***Loper Bright v. Raimondo*: An Exemplar of an Increasingly Pervasive Contemporary Supreme Court**

Wilfred Kozlowski

Following Loper Bright v. Raimondo[1]*, the longstanding precedent of* Chevron *deference—which allowed courts to defer to an agency's reasonable interpretation of ambiguous statutes—was dissolved.*[2] *The judicial branch has consolidated authority over the policymaking process by assuming power to interpret ambiguous statutes, which negatively alters the role of the bureaucracy and the executive branch. This paper argues that the course of the current Supreme Court pushes the limits of its Constitutional authority while undermining the checks and balances of the Executive Branch.*[3] *The continuation of this breach leads to a more controlling Supreme Court, one that challenges the institutional structure outlined by the Founding Fathers.*[4,5]

Overview

The *Chevron* doctrine introduced a two-step process for courts to review a federal administrative agency's actions. The doctrine was adopted to establish a uniform standard to defer to an agency's interpretation of an ambiguous statute in order to honor its legislative intent, allowing agencies to fill in gaps in statutory language. Firstly, the courts had to determine whether legislators had directly addressed the precise question at hand;

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[1] *See* Loper Bright Enterprises et al. v. Raimondo, Secretary of Commerce et al., 22-451 (2024).

[2] *See* Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 842–43 (1984).

[3] Erin Ryan, *The Four Horsemen of the New Separation of Powers: The Environmental Law Implications of West Virginia, Sackett, Loper Bright, and Corner Post*, 109 Minn. L. Rev. 2839, [2866-2871] (2025).

[4] The Federalist No. 78 (Alexander Hamilton).

[5] U.S. Const. art. III, § 2, cl. 1.

if the statute was not deemed clear by the courts based on analysis of the statute's text, context, and purpose, then the courts must determine if the agency's interpretation of the statute is a reasonable one. If the interpretation is reasonable and consistent with the legislative intent of the statute after the use of "traditional tools of statutory construction," the courts defer to that interpretation of the statute.[6] This essentially allowed agencies the interpretive power to implement ambiguous laws after the given procedure, only deferring to the judicial branch to assess reasonableness. This precedent stood as the basis for policymaking and executive practices within the bureaucracy for forty years, allowing the administrative agencies within the executive branch to shift priorities towards maximizing effectiveness in management through the unimpeded application of procedures. For instance, the Occupational Safety and Health Administration (OSHA)—created by the Occupational Safety and Health Act of 1970[7] in response to growing concerns of workplace injuries and deaths[8]—relied on *Chevron* in order to interpret safety standards in the workplace. As such, *Chevron* allowed the OSHA to interpret the statutory phrase "serious [workplace] hazards"in accordance with their own judgment, thereby augmenting their ability to define obligations employers must adhere to .[9] The significance of this lies in the administrators of OSHA; they work in the field directly to gain applicable experience and possess profound expertise on workplace routines. This field-specific knowledge renders it distinct from

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[6] Chevron U.S.A. v. NRDC, 467 U.S. 837 (1984).
[7] 29 U.S.C. §§ 651–678.
[8] *House Committee on Education and Labor*: *Hearings on Occupational Safety and Health,* 90th Cong. Rec. 51, p. 11395 (1968); *Senate Committee on Labor and Public Welfare: Hearings on Occupational Safety and Health Act of 1968,* 90th Cong. (1968).
[9] Conn Maciel Carey LLP, What Does the 2024 Supreme Court Chevron Decision Mean? (2026), https://www.connmaciel.com/what-does-supreme-court-chevron-decision-mean/

a court's independent judgment on what constitutes a reasonable judgment in the field, as judges do not possess a comparable amount of experience and knowledge required for the specific policy area.

In addition to improving the efficacy of the executive branch, *Chevron* catalyzed government efficiency in all branches. By allowing agencies to interpret statutes and account for technological advances, market changes, or other evolving factors in regulations, administrative action became significantly more efficient. If agencies instead have to consult the courts on interpretations of statutes, it prevents ad hoc responsibilities requiring urgent action from being addressed in time. After Congress created the Clean Air Act in 1977,[10] The Environmental Protection Agency (EPA) was able to define the term "stationary source" to create new regulation standards and adapt the law without the need for new legislation.[11] Thus, *Chevron* increased productivity within Congress by limiting their need to persistently update prior legislation whilst also compelling current regulatory practices within the bureaucracy.

