CAUSE of ACTION INSTITUTE

Pursuing Freedom & Opportunity through Justice & Accountability℠

Loper Bright Enterprises v. Raimondo

MERITS AMICUS BRIEFS – KEY QUOTES

44 amicus briefs—presenting arguments from 171 organizations, individual parties, or government entities—were filed on the merits in *Loper Bright Enterprises v. Raimondo*. This represents a tremendous demonstration of support for the fishermen-petitioners and their case for overruling *Chevron*.

1. Atlantic Legal Foundation

"An agency interpretation purporting to authorize regulatory activity that conflicts with the Constitution, particularly with the powers and duties that Article I assigns exclusively to Congress—such as the power of the purse—is out of bounds. Any such interpretation must be viewed as 'unreasonable—*i.e.*, something Congress would never have allowed.'" (p. 8)

"The industry-funded monitoring program . . . is an effort by [the National Marine Fisheries Service] to sever Congress's purse strings, or at least avoid entanglement in them. This attempt at constitutional circumvention obstructs the purpose of the Appropriations Clause." (p. 13)

2. The DRI Center for Law and Public Policy

In addition to extraordinary economic impacts, industry-funded monitoring raises "important questions . . . concerning the separation of powers and who—*i.e.*, the nation's legislative branch or the executive branch—has authority to impose payment upon the fisheries industry for at-sea monitoring salaries[.] . . . [A]nd] [e]ven apart from payment-imposing authority, political significance may be attributed to Congress already having considered the circumstances under which industry-funded monitoring should be implemented." (p. 8)

"[T]o justify its interpretation based on statutory language, the [National Marine Fisheries Service] cobbles together a collection of [Magnuson-Stevens Act] provisions between 24 and 44 years old. [But] [a]s Justice Barrett recently observed, '[a] longstanding want of assertion of power by those who presumably would be alert to exercise it may provide some clue that the power was never conferred.'" (p. 10)

3. **Pacific Legal Foundation**

"Courts, by deferring to agency interpretations under *Chevron*, . . . permit all three branches to ignore the Constitution's procedure for establishing the law of the land: (1) *Chevron* undermines Congress's vested power to pass laws by permitting agencies to pass laws instead. (2) *Chevron* undermines the President's vested power to faithfully execute the law by permitting executive-branch officers to instead legislate laws into being. (3) And *Chevron* undermines the judiciary's vested power to say what the law is by instead requiring judges to acquiesce in an agency's resolution of a question of law." (p. 6)

"*Chevron* has encouraged not just a flight, but a permanent emigration of legislative power from the hands of democratically accountable people's representatives in Congress to unaccountable administrative agencies." (p. 8)

"Courts have been pushed into the political arena[.] . . . Agencies reinterpret statutes . . . because even Congressmen do not have the fortitude to touch . . . politically sensitive issues. [T]his circumvention of legislative lawmaking is brought to federal courts . . . [which] are thrust into deciding such politically charged issues not because they have any particular affinity to jump into the fray. Far from it. . . . [They] must step into the political arena because of politically unaccountable agency action. And *Chevron* calls on courts to put the judiciary's stamp of approval on policy choices enacted by the President's representatives in lieu of the people's." (p. 24)

4. **The LONANG Institute**

"[N]o federal statute can be supposed to enable agency experts . . . to substitute their will for that of Congress or fill in the blanks that an enabling congressional statute creating the agency omitted. It is far more rational to suppose that the courts would interpose themselves between that agency and the people, acting as a check and a limitation on federal employees and experts who, no more or less than anyone else, but inevitably tending to follow human nature, will always construe their own expertise and powers expansively rather than restrictively." (p. 9)

"The doctrine that textual silence equals a grant of authority has no place in administrative law. Such muddled reasoning cannot stand. Not only does it assume that plain language is to be understood as meaning the opposite of what the words actually mean, but it also defies logic, and completely shreds the doctrine of enumerated powers with respect to federal statutes." (pp. 11–12)

5. **The Goldwater Institute**

"The experience of states rejecting *Chevron* theory as a state-law matter shows why judicial independence is a better path: it prevents undemocratic and unpredictable

expansions of government authority while still leaving government capable of protecting public health and safety." (p. 10)

"[T]oday's administrative law resembles seventeenth-century monarchical rule more than the separation-of-powers system the Founders created. And the most outspoken defenders of today's administrative state *concede* this." (p. 11)

"Government by administrative agency presents significant problems of legitimacy because the Constitution does not contemplate these bodies, and because their staffs are not meaningfully answerable to voters. Also, the modern administrative state was created before such phenomena as regulatory capture, rent-seeking, or the knowledge problem were well known. Scholarship has since demonstrated that these problems are intractable, and judicial vigilance—the opposite of restraint—is an important, if imperfect, means of addressing them." (p. 21)

