts must respect an agency's "reasonable interpretation" of an executive order and citing *Seminole Rock*); *see also* Kester v. Campbell, 652 F.2d 13, 15 (9th Cir. 1981).
[10] Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29 (1983).
[11] Ohio v. EPA, 603 U.S. __ (2024).
[12] Corner Post, Inc. v. Board of Governors of the Fed. Rsrv. Sys., 603 U.S. ___ (2024).
[13] *See* 5 U.S.C. § 553(e).
[14] *See generally* West Virginia v. EPA, 597 U.S. 697 (2022).
[15] *Loper Bright*, 144 S. Ct. at 2263.
[16] *Id.* at 2263, 2273.
[17] *Id.* at 2263 n.5 (citing, as an example, 29 U.S.C. § 213(a)(15)).
[18] *Id.* at n.6 (citing, as an example, 33 U. S. C. § 1312(a)).
[19] *Id.* (citing 42 U. S. C. § 7412(n)(1)(A), which directs EPA to regulate power plants "if the Administrator finds such regulation is appropriate and necessary").
[20] *Chevron*, 467 U.S. at 843 n.9.
[21] *Id*. at 842–43.
[22] *Loper Bright*, 144 S. Ct. at 2266.
[23] Examples drawn from *Loper Bright*, 144 S. Ct. at 2296 (Kagan, J. dissenting).
[24] *Loper Bright*, 144 S. Ct. at 2266.
[25] *Id.*
[26] *Id.* (quoting Wis. Cent. Ltd. v. United States, 585 U.S. 274, 284 (2018)).
[27] *See generally* John Calhoun, *Measuring the Fortress: Explaining Trends in Supreme Court and Circuit Court Dictionary Use*, 124 YALE L. J. 248 (2014).
[28] *See generally* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW (2012).
[29] Whitman v. Am. Trucking Ass'ns., Inc., 531 U.S. 457, 469 (2001).
[30] *Loper Bright*, 144 S. Ct. at 2263 n.5 (citing, as an example, 29 U.S.C. § 213(a)(15)).
[31] *Id.* (citing, as an example, 42 U.S.C. § 5846(a)(2)).
[32] Batterton v. Francis, 432 U. S. 416, 425 (1977).
[33] *Loper Bright*, 144 S. Ct.
[34] *Id.* at 2263 n.6 (citing 42 U. S. C. § 7412(n)(1)(A) (emphasis added)).
[35] *Id.* (citing, as an example, 33 U. S. C. § 1312(a), which provides that "Whenever, in the judgment of the Administrator . . . discharges of pollutants from a point source or group of point sources . . . would interfere with the attainment or maintenance of that water quality . . . which shall assure protection of public health, public water supplies . . . effluent limitations (including alternative effluent control strategies) for such point source or

sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality").

[36] Michigan v. EPA, 576 U.S. 743, 752 (2015).

[37] This chart is adapted from the alert originally published on our website. *See* Varu Chilakamarri, Mark Ruge, and Falco Muscante II, *Quick Guide: Agency Deference Caselaw*, K&L Gates LLP (June 18, 2024), https://www.klgates.com/Quick-Guide-Agency-Deference-Caselaw-6-18-2024.

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