The Administrative Procedure Act, signed into law on June 11th, 1946, by President Truman, was created to govern the proposal or implementation of regulations by federal agencies. Federal agencies have a series of procedures they must adhere to—such as providing public notice and publicizing proposed regulations—in order to legally administer a regulation for the notice-and-comment rulemaking permitted under section 553 the APA.[12] Additionally, Section

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[10] An original law which authorized regulation of carbon emissions. See 42 U.S.C. § 7401 et seq..

[11] Duke K. McCall III, Ella Foley Gannon & John McGahren, *The End of the Chevron Doctrine: An Environmental Law Watershed?*, MORGAN LEWIS (July 3, 2024), https://www.morganlewis.com/pubs/2024/07/the-end-of-the-chevron-doctrine-an-environmental-law-watershed.

[12] Within this section, it is defined that notice-and-comment rulemaking allows agencies to submit proposed regulations and allow the public to comment before it is issued as a final rule, See 5 U.S.C. § 553

704 of the APA also addresses how agency procedures ought to be adjudicated, stating that individuals who claim to have suffered legal wrongdoings as a result of an agency's practice are entitled to judicial review to examine whether the practice was unlawful.[13] This might appear to directly conflict with Chevron deference, as Chief Justice Roberts suggested, but the two frameworks are conceptually harmonious. Section 706 of the APA states that "court[s] 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."[14] Chief Justice Roberts argued that this section ought to be interpreted as categorically against *Chevron,* but in fact courts can decide relevant questions of law while taking into account the agency's reasonable interpretation of the law. Congress leaves ambiguities within bills for a reason; because they do not possess the expertise and mastery of the field under consideration that agencies do. For instance, the Clean Air Act was drafted using ambiguous language such as "adequate provisions" for emissions regulations standards, allowing the EPA to determine what sufficed as adequate.[15] This means that Congress has delegated the authority to implement the legislation they drafted to the experts by using ambiguities. Though the APA states explicitly that the Court shall interpret the "meaning or applicability of the terms of an agency action" by deferring to an agency's reasonable interpretation, the court has effectively upheld Section 706 of the APA.[16] Since the legislators themselves delegated authority to the agencies when drafting the bill, making their reasonable interpretation of the bill the best reading of the statute in question.

To better understand the depth and impact of the *Loper Bright* verdict on the executive branch, one must examine the role the bureaucracy plays in policymaking. The inherent

[13] 5 U.S.C. § 704
[14] 5 U.S.C. § 706.
[15] Clean Air Act, 42 U.S.C. §§ 7401–7671q, *Post,* p. 724.
[16] 5 U.S.C. § 706.

breadth and ambiguity of statutory language require bureaucracies to translate policies into interpretations and implementations. Agencies possess an astute expertise pursuant to their respective subject matter—compounded by experience in the institutional structure and the plethora of data at the disposal of agencies. An agency's evaluation of a policy leads to indirect participation in the agendas of legislators and politicians. Consequently, bureaucrats outlast many politicians, as their role in the system persists beyond electoral cycles. Longevity ultimately creates stability within the administrative system, as bureaucrats are merit-based and non-partisan. Such flexibility manifests in bureaucratic discretion—therefore invigorating federal agencies—as the bureaucracy is endowed with initial agenda volition. This allows for operational continuity and standardized procedures which mitigate abrupt shifts in policy. This operational continuity is thus extremely valuable in terms of utility, as agencies can remain productive by maintaining uninterrupted and consistent performance. The ambiguous nature of legislation facilitates the flexibility a bureaucratic agency has, known as bureaucratic discretion, which in turn places the bureaucracy in a position of initial agenda-setting. The deputation of bureaucratic discretion through *Chevron* reflected the court's approach to respecting delegation; legitimizing how bureaucratic discretion is a bona fide part of the government and not a ramification of equivocal legislation. For that reason, distinct bureaucracies interpret different policies to fit their own views and practicalities insofar as the original intent of a policy may be altered in accordance with a bureaucrat's respective interpretation. In essence, the laws enacted by Congress and the President are translated from broad laws to concrete actions under the bureaucracy.[17]