6. America First Legal Foundation

"As a linguistic matter, *Chevron* does not teach that silence equals ambiguity, as it refers to statutes that are 'silent *or* ambiguous.' The 'silence' *Chevron* contemplated was very different from the silence embraced by the decision below[.]" (p. 4)

"Under the erroneous rule of default deference to agencies' 'broad authority,' agencies assert an 'enabling-silence' version of *Chevron* that looks less like the power to 'fill gaps,' and more like the power to legislate a plenary regulatory scheme." (p. 12)

7. TechFreedom

"[There] are *clear* terms of *ambiguity*. They display Congress's *intent* to place a gap in a statute for the agency to fill. On this view, Congress must use a word like 'reasonable' as a means of bluntly announcing, *Here is a gap*. . . . [I]t remains for the courts to resolve any *true* ambiguity in the statute, via conventional statutory interpretation. . . This approach stops agencies from 'discovery' new powers hidden in every statutory provision that is less than crystal clear." (p. 12)

"*Chevron*'s two-part test doesn't make much sense. 'If the court resolves the question at step one, then it exercises purely independent judgment and gives no consideration to the executive view.' . . . 'If it resolves the question at step two, then it applies a standard of maximum deference.' . . . The stakes at step one—whether a statute is deemed ambiguous—are extraordinarily high. 'And yet there is no particularly principled guide for making that clarity versus ambiguity decision.'" (pp. 19–20)

"Eliminating the overbroad *Chevron* 'doctrine' simply ensures that courts do what they have always done: parse statutes and then declare, with finality, what they mean." (p. 21)

8. **American Center for Law and Justice**

"*Chevron* is premised on the textually indefensible notion that Congress intended agencies to resolve any ambiguity Congress left in a statute to be implemented by an agency. . . . This premise is manifestly false. Congress expressly stated that the judiciary retains sole authority to 'interpret . . . statutory provisions. . . . [But] *Chevron*'s textual incompatibility with the [Administrative Procedure Act] is just one of its many faults.'" (p. 5–6)

"*Chevron* gives Congress carte blanche to enact ambiguous legislation, and implicitly condones expansive delegations of authority to fill in gaps. *Chevron* has played a key role in the modern administrative state in which the laws governing Americans are increasingly 'nothing more than the will of our current President.'" (p. 9)

"*Chevron* requires federal judges to place their thumbs on the scales of justice in favor of the executive branch. . . . *Chevron* therefore offends due process principles because it creates a 'systematic judicial bias in favor of the federal government, the most powerful of parties, and against everyone else.'" (pp. 13–14)

9. **New England Legal Foundation**

"[L]ower courts must . . . interpret a statute with a fresh and independent eye, free of any rogue pro-agency presumption, by giving effect to the text's ordinary meaning, and by drawing reasonable inferences from its context[.]" (p. 12)

"Congress's inclusion of industry-funding language in certain narrow statutory sections must mean that its omission of any such language in the broadly worded section in dispute was a deliberative policy choice[.] . . . [A] correct application of these interpretive tools would show that Congress did not permit the Government to treat industry funding of at-sea observers as an implied cost of complying with that inspection regime[.]" (p. 22)

"[A] decision upholding th[e] [herring] regulation's injection of a funding requirement into the statutory 'carried on board' language would permit the Government to require potentially 'any fishery' falling under the statute to pay for at-sea observers. But if Congress had really wanted to delegate such a vast and unusual power to the Government, it would have said so, plainly and distinctly[.]" (p. 24)

10. **Manhattan Institute and Profs. Epstein, Zywicki, Hurwitz, and Manne**

"Along with enabling agencies to go overboard and to take over the government, *Chevron* deference has also resulted in a diminution of Congress's role. . . . [E]xamples from economics and political science . . . show how individual Congress

members derive 'myriad benefits' from delegation. . . . [D]elegation 'unravels the institutional interests of Congress.'" (p. 6)

"In addition to the problem of congressional over-delegation, there is the problem of agencies who behave not as loyal agents but as principals. Too often, agencies attempt to piggyback their sweeping policy agendas onto narrow statutes, unrelated to their powers." (p. 7)

"Overturning *Chevron* wouldn't upset any previous statutory interpretations; it would only change the methodology that courts use to review agency action going forward. It would also re-empower Congress to curtail the excesses of unaccountable agencies." (p. 13)

11. The Foundation for Government Accountability

"Besides violating the Constitution's separation of powers, *Chevron* has created a host of other problems. It has emboldened agencies to unilaterally expand their power, accelerated the growth of the administrative state, weakened Congress and encouraged it to punt difficult political questions to unelected bureaucrats, and has significantly undermined personal liberty." (p. 3)

