

THE LOSS OF *CHEVRON* IS A GAIN FOR AGRICULTURE: EXPLORING THE IMPLICATIONS OF SCOTUS’S DEPARTURE FROM *CHEVRON* IN AGRICULTURE-RELATED INDUSTRIES

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ABSTRACT

This Note examines the landmark 2024 Supreme Court decision in Loper Bright Enterprises v. Raimondo and its implications for the agricultural regulatory landscape. By overturning the long-standing Chevron deference doctrine, the Court redefined the balance of power between federal agencies and the judiciary, shifting interpretive authority over ambiguous statutes back to the courts. The Note explores how this shift benefits the agriculture industry—historically burdened by extensive and often overlapping federal regulations—from conservation practices to food safety standards. It highlights the potential for increased legal challenges to agency decisions, the impact on specific agriculture-related rules and programs, and the role of Congress in crafting more precise

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legislation. The analysis suggests that Loper Bright offers the agricultural sector a more level playing field, reducing bureaucratic overreach while reinforcing constitutional checks and balances.

I. INTRODUCTION

Since our nation's founding, farms and farmers have played a vital role in the economy. They supply food for our country and the world, create jobs for workers throughout the supply chain, and keep American agriculture a leader in innovation. Regulations play an essential role in ensuring consumer and farmer safety. In the agriculture industry, these regulations contribute to varying aspects of the industry such as: consumer welfare protection through food safety and labeling standards; animal welfare protection; and environmental protection.¹ Without these protections, farmers would lack support in addressing nationwide challenges and unethical business practices, and they would struggle with no federal assistance on matters ranging from conservation practices to organic standards.

While these regulations do play a crucial role, it is important to recognize that they have also placed considerable burdens on the agriculture industry. Farmers face a range of demanding requirements stemming from these regulations. The complexity is further exacerbated by the overlap of agency jurisdictions concerning different farming practices, leading to additional challenges within the agriculture industry. In June 2024, the United States Supreme Court decided *Loper Bright Enterprises v. Raimondo* which dramatically reduced federal regulatory power by overturning the 40-year-old precedent set in *Chevron v. National Resource Defense Council*, most commonly known as *Chevron* deference.² This landmark ruling shifts the responsibility of interpreting ambiguous laws from federal agencies back to the judiciary, effectively limiting the regulatory overreach of federal agencies.³ This Note will delve into *Chevron*'s history and examine the positive changes and impacts the *Loper Bright* decision may have on the agricultural regulatory landscape, particularly from the perspectives of Congress and the central overseeing of federal agencies.

1. Why Regulatory Compliance is a Must for Agriculture Industry, MIRROR REVIEW (Aug. 6, 2025, at 21:56 CT), <https://www.mirrorreview.com/agriculture-industry/> [<https://perma.cc/H337-SU8L>].

2. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024).

3. *Id.*

II. SO, WHAT IS *CHEVRON*, AND WHAT DOES IT DO WITH AGRICULTURE?

Congress writes the laws, the judiciary interprets them, and the executive branch carries them out.⁴ This is a lesson every fifth grader learns and I am sure you remember from the melodic Schoolhouse Rock ballad.⁵ However, the reality is that the legislative process and creating laws is not as straightforward as the song “I’m Just a Bill” so jollily coins.⁶ The problem is that laws are not straightforward and governing the country requires writing legislation around complex topics such as the Farm Bill, elaborate environmental regulations, and often regulations surrounding problems that do not yet exist.⁷ Additionally, because Congress is not equipped, or agreeable enough, to micromanage the day-to-day administration of the legislation it passes, it must rely on federal agencies, under the supervision of the President, to carry out the laws they write.⁸

Understanding the importance of administrative law in our modern government is essential. Administrative agencies promulgate regulations to carry out the laws for the president.⁹ The executive branch includes agencies such as: Federal Deposit Insurance Corporation (FDIC); Environmental Protection Agency (EPA); United States Department of Agriculture (USDA); Bureau of Land Management (BLM); Center for Disease Control and Prevention (CDC); Consumer Financial Protection Bureau (CFPB); Department of Transportation (DOT); Natural Resources Conservation Service (NRCS); and many more.¹⁰

4. *Branches of the U.S. Government*, USAGOV (Sept. 20, 2024), <https://www.usa.gov/branches-of-government> [<https://perma.cc/2NX2-A79G>].