However, the powers of the bureaucracy were stifled when *Chevron* was overturned by *Loper Bright*, a case in

[17] Ora-orn Poocharoen, *Bureaucracy and The Policy Process*, Routledge Handbook of Public Policy (2012).

which a New Jersey fishing company won against the National Marine Service Board, who required them to pay for on-board observers.[18] The majority opinion—delivered by Chief Justice Roberts—states that "the Administrative Procedure Act[19] [APA] requires courts to exercise their independent judgment" when determining if an agency has acted within its statutory powers and that "courts may not defer to an agency interpretation of the law simply because the statute is ambiguous."[20] Since the APA was seen by the majority opinion as the formalization of judicial interpretation into codified law, they characterize the two-step framework as "unworkable" and unreliable since the initial ruling due to the nature of ambiguity being a pliable concept, leading to a test which "cannot stand…for allocating interpretive authority".[21] Chief Justice Roberts also viewed *Chevron* deference as a renunciation of the courts' rudimentary duty to interpret laws, citing cases like *Marbury v. Madison* (stating "rudimentary" should be "core" that "[i]t is emphatically the province and duty of the judicial department to say what the law is", which was then used to establish the principle of judicial review)[22], to demonstrate what the Founding Fathers allegedly envisioned for the judicial branch's powers and its incongruence with the principles of *Chevron*.[23] Principally, Chief Justice Roberts and the majority rejected *stare decisis* on the basis that *Chevron* was fundamentally flawed to begin with because agencies have "no special competence in resolving statutory ambiguities" and that

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[18] *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024).
[19] See 5 U.S.C. § 551 *et seq.*
[20] Loper Bright Enterprises et al. v. Raimondo, Secretary of Commerce et al., 22-451 U.S. 1, 1 (2024).
[21] Loper Bright Enterprises et al. v. Raimondo, Secretary of Commerce et al., Nos. 22-451 (2024). at 7
[22] Marbury v. Madison, 5 U.S.1, 137 (1803).
[23] Loper Bright Enterprises et al. v. Raimondo, Secretary of Commerce et al., 22-451 (2024). at 2

it eroded the necessary constitutional duties of the judicial branch as the Founders intended.[24]

Under *Chevron*, agencies possessed substantial policymaking power: since courts were required to defer to a federal agency's reasonable interpretation of an ambiguous statute passed by Congress, agencies could issue their own regulations or alter operations in response to a statute. The agency's interpretation, and the subsequent practices thereof, functioned as the basis of the judiciary's interpretation of the law. In essence, *Loper Bright* undermines the bureaucracy's role in policymaking by restricting bureaucratic discretion and encroaching upon their ability to execute essential regulations or operations by stimulating the growing power of the Supreme Court. This ability, and the bureaucracy's overall role in policymaking, was notably restricted after the decision of *Loper Bright*; noteworthy because the role of bureaucrats in America's governmental structure is critical to its functionality. Yet, instead of using an agency's reasonable interpretation, the courts now rely on their own independent judgment of a federal statute to determine its meaning and applicability. Reliance on independent judgment is concerning due to the paradigm of the Supreme Court assuming the role of de facto authority in situations which it is not well-equipped to do so, which Justice Kagan highlights in her dissenting opinion.

In Justice Kagan's dissenting opinion, two landmark decisions were referenced to prove that the Supreme Court was "even more deferential to agencies" in earlier decisions, showing how the Supreme Court has supported deference to agencies even before *Chevron* was decided.[25] The first was *Gray v. Powell*, where the court decided before the APA's creation in December of 1941 to defer to the Director of the Bituminous Coal Division's interpretation of the word

[24] Loper Bright Enterprises et al. v. Raimondo, Secretary of Commerce et al., 22-451 (2024). at 5

[25] Loper Bright Enterprises et al. v. Raimondo, Secretary of Commerce et al., Nos. 22–451 and 22–1219 (2024).