"The [Administrative Procedure Act] is, of course, the statute Congress created to govern judicial review of executive agency action based on the agency's interpretation of a statute it administers. Yet, nowhere in the text of the APA did Congress even suggest that courts should afford deference to executive agency interpretation of an otherwise ambiguous statute when conducting judicial review." (p. 7)

"*Chevron* has steadily weakened the general presumption that law enforcement should decline to act where the law is silent, and instead, has encouraged executive branch enforcement agencies to actively work to 'fill the gaps' in laws wherever their unelected bureaucrats see fit by unilaterally creating new legal requirements outside the legislative process." (p. 10)

"*Chevron* deference [is] less efficient, consistent, and predictable than pure statutory interpretation. *Chevron* rarely allows for a simple or predictable analysis as it involves three steps . . . and at each step, there is room for courts to trip, reaching different results." (p. 21)

12. Center for Constitutional Jurisprudence

"Employing *Chevron* deference to defer to agency interpretation of ambiguous statutory texts breaches the core doctrine of separation of powers in two fundamental ways. First, it allows executive agencies to exercise Congress's power to legislate, a power which the Constitution vests solely in Congress and strictly limits how those

laws can be made. Second, *Chevron* deference impermissibly allow executive agencies to exercise the Judiciary's well-settled power 'to say what the law is.'" (p. 7)

"Congress has demonstrated its ability time and again to enact complex statutory schemes to regulate matters within its purview. Nothing less should be expected from the People's elected representatives. No doubt hard choices need to be made. But Congress, the body answerable to the electorate, is the constitutionally designated body to make those hard choices. . . . There is no 'complexity exception' to either the separation of powers structure of the Constitution or the nondelegation doctrine." (p. 12–13)

13. Cato Institute and Committee for Justice

"[An] overview of nineteenth and early twentieth-century cases shows that *Chevron* deference is not a creature of history. It was not until the mid-twentieth century and the rise of the administrative state that courts truly deferred on legal interpretations. . . . *Chevron* is ahistorical and should be overruled." (pp. 10–11)

"*Chevron* was an accidental revolution, because the approach that the Court actually applied did not match the radical language of the test *Chevron* laid out. This is the irony of *Chevron*: it is famous for its two-step test, but the opinion itself did not follow this new test." (p. 14)

"[I]nconsistency in applying the canons of construction and deciding what constitutes ambiguity undermines the workability and longevity of *Chevron* deference. . . . The Court has had forty years to settle on a consistent approach but has been unable to find one. For that reason, *Chevron* should be overruled." (p. 26)

"*Chevron* continues to boldly wreak havoc among the lower courts. Leading by example has proven to be insufficient, but this Court has an opportunity to finally put *Chevron* to rest and overrule it. Only overruling *Chevron* in its entirety will give lower courts the clarity they need." (p. 30)

14. Landmark Legal Foundation

"This case stands apart from recent decisions on the scope of administrative authority in at least one important respect[:] . . . [it] involves the absence of any statutory language empowering [the National Marine Fisheries Service] to fund its inspection regime. . . . And [the government] cannot point to any other instance where 'an agency, without express direction from Congress, requires an industry to fund its inspection regime.'" (pp. 13– 14)

"*Chevron* deference also violates the Administrative Procedure Act (APA). The text of the APA . . . states, 'to the extent necessary to decision and when presented, the

reviewing court *shall decide all relevant questions of law*, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.' . . . At the time of the APA's enactment, the meaning of a statute was considered a question of law. . . . [A]uthority to decide 'all relevant questions of law' is restricted to the courts." (p. 16)

15. Liberty Justice Center

"[O]ur Founding Fathers, scholars, commentators, and even our first Congress relied on custom and contemporaneity in ascertaining the intent and meaning of the Constitution. . . . These two maxims, when combined, come to a better approximation of meaning or intent than *Chevron*'s bias for whatever policy the current administration prefers." (pp. 11–12)

16. David Goethel and John Haran

"In a case presenting questions of statutory interpretation and agency-deference doctrines, it is all too easy to lose sight of the people and communities affected by the resolution of those questions. In this case, they are not hypothetical." (p. 2)

"Where Congress tread[s] carefully to avoid crushing . . . local interests, the Department's monitoring-funding mandate plants a heel on traditional fishing communities, the very ones Congress sought to protect." (p. 7)

"While the legal issues presented by this case are consequential, so are the practical consequences of forcing vessel owners to pay for their own ride-aboard regulators. At stake is nothing less than the continued existence of a storied industry and way of life." (pp. 10–11)

"Because the cost of regulation falls disproportionately on small business, legal doctrines that expand regulators' powers will tend to disproportionately injure small business. The impact of imposing monitoring costs on small, family-owned fishing enterprises—a policy imposed by regulatory fiat, not congressional command—is a clear example of the phenomenon." (p. 14)