5. PLAYNOWPLAYL8TER, *Schoolhouse Rock – I’m Just a Bill*, at 1:50 (YouTube, Nov. 8, 2016), <https://www.youtube.com/watch?v=OgVKvqTIto> [<https://perma.cc/WMM9-TT4E>].

6. *Id.*

7. See JOHN V. SULLIVAN, HOW OUR LAWS ARE MADE, H.R. DOC. NO. 110-49, at V, 5 (1st Sess. 2007), <https://www.govinfo.gov/content/pkg/CDOC-110hdoc49/pdf/CDOC-110hdoc49.pdf> [<https://perma.cc/KQ9Y-3UX3>] (discussing the complexity of the legislative process).

8. See TODD GARVEY & SEAN M. STIFF, CONG. RSCH. SERV., R45442, CONGRESS’S AUTHORITY TO INFLUENCE AND CONTROL EXECUTIVE BRANCH AGENCIES 1–2 (2023).

9. *Understanding Administrative Law*, PEPP. L. BLOG (Mar. 19, 2024), <https://law.pepperdine.edu/blog/posts/understanding-administrative-law.htm> [<https://perma.cc/3GWF-QJ5R>].

10. Brianna J. Schroeder, *What Does the Supreme Court’s Decision Overturning Chevron Have to Do with Agriculture? (Hint: Everything!)*, JANZEN AG LAW: SCHROEDER AGRIC. L. BLOG (July 2, 2024), <https://www.aglaw.us/schroeder-ag-law-blog/2024/7/1/what-does-the-supreme-courts-decision-overturning-chevron-have-to-do-with-agriculture-hint-everything> [<https://perma.cc/XHV7-CCP3>].

This long list of “alphabet soup” agencies reaches every aspect of our lives and significantly impacts agriculture, as agriculture is one of the most heavily regulated industries in the United States.¹¹ “Virtually every aspect of agricultural production, processing, distribution, and marketing [is] regulated in some manner by the federal, state, or local governments.”¹² A significant amount of agricultural regulation is conducted by and through administrative agencies.¹³ The close relationship between agriculture and administrative agencies makes these agencies particularly impactful in all aspects of agriculture.

This brings us back to the critical question posed above: as complex agricultural regulations are enacted, which branch of government gets to decipher the ambiguous parts of these laws that must be interpreted for practical implementation? Luckily, or somewhat unluckily, the Supreme Court had answered this question in *Chevron, U.S.A., Inc. v. National Resource Defense Council*.¹⁴ For over four decades, federal judges have used the legal standard known as *Chevron* deference which refers to the latitude judges give federal agencies to interpret the statutes they administer.¹⁵ The Court articulated a somewhat simple two-part test.¹⁶ First, judges examine the wording and the context of the statute in question to see if Congress’s intent is clear.¹⁷ If the purpose is clear, then the matter is settled, the agency is obliged to follow the letter of the law as written by Congress.¹⁸ However, if the statutory language is ambiguous, the court must defer to the agency’s choice in carrying out the law, as agencies are considered experts in their fields.¹⁹

For example, if Congress passed a law saying, “corporations cannot pollute freshwater lakes,” the EPA would decide what pollutant means.²⁰ Under *Chevron*, if someone challenged the EPA’s definition of pollutant, courts would defer to the EPA’s definition as long as it was reasonable.²¹ *Chevron* effectively allowed administrative agencies the autonomy to establish and enforce regulations without

11. *Administrative Law – An