"producer" in the Bituminous Coal Act,[26] effectively setting the precedent that agencies ought to have the ability to interpret statutes.[27] Such deference was a recognized and appropriate practice established long before the *Chevron* decision, not an unorthodox idea introduced by *Chevron*. Moreover, in 1944, the decision of *NLRB v. Hearst Publications* likewise solidified the notion of deference by deferring to an agency's reasonable interpretation of the term "employee".[28] Justice Kagan applies the precedent of these cases to demonstrate that deference was a preexisting judicial norm rather than a novel doctrine as characterized by the majority. Therefore, *Chevron* ought to remain as an established legal precedent since in denying *Chevron,* the majority opinion must also deny the decisions of *Hearst* and *Gray,* which they did not, proving that they recognized the legal precedent set before *Chevron* but chose to ignore it when overturning it.[29] Because of this, Justice Kagan states the decision was a blatant "power grab" by the conservative Supreme Court, arguing that the majority was overstepping its authority and transforming the Supreme Court into "the country's administrative czar".[30] Despite Chief Justice Roberts' claims in his majority opinion that the *Chevron* doctrine contested the APA—particularly under Section 706—the *Chevron* decision was compatible with the statutory requirements of the APA. The dissenting opinion thus depicts how this blatant "power grab" by the Supreme Court is about more than just this one case; it's the fact that the court is appointing itself as the final arbiter of scientific and technical

[26] A law used to establish a commission known as the Bituminous Coal Division to control prices in the coal industry. See Bituminous Coal Act of 1937, 15 U.S.C. § 828–852.
[27] Gray v. Powell, 314 U.S. 402 (1941).
[28] NLRB v. Hearst Publs., Inc., 322 U.S. 111, 64 S. Ct. 851, 88 L. Ed. 1170 (1944).
[29] Loper Bright Enterprises et al. v. Raimondo, Secretary of Commerce et al., Nos. 22-451 (2024). at 22
[30] Loper Bright v. Raimondo, Secretary of Commerce et al. (2024). at 3

policy in which the judges have no meaningful understanding of.

Present Ramifications of *Loper Bright*

The *Loper Bright* decision provoked instantaneous and sharp criticisms, particularly by health and environmental advocates, who argued that shifting interpretive authority from scientifically informed agencies with decades of practical experience to generalist judges may destabilize entire regulatory domains. In practice, precisely these government agencies (e.g., the EPA, the FCC)—staffed by renowned scientists, experts, or researchers from their relevant fields—can no longer support policies with empirically-based data or grounded experience. Since technocratic legitimacy prioritizes an epistemic-based approach over ideological mandates, technocratic legitimacy delivers effective results from policies and is devoted to the common good.[31] Before *Chevron* was overturned, regulatory power was dynamic and elaborate, allowing each political branch and institution to meaningfully advance policy as the Founding Fathers intended. Instead, the *Loper Bright* decision reoriented the federal separation of powers by synthesizing regulatory power within the Supreme Court, preventing the unilateral contributions from all three branches of government found in standard lawmaking procedure. Without deference to agencies and the notice-and-comment process, statutes like the Clean Air Act[32] or the Clean Water Act[33] would not have been enacted, as agencies such as the EPA were crucial to setting air quality standards and providing oversight on emissions of industries.[34] Further, such policies were dependent on the

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[31]Paul Tucker, *Reining in Technocracy to Increase Democratic Legitimacy*, Reg. Rev. (Aug. 8, 2018), https://www.theregreview.org/2018/08/06/tucker-reining-technocracy-increase-democratic-legitimacy/.
[32]Clean Air Act, 42 U.S.C. §§ 7401–7671q (2018).
[33]Clean Water Act, 33 U.S.C. §§ 1251–1389 (2018).
[34]Ryan, *supra* note 3, at [2839].

notice-and-comment process, so eliminating agency deference likewise contravenes with the agency's duty to implement citizen-backed regulations. Evidently, judicial review is a necessary and important aspect of lawmaking, but as Justice Kagan and other dissenting opinions identified, the *Loper Bright* decision was an imprudent means of achieving judicial force and elevating institutional disparity whilst curtailing necessary executive and bureaucratic functions.