17. Buckeye Institute and NFIB Small Business Legal Center

"For nearly 40 years, courts have been digging the *Chevron* hole deeper and deeper. 'Along the way, it has become pitted with exceptions and caveats[.]' . . . As we look up from the depths of the *Chevron* hole manifested by the NMFS regulation, the light of congressional authority is barely a glimmer. It is time to stop digging and climb out." (p. 4)

"While an increasing number of States have moved away from *Chevron* or deference altogether, it is telling that 'no states have gotten appreciably more deferential in the past 20 years.'" (p. 21)

"The way forward . . . is to jettison *Chevron*. It should be replaced with (1) a recognition of the role that 5 U.S.C. § 702 gives the courts; (2) a consideration of whether Congress, in fact, authorized the agency to act, and; (3) consistent with the *Skidmore* approach of giving the agency interpretation the respect it is entitle to as an 'expert'—where appropriate—apply Federal Rule of Evidence 702 to the agency's and challengers' expert presentations." (p. 32)

18. Christian Employers Alliance

"When federal agencies are not actively restrained by courts, they threaten fundamental rights by reinterpreting statutes to expand their authority. This Court should hold that agencies do not possess blank checks to read their policy preferences into silent or ambiguous federal statutes or to impose broad mandates in serve of nation-shaping political agendas. . . . [T]ime has shown that the [*Chevron*] doctrine encourages politicized agencies to reinterpret federal laws in ways that Congress could not have imagined[.]" (p. 29)

19. Third Party Payment Processors Association

"Over the past four decades, agencies have seized on what has become *Chevron*'s deferential regime to undermine the basic tenet of administrative law: that federal agencies execute the law enacted by Congress, rather than the policy preferences of unelected bureaucrats." (p. 7)

"Empowering federal courts to review agency interpretations of law *de novo* will strengthen the rule of law, since this will result in regulated parties being governed by the 'faired reading of the law that a detached magistrate can muster,' rather than whatever self-serving reading a federal agency itself can convince a court to accept as 'reasonable.' . . . [O]verruling *Chevron* will not undermine the federal administrate state; rather, agencies will no need to advance Congress'[s] goals, not their own bureaucratic objectives." (p. 26)

20. U.S. House of Representatives

"Agencies exist only because Congress created them, and it is not incumbent upon Congress to expressly withhold authority from an agency. When a statute fails to address whether an agency possesses a claimed regulatory authority, the agency lacks that power. Congress does not delegate regulatory authority to Executive Branch agencies through silence." (p. 5)

"This case is even more straightforward than one involving complete statutory silence. Here, the [National Marine Fisheries] Service claimed an authority that the statute mentions; the statute expressly grants the Service that authority in three limited situations. But the statute is silent on whether the Service has such authority *in other circumstances*. It does not. The statute's silence shows where Congress was unwilling to empower the Service. It is thus a limit on, not an expansion of, the Service's regulatory authority." (p. 7)

"It is all but impossible for Congress to anticipate each silence that a creative agency will find lurking in a piece of legislation and insert 'thou shalt not' provisions to address them." (p. 16)

"When an agency claims a new authority from statutory silence . . . it is (a) making a policy decision that only Congress may make; (b) exercising authority that Congress has not delegated to it; and (c) thus usurping legislative powers. . . . The agency is aggrandizing its own authority at Congress's expense." (p. 20)

"If agencies can concoct authority from statutory silence, they will utilize that power to undermine critical Congressional checks on the Executive Branch. This case is a textbook example of that phenomenon because it involves an agency attempting to evade Congress's power of the purse." (p. 25)

21. U.S. Chamber of Commerce

"Whatever one might say of the *Chevron* decision as an original matter, it is clear that today's *Chevron* doctrine does not serve the separation of powers. Far too often, courts applying *Chevron* have found latent ambiguity in statutes and thus deferred to sweeping new agency rules asserting broad powers that purport to 'interpret' that ambiguity, without fully deploying the traditional tools of statutory interpretation or carefully policing limits on congressional delegations of authority." (p. 8)

"These separation-of-powers and APA concerns [with *Chevron*] are only compounded in the context of deference to so-called 'independent' agencies. Such agencies raise additional constitutional issues insofar as they are insulated from executive control—*i.e.*, the ability of the President to remove agency heads—and thus from political accountability." (p. 13)

"Today's morass of regulations, aggravated and encouraged by the expansion of *Chevron*, imposes astronomical costs in compliance, lost productivity, and higher prices, reaching as high as $1.9 trillion per year. . . . These costs are higher on average for smaller businesses. . . . The current *Chevron* regime also undermines the stability and predictability for businesses because they cannot ascertain their regulatory obligations based on the laws that Congress has enacted." (p. 16)

22.Mountain States Legal Foundation

"'*Chevron* deference' itself is not a matter of binding precedent warranting stare decisis effect; instead, it is a statutory-interpretation canon that a lower court should use in a relevant case only after that court has exhausted all other traditional means of determining what the law is . . . [a]nd even then, only where its interpretative weight supplies an answer that is clearly better than the potential answers supplied by any other interpretation canons[.]" (p. 7)

"Over the course of the past four decades, the Justices seem to have applied '*Chevron* deference' differently in the various agency-deference cases. . . . The only uniformity that can be discerned over this period is that it's not clear whether any Justice adheres to, or refrains from adhering to, '*Chevron* deference' consistently." (p. 18)

23.Senator Cruz, Representative Johnson, and 34 Other Members

"*Chevron* deference 'precludes judges from exercising the judgment' vested by Article III by 'forcing them to abandon what they believe is 'the best reading of an ambiguous statute' in favor of an agency's construction.' . . . This has the effect of not only denying courts the power Article III has vested in them . . . but effectively transfer to the Article II executive the power 'to exercise the judicial power[.]'" (p. 7)

"Even when Congress expressly delegates authority to an agency, judicial deference to agency interpretations of legal meaning is inconsistent with the Constitution's structure and the terms of the [Administrative Procedure Act]." (p. 10)

"*Chevron* deference has no basis in law, history, or logic. It flaunts basic textual and structural protections of the Constitution and is . . . at odds with the APA." (p. 13)

"[W]hen it comes to applying *Chevron*, there is a disconnect between this Court's theoretical retention of the doctrine and its application by the lower courts, suggesting that only a clear overruling will turn the tide." (p. 19)

24.Advancing American Freedom and 11 Other Groups

"It is regrettable that the Court has declined to mention *Chevron* even in cases where it is directly at issue . . . given the doctrine's many problems recognized by members of this Court. . . . But, as this case well illustrates, lower courts continue to feel obligated to apply *Chevron* because the Court has yet to clearly overrule it." (p. 8)

"For four decades, *Chevron* deference has been a menace in the land, and now on the sea. Perhaps the instant regulation mandating bureaucrats on boats will finally capsize this leaky doctrine, now close to its final watch. . . . Whatever hopeful benefits might have been countenanced when *Chevron* was decided in 1984, nearly four

decades of experience and navel gazing have done little to bind agencies to the Constitutional mast. Instead, they seem irresistibly drawn to the siren song of increase regulatory power where none was granted." (p. 12)

25. Electronic Nicotine Delivery System Industry Stakeholders

"*Chevron* deference inspires 'avowedly politicized administrative agencies seeking to pursue whatever policy whim may rule the day' to modify or completely reverse their prior statutory interpretations knowing full-well any reasonable interpretation of an arguably ambiguous provision will likely be upheld. The resulting regulatory whiplash places individuals and businesses subject . . . in an untenable position. . . . [W]hen courts are obligated to simply defer to an agency's latest interpretation, this raises serious due process and fair notice concerns[.]" (p. 28)

26. National Right to Work Legal Defense Foundation

"[N]either Congress nor the courts have constitutional authority to transfer the indefeasible 'judicial Power' to agencies. . . . The Constitution simply does not contemplate such 'undifferentiated governmental power.' . . . At bottom, *Chevron* is incompatible with the Constitution's fundamental structural safeguards." (pp. 4–6)

"[A]gencies often adopt statutory interpretations for political and ideological reasons, not because a dispassionate reading of the law led to that interpretation[.] [This] is reason alone for courts to decline to defer to such politicized judgments. . . . There is no reason for courts to assume, as *Chevron* commands, that the political appointees' interpretation of an ambiguous statute is the objectively best interpretation . . . as opposed to merely the interpretation the agency's political heads believe will best satisfy their policy objectives." (p. 8)

27. Competitive Enterprise Institute

"*Chevron* is vulnerable to multiple originalist criticisms: not only is it a judicially created doctrine, but it is also directly contrary to Congress's express statutory command. . . . It is the courts, and only the courts, that the Constitution has designated to interpret statutes. Agency expertise and rulemaking are important, but only as they relate to factual questions[.]" (pp. 3–4)

"[With] a statute that is ambiguous as to whether Congress has chosen to exercise a given power, the court must typically decide whether the executive was assigned that power or whether it was left to the states. But when courts defer to executive rulemaking, it is the executive that must determine the locus of that power . . . [and its] decision may be tainted by institutional self-interest." (p. 6)

"*Chevron* regularly injects uncertainty into our legal system. *Chevron* prevents people from planning their lives and knowing what the law will allow or require beyond the next presidential election. *Chevron* discourages and unsettles planning and investment, essentially because it makes such activities less attractive and less worthwhile." (p. 12)