In congruence with the dissenting opinion, Cass R. Sunstein (an American legal scholar at Harvard Law) argues that the context of the law itself clarifies its true meaning. He mentions how in 1951, former legal scholar of administrative law Professor Kenneth Culp Davis who helped draft the APA patently stated that "the doctrine of *Gray v. Powell* has survived the APA".[35] Indeed, not a single justice following the enactment of the APA interpreted the new law as ambivalent or contradictory to earlier cases involving administrative deference such as *Gray*. This is substantiated by the doctrine of legislative acquiescence, which courts use to hold that silence implies acceptance of an interpretation, allowing undisputed interpretations to become law. These past historical decisions make apparent how prior justices did not see Section 706 of the APA as a repudiation of judicial deference, so *Chevron* should not be seen as such either. Further, the APA significantly reformed other aspects of administrative law—such as the publishing of all procedural rules to promote transparency[36] and establishing a process to resolve disputes over formulating an order.[37] If Congress had intended to abolish deference, the courts would have reacted accordingly almost instantaneously, but they did not.[38] Thus, the APA may not be interpreted as a

[35] *See* Gray v. Powell, 314 U.S. 402, [411] (1941).
[36] 5 U.S.C. § 552 (2018).
[37] 5 U.S.C. §§ 554-557 (2018).
[38] Cass R. Sunstein, *Chevron Is Not Inconsistent with the APA*, Yale J. on Reg.: Notice & Comment (Sept. 16, 2020), https://www.yalejreg.com/nc/chevron-is-not-inconsistent-with-the-apa-by-cass-r-sunstein/.

prohibition of deference because of legislative acquiescence and prior court precedent, and instead Section 706 is compatible with deference to agencies since historical judicial practices continued to uphold *Gray*, even in all future practices.

Under *Loper Bright*, Congress will be prodded to revisit and interpret previous statutes, reintroducing complex interpretive questions and making legislative procedures more convoluted.[39] Considering the 43-day government shutdown beginning in October of 2025 and the partial shutdown beginning in February of 2026, increasing pressures on an already divided Congress is unsustainable for legislative output. *Loper Bright* also encourages judicial micromanagement, which erodes away at the separation of powers between branches and replaces agency expertise with their own standpoints, evidently overstepping their role as interpreters of definitive legal rulings. Although *Chevron* deference empowers the legislative and executive branches, the judicial branch—especially the Supreme Court—benefited institutionally from the *Chevron* doctrine. Instead of independently reviewing each interpretation of any ambiguous statute—which leads to inconsistent rulings through the misuse of interpretative tools to cause competing canons of construction based on the same text[40]—the Supreme Court focused on uncommon or distinctive cases worthy of attention. *Chevron* deference also preserved judicial legitimacy (the extent to which the court acts impartially and fairly in their decisions), which courts risk when they are perceived to be deciding questions of what should be done through policy and not questions of the law itself. This allowed agencies, such as the EPA, to efficiently implement water regulations rules

[39] Amanda L. Tyler, *Judicial Review of the Legislative Power in the Roberts Court*, 48 Harv. J.L. & Pub. Pol'y 125 (2025).
[40] Carlos E. González, *Turning Unambiguous Statutory Materials into Ambiguous Statutes: Ordering Principles, Avoidance, and Transparent Justification in Cases of Interpretive Choice*, 61 Duke L.J. 583 (2011).

without continuous, explicit approval.[41] Thus, Courts under *Chevron* maintained their neutral rationale, allowing the better-suited agency to make policy judgments while still addressing strenuous legal resolutions and allowing government procedures to run efficiently without subverting the separation of powers.