28. Eight National Business Organizations

"This Court's practice in recent years of deciding cases involving challenges to agency regulations or interpretations without any discussion of the *Chevron* framework has proved unsatisfactory, plunging courts, counsel, and the regulated community into a twilight zone of uncertainty." (p. 3)

"There is no doubt that *Chevron* distorts the results of litigation. That doctrine puts a heavy thumb on the scale on the side of agencies when a less constrained judicial inquiry would favor the challengers—as reversals by this Court clearly attest. *Chevron* incentivizes a finding of statutory ambiguity, rather than a deep inquiry into the meaning of statutory language." (p. 6)

"*Chevron*, by requiring deference to a 'reasonable'—but not the best—interpretation of ambiguous statutory language[,] undermines the authority of Congress for no good reason. Courts unquestionably possess the ability to construe complicated, obscure statutory language and affix meaning to legislative pronouncements. And they do so without the incentives that may lead regulators into interpretations that are driven by political considerations or a desire to expand their own authority." (p. 14)

"Far from undermining regulation, dismantling *Chevron* deference will incentivize agencies to conduct careful statutory analysis that will persuade a court of its correctness, rather than rely on rote judicial deference, and thereby improve the quality of regulation and agency adherence to congressional intent." (p. 26)

29. National Taxpayers Union Foundation

"*Chevron*'s framework rests on the theory that an agency fills gaps explicitly or implicitly left by Congress. . . . Filling in explicit gaps or resolving potentially conflicting provisions is materially different than 'implicit' gaps supposedly from statutory silence. Allowing deference based on implicit silence wreaks havoc upon Americans who must contend with unelected bureaucrats acting in place of Congress." (p. 5)

"It is not only fishermen who suffer under expansive readings. *Loper Bright* is one of the numerous instances where an agency's interpretation of a 'silent or ambiguous' statute exceeds the bounds erected by Congress's unambiguously expressed intent, but a court upheld the interpretation as reasonable[.]" (p. 8)

30. Ohio Chamber of Commerce

"Administrative agencies undoubtedly have some authority to shape how statutes are interpreted and implemented. In practice, however, the courts' reliance on *Chevron* has allowed agencies to promulgate regulations and requirements beyond those found in enabling statutes. Likewise, [*Chevron*] has often substituted the will of agencies for the judgment of the courts." (p. 5)

"The frequency with which courts find ambiguity is troubling. What was designed as a process for interpreting truly ambiguous statutes—the rare circumstance where the other tools of construction do not work—has instead become commonplace. What was essentially a last resort has instead become the go-to strategy[.]" (p. 9)

31. National Sports Shooting Foundation

"*Chevron* allows significant decisions impacting millions of Americans to change with the political winds. Indeed, 'when one administration departs and the next arrives, a broad reading of *Chevron* frees new officials to undo the ambitious work of their predecessors and proceed in the opposition direction with equal zeal.'" (pp. 13–14)

"When Congress passes laws that impose onerous burdens on the citizenry, citizens may respond by removing members of Congress through elections. But the Framers could not have conceived of unelected and unaccountable bureaucrats having the power to legislate across broad swaths of the economy with citizens having no recourse. Such a system strips the Government of all accountability." (p. 18)

32. New Civil Liberties Alliance

"*Chevron* directs Article III judges to abandon even the pretense of independent judgment by giving automatic and often dispositive weight to an agency's interpretation of federal legislation. It forces federal judges to acquiesce in the executive branch's view of the law—even when the courts themselves disagree with the agency's view. That is nothing less than a massive 'judicially orchestrated shift of power.'" (p. 7)

"[*Chevron*] requires courts to favor the legal position of one party—the government—over the legal position another party, and it instructs courts to subordinate their own judgments to those of the agency. So, while the duty of independent judgment allows courts to consider an agency's views and to adopt them *when persuasive*, it absolutely forbids a regime in which courts begin with a predisposition to 'defer' to, or favor, one party's statutory interpretation over the interpretations of other parties." (p. 10)

"[P]reserving *Chevron* comes with many costs, for Americans and for this Court. Every day that *Chevron* remains unrepudiated, this Court deprives Americans of

their constitutional right to independent judgment by an unbiased judge. Every day, therefore, that this Court refuses to correct its own grievous constitutional error, *Chevron* erodes this Court's legitimacy." (p. 25)

33. Independent Women's Law Center and Washington Legal Foundation

"[A]gencies operating against the backdrop of *Chevron* regularly engage in comprehensive regulation that is far afield of their statutory mandate and even contrary to what Congress itself has directed. In doing so, they take power both from Congress and the judiciary, which the Constitution provides the ultimate authority to say what the law is." (p. 6)

"[M]any entrepreneurs face significant difficulties as they seek to provide for their families both emotionally and economically. Unlegislated federal regulation should not be one of them. Yet this is precisely what *Chevron* allows. That doctrine has had devastating consequences for small business and cannot be squared with the separation of powers the Constitution requires." (pp. 14–15)