Moreover, the *Chevron* doctrine was seen in an *amici curiae* brief (submitted by Christopher J. Walker of University of Michigan Law and Kent H. Barrett of University of Georgia Law outside of the immediate lawsuit to inform judges on defending *Chevron*)[42], to be in direct accordance with the APA despite the varying interpretations of the law over the years. It is stated within this brief that "the 'most natural reading' is that 'section 706 established deferential standards of review for issues other than relevant questions of law', thereby indicating that Congress knew how to write a deferential standard into statute when it wanted to do so".[43] This reveals how *Chevron* was not reprehensibly wrong such that it ought to be overturned due to Congress' omission of specification directly against agency deference within the statute. The *Chevron* doctrine also allowed for hindrances in statutory interpretation to be avoided by deferring to the agency's reasonable interpretation. Despite this, Chief Justice Roberts decided instead to rely on the court's "independent interpretation," meaning the courts can decide the "correct" interpretation in close calls determined by their own political wills.[44] Through

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[41] David Doniger, *The Significance of Chevron Deference.*, 2024, https://www.nrdc.org/bio/david-doniger/significance-chevron-deference.
[42] Brief for Professors Kent Barnett & Christopher J. Walker as Amici Curiae in Support of Neither Party, Loper Bright Enters. v. Raimondo, No. 22-451 (U.S. Nov. 15, 2023) 2023
[43] Brief for Professors Kent Barnett & Christopher J. Walker as Amici Curiae in Support of Neither Party at 20-21, Loper Bright Enters. v. Raimondo, No. 22-451 (U.S. Nov. 15, 2023), 2023 WL 8004543.
[44] Christopher J. Walker, *What Loper Bright Enterprises v. Raimondo Means for the Future of Chevron Deference.* Yale Journal On Regulation (2024).

this "independent interpretation" practice, uniformity of law across states and consistent application of statutes will becomes increasingly labyrinthine, as courts are less insulated from political pressures if they can make judgments now based on their own wills instead of consistency of legal principles.

Judicial Activism

The purpose of *stare decisis*[45] is to maintain legal consistency, and defying it enables the Supreme Court to politicize its decisions and depart from longstanding judicial principles. Though the bipartisan Supreme Court ruled unanimously in *Chevron*,[46] the conservative Supreme Court of the 2020s has revealed a preference for overturning precedents that have stood for decades; such is the case with *Ramos v. Lousiana,*[47] *Dobbs v. Jackson Women's Health Organization*,[48] and the *Loper Bright* decision. The common thread between all these cases is the consistent pattern within the Supreme Court of deliberately overturning established legal precedents, which reshapes the structure of law. This has concerning implications, as the Supreme Court's self-reliance (the notion that the Supreme Court is hinging on its own expanding powers as opposed to the balancing of powers between other branches, which comes at the expense of *stare decisis*) has led to the discounting of long-standing legal principles. Historically, precedents set by prior cases are seldom overturned: overruled only in select instances that present compelling reasons to do so. Likewise, judicial capacity—the number of cases the Supreme Court can oversee in a year—is approximately 80

https://www.yalejreg.com/nc/what-loper-bright-enterprises-v-raimondo-means-for-the-future-of-chevron-deference/

[45] Meaning literally "to stand by things decided", which allows courts to hold historical precedents on similar cases to maintain consistency in rulings. See, *Stare Decisis*, Black's Law Dictionary (12th ed. 2024).

[46] *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842–43 (1984).

[47] *See* Ramos v. Louisiana, 590 U.S. 83 (2020).

[48] *See* Dobbs v. Jackson Women's Health Org., 597 U.S. 215

cases annually, leading to a reliance on *stare decisis* for many of the Supreme Court's verdicts to maintain efficiency and consistency in Supreme Court rulings. The overturning of longstanding judicial principles, which the current Supreme Court is willing to depart from, manufactures a critical turning point. This subsequent crisis leads to the frequent and irrational overturning of precedents, abandoning consistency and increasing judicial activism.

Since the legal consistency of *stare decisis* is used by policymakers when drafting bills designed to be durable to avoid making new legislation for each agency's particular functions, policymakers must now draft policies under a veil of uncertainty; knowing that erratic shifts can occur which destabilize long-term policy effectiveness. Although it is too soon to analyze the true ramifications of the *Loper Bright* decision, the grave risk of other legal doctrines being overturned has already materialized in the removal of federal abortion rights in *Dobbs*[49] or unanimous jury convictions applying to state criminal charges in *Ramos*.[50] The efforts of the Supreme Court to act based on independent judgment, inconsistent with *stare decisis*, has led to a pattern of its demonstrated political will affecting decisions. This paradigm of reversing legal precedents is shaping how the contemporary legal system, and more generally, the United States government, will function in the future.