34. State of West Virginia and 26 Other States

"Let's be clear: The States are not asking the Court to fix where we've ended up by doing away with regulations or agencies. An unfounded ban like that would be neither practical nor rational. We do, though, question the oft-unstated notion that more regulation is necessarily better. The space between these poles is important: it's the ground on which courts should referee regulatory disputes. But *Chevron* feeds regulatory growth because it all-but leave[s] agencies to their own devices to decide how far they can go—in other words, the courts have left the field." (p. 7)

"[E]ach wave of bureaucrats sprints to the fringe of what they think the courts will allow—making new law instead of implementing different policies within an agreed-upon statutory range. Resetting that power balance requires a judiciary that can step in. And that's how the Framers designed the separation of powers to work[.] . . . *Chevron* practically guarantees that ever-more-ambitious agency ploys—and the whipsaw effect that comes with them—will continue and probably get worse." (p. 13)

"*Especially* for small, family-owned and –operated outfits . . . , the burdens of shifting, expanding regulations are crushing. . . . Challenging regulations in court imposes even more expenses that many small businesses cannot afford. . . . And the regulatory problem for small businesses isn't just the price tag, but the disproportionate burden they shoulder. The situation is ripe for rent-seeking." (pp. 17–18)

"When agencies lack institutional incentives to protect federalism and courts let them erode the States' spheres through uncertain text, it's no surprise that States become *Chevron*'s victims[.]" (pp. 18–19)

"[L]ife without *Chevron* can move on easily. The States' experience also shows that it can do so without missing out on agency expertise—long cited as reason *Chevron* deference should stay. That subject-matter mastery would just operate in a narrower and more accountable zone." (pp. 27–28)

35.Strive Asset Management

"Rather than having Congress make laws and the President have the power to sign or veto them, executive agencies today have the power to unilaterally promulgate rules to the same effect, subject only to a potential legislative 'veto' that effectively requires a supermajority of Congress to deploy. Worse still, because *Chevron* often requires judges to defer to agencies on interpretation of statutory silence, agency action is often able to thwart meaningful judicial checks as well." (p. 5)

"[T]his Court has already placed some limitations on agency deference, such as rejecting a presumption that Congress intended to delegate major questions to agencies. . . . [But] [t]he true effects of an agency rulemaking are often apparent only after the fact, meaning it will frequently prove difficult for courts to determine whether a proposed regulation falls under the major questions doctrine until the damage is well underway. . . . [M]ore fundamentally, the framers did not create a system of government where the power to enact, interpret, and enforce 'minor' laws affecting only limited segments of the population or having lesser economic impact would be vested in a single, omnipotent executive branch[.] . . . The major questions doctrine . . . does not provide a sufficient safeguard[.]" (p. 11)

36.American Cornerstone Institute

"The core problem with *Chevron* . . . was the substantive premise underlying the methodological debate. In the view of the Court in 1984, 'the power of an administrative agency to administer a congressionally created . . . program *necessarily requires the formulation of policy* and the making of rules to fill any gap left, implicitly or explicitly, by Congress.' . . . In other words, the Court took as a given that administrative agencies are the primary decisionmakers for purposes of American public policy. . . . [T]hat presumption could not be farther from the Founders' conception of ordered, deliberative, legitimate republicanism." (p. 19)

"When the Framers established the legislative branch, they expressly created a body capable of, and incentivized to, deliberate over costs and benefits in a way that would allow their republican experiment to *prudently* meet the exigencies of a changing world. However, the Progressive vision of policy-by-bureaucrat excises that most critical ingredient from good and sound policymaking. Because *Chevron* deference has . . . presumed and protected policy-by-bureaucracy, its existence has prevented that wound from healing . . . resulted in agency excoriation of our fundamental rights and . . . generated some colossally ill-advised public policy." (p. 31)

37. FPC Action Foundation and Firearms Policy Coalition

"Under *Chevron*, there is a blending of executive and legislative powers . . . of the department that 'holds the sword of the community,' and 'the legislature,' which 'prescribes the rules by which the duties and rights of every citizen are to be regulated.' . . . This dangerous combination contravenes the safeguards for liberty that the Constitution secured by granting 'all legislative Powers' to the 'Congress of the United States.'" (pp. 32–33)

38. American Free Enterprise Chamber of Commerce

"*Chevron* deference was a grievous mistake when the Court adopted it. Experience has confirmed this, and the Court need not perpetuate the error. *Chevron*'s regime of administrative deference defies the constitutional separation of powers and the due process rights of regulated parties. And it cannot be squared with the [Administrative Procedure Act's] plain text." (pp. 6–7)