Judicial activism—the idea that a court makes decisions based on political motivations rather than on adherence to the law—is a determining factor in the current Supreme Court's decisions. Since judicial activism in and of itself is not inherently bad (e.g., many accused the Supreme Court of judicial activism after the decision in *Brown v. Board of Education*, which established that "separate but equal" segregation was unconstitutional),[51] the question arises of how

[49] *See* verdict of Roe v. Wade, 410 U.S. 113 (1973).
[50] *See* verdict of Apodaca v. Oregon, 406 U.S. 404 (1972)
[51] Brown v. Board of Education, 347 U.S. 483 (1954).

judicial activism in the current Supreme Court negatively affects the separation of powers, or increases the magisterial capacity thereof. This legal restructuring from judicial activism—referred to by Richard M. Re (a professor at Harvard Law School) as legal realignment—has directly resulted from the actions of the conservative justices in the current Supreme Court. Ironically, Justice Scalia — a conservative Supreme Court justice serving from 1986 to 2016—had expressed interest in preserving judicial deference to agencies in the previous court rulings he presided over because he saw it as a necessary tool for the modern administrative state to maintain stability. Further, Justice Scalia argued that agencies, which report to the President, can be better held accountable by the public regarding their policy decisions than the unelected federal judges who are sequestered from the public.[52] Yet, all six of the conservative justices of the 2020s voted against his opinion in the *Loper Bright* decision, which Richard M. Re argues demonstrates how judges are being influenced by external political motives instead of abiding by posture of constraint.[53] Assuredly, the *Loper Bright* decision strengthens the notion of deleterious judicial activism in the Supreme Court, patently trading off the authority of judicial decisions with political or societal considerations of a law. Since the Supreme Court's prior role in policy enactment and elucidation under *Chevron* deference stood in the way of their ability to adjudicate ambiguous legislation; it stands to reason that the Supreme Court of the 2020s, one of the most overreaching courts in recent years, overturned *Chevron v. NRDC* in the *Loper Bright* ruling.[54] *Loper Bright* represents a noteworthy instance of the Supreme Court stripping powers from the federal bureaucracy, a prominent political actor, to increase its own authority, serving as a testament to the Supreme Court's

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[52] Loper Bright, 144 S. Ct. at 2273; *id*. at 2294
[53] Richard Re, Legal Realignment, 92 U. Chi. L. Rev. 7 (2025).
[54] Mark A. Lemley, The Imperial Supreme Court, 136 Harv. L. Rev. 97, 136 (2022).

centralization of power. This erosion of executive power in exchange for consolidated judicial authority is nothing short of concerning insomuch as it undermines structural precedent and policy stability.

The contemporary vision of the conservative Supreme Court destabilizes many policies supported by existing laws and regulations based upon rooted court precedents. In *Ryan v. FTC*, which cited *Loper Bright* in its decision, a Texas federal court nullified the FTC's ban on employee non-compete agreements—agreements which restrict employees from joining competitors or starting a rival business for a set time after leaving a company.[55] The banning of non-compete agreements allowed thousands of workers the ability to exercise autonomous career mobility and explore new job opportunities, but since its annulment employees in non-compete agreements are forced to stay in undesirable jobs or leave their industry entirely. The continuation of this departure from *stare decisis* will lead to further court decisions which bear an immense economic and social cost.

Conclusion

The implications of *Loper Bright Enterprises v. Raimondo* created a paradigm shift within the separation of powers by expanding the judicial branch's role in the policymaking process while simultaneously diminishing the policymaking abilities of the executive branch. The decision of *Loper Bright* also aligns with an overarching conservative agenda within the Supreme Court to deconstruct the administrative state. Considering that the decision undermines the administrative expertise of bureaucrats, it is foreseeable that many agencies will be challenged legally by businesses or interest groups seeking to change their practices. The influx of lawsuits will affect government or judicial efficiency, as the judicial capacity may not be able to adapt; similar to the influx

[55] *Ryan LLC v. Fed. Trade Comm'n,* No. 3:24-CV-00986-E, 2024 U.S. Dist. LEXIS 148488 (N.D. Tex. Aug. 20, 2024).