"The D.C. Circuit not only reached the wrong result on the statute [in this case], but the opinions below encapsulate *Chevron*'s incoherence. Purporting to apply *Chevron* faithfully, the four judges who considered this case reached three different positions. . . . [And] [t]he decision below is hardly anomalous in exposing the absurdities that *Chevron* has created." (pp. 25–26)

39. America First Policy Institute

"The courts are fully capable of, and constitutionally responsible for, analyzing ambiguous statutory provisions. In addition, deferring to administrative agencies to fill gaps and resolve ambiguities within statutory language creates less political accountability for such decisions than if the courts simply interpreted statutory language and allowed Congress to address the matter if the resulting course bears correction." (p. 6)

"Under *Chevron*, unelected bureaucrats are encouraged to fill gaps and clarify ambiguities in statutory law. They inevitably do so based on policy preferences, not the relatively impartial interpretive methodology that courts utilize. At the same time, Congress is incentivized to direct difficult decisions to administrative agencies and leave those issues there, in bureaucrats' hands. The result is that administrators become unelected lawmakers, and the elected lawmakers can distance themselves from unpopular regulatory outcomes. The problem is compounded by the sheer size of the present administrative state[.]" (p. 15)

40. Southeastern Legal Foundation and 3 Other Groups

"At bottom, 'federal agencies may not resort to nonappropriation financing.' . . . 'Their activities are authorized only to the extent of their appropriations.' . . . Thus, when an agency seeks funding outside of the appropriations process without express statutory authority, it presents serious separation-of-powers issues." (p. 9)

"[I]n both the [Magnuson-Stevens Act] and other statutes, 'necessary and appropriate' is most naturally read as a discretion-limiting provision. . . . The most textually sound reading of 'necessary and appropriate' . . . is the reading that requires agencies to weigh the costs and benefits of a particular policy[.]" (pp. 12–13)

"In no other context [aside from *Chevron*] does a court simply defer to one of the parties. . . . [S]uch extreme deference may violate judicial canons requiring independence. . . . Instead of recognizing the judge as an impartial decisionmaker, *Chevron* requires the judge to systematically favor one party. And not just any party. This scheme favors the federal government[.]" (p. 22–23)

41. Governor Brian Kemp (State of Georgia)

"The most pernicious examples of administrative overreach are federal regulations which expand federal authority into areas previously reserved to the States. . . . *Chevron* . . . has shielded these interpretations from meaningful judicial review. These interpretations—even those which do not trigger the Court's existing limits on agency or Congressional action—have combined to vastly expand the regulatory purview of federal agencies at the expense of the States' reserved powers." (pp. 8–9)

"Even where agency action does not result in a systemic and fundamental shift in the balance of power between the States and the Federal Government, the gradual accumulation of the actions has an enormous impact in the aggregate. Allowing the small intrusions on State sovereignty to escape meaningful judicial review may work when each decision is viewed in isolation, but the long-term effect is no less detrimental." (p. 18)

42. Gun Owners of America and 13 Other Groups

"'[T]he federal courts have become habituated to defer to the interpretive views of executive agencies, not as a matter of last resort but first. . . . [C]ourts do so almost reflexively, as if doing so were somehow a virtue, or an act of judicial restraint—as if our duty were to facilitate violations of the separation of powers rather than prevent them.'" (p. 9)

43. Little Sisters of the Poor

"The common thread over more than a decade of regulation and litigation is that federal regulators, motivated by politics and ideology, disfavored unpopular religious groups at every turn. Each loss in this Court was met not with acquiescence but with yet more aggressive regulatory creativity. The saga of the contraceptive mandate [for example] thus epitomizes the kind of executive overreach the Constitution is designed to protect against when fundamental rights are on the line." (p. 16)

"Religious liberty cases often highlight the mismatch between the rationales for judicial deference in the face of statutory ambiguity and how agencies exploit that ambiguity." (p. 20)

44. Advance Colorado Institute

"While silence, vagueness, and ambiguity regretfully exist in many statutes (despite their gargantuan page numbers), a lack of clarity or express direction should not result in reflexive deference to an executive agency. Nor should the judiciary have complete deference to unilaterally resolve silence or vague words. Congressional silence or vagueness is not a grant of rule-making authority[.]" (p. 5)

"Where no best interpretation—taken from the clear words or expressed directive of the statute (rather than an implied meaning)—can be understood, a statute should properly be returned to Congress to resolve either by continuing its intentional silence or by amending with clarity. The legislative branch must be held accountable to write the nation's laws." (pp. 6–7)

"No one questions whether the government has the authority to pass laws that put some restraints and rules on the marketplace. Rather, the question centers around who, exactly, has the right to create the restraints and rules. Our original constitutional system is clear: Congress has the foundational right. . . . A nondelegation doctrine should be adopted as *Chevron* is overruled so that the duty to write the law is placed squarely back on Congress." (pp. 15–16)

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