of Multidistrict Litigation cases in personal injury against pharmaceuticals which backlogged courts in 2024.[56] Already, courts have been overturning past agency decisions; in January of 2025, the U.S. Court of Appeals for the Sixth Circuit relinquished the Federal Communications Commission's (FCC) net neutrality order under the Obama administration, which mandated that all internet providers must treat data on the internet equally instead of pushing specific content.[57] By the same token, the decision will likely affect administrative departments and their respective policy areas. EPA regulations may now face judicial hurdles, labor policies made by the National Labor Relations Board may be susceptible to change, and Health and Human Services regulations via the Affordable Care Act may be increasingly contested in court. The weakening of federal agency power also limits public input, as public opinion allows Congress and agencies to react to the demands of people. When legislators and agencies have impaired capacities to create and implement legislation, this diminishes their function of serving the people's interests in government operations. Public input in legislation and the resulting regulatory practices is critical to the sustaining of democracy, as democracy hinges on the will of the people. Henceforth, agencies may be hesitant to enact innovative practices or ambitious regulations, hindering governmental modernization and restricting necessary societal engagement.

Perhaps the most profound consequence of the *Loper Bright* decision is its capability to dissolve democratic accountability in the executive branch. This accountability derives from the executive branch's chain of command, from the President of the United States to Department executives to individual actors. Under *Chevron*, the interpretive authority of ambiguous laws passed by Congress was automatically delegated to administrative agencies, thereby expanding

[56] Judicial Panel on Multidistrict Litigation, U.S. Jud. Panel on Multidistrict Litig., https://www.jpml.uscourts.gov/

[57] *In re MCP No. 185*, No. 24-7000, 2025 WL 12157 (6th Cir. Jan. 2, 2025).

bureaucratic discretion. The chain of accountability within the executive branch as a whole, even if indirectly, eventually led to democratically elected officials. Since executive orders are instructions signed by the president directed towards federal agencies, democratic legitimacy is preserved because agencies can be held liable for not abiding by executive orders. But now, when the interpretive authority of policy is instead transferred from the bureaucratic discretion of public administrators to unelected federal judges, who serve lifetime appointments and may act according to their own individual political motives, the spirit of executive and democratic policymaking is jeopardized. Although it follows that both bureaucrats and judges are both unelected, deference to agencies is more advantageous for the public, as bureaucrats can be better called to account for policy implementations than federal judges, as argued by Justice Scalia. Since the Supreme Court is meant to make decisions based on adherence to the Constitution, this imbalance of power is inherently paradoxical. How can the Supreme Court dismantle the executive branch's role in policymaking, thus affecting the constitutional structure of the federal government's separation of powers, in the name of constitutional fidelity? Although the majority opinion argues that interpreting the law in such ways is an innate judicial function, this contradiction in the practices of the Supreme Court resists the constitutional restraints on judicial power which they ought to abide by, affecting the structure and institutional functionality of checks and balances within the three branches. Alexander Hamilton wrote in Federal Paper no. 78 that "it may truly be said to have neither force nor will, merely judgment".[58] This notion is codified within Article III, Section 2 within the U.S. Constitution itself, in which it is written that judicial authority is limited to only "cases" and "controversies".[59] Thus, judicial activism, coupled with the idea of an imperial Supreme Court, affects both bureaucrats'

[58] The Federalist No. 78 (Alexander Hamilton)
[59] U.S. Const. art. III, § 2, cl. 1

discretionary abilities and the powers of the executive branch as a whole.

The effects of the *Loper Bright* decision are still contingent upon future court rulings. Nevertheless, the trajectory of the Supreme Court is by no means nebulous. The Supreme Court of the 2020s – under Chief Justice Roberts and a conservative majority – has revealed a preference for centralizing judicial authority at the expense of other roles. In the instance of the *Loper Bright* decision, the Supreme Court censured the abilities of the federal administrators within the bureaucracy despite their tangible and durable experience in their respective fields. In a broader sense, the Supreme Court is overturning inveterate legal precedents to diminish checks and balances, acting more as monarchical arbiters than neutral interpreters of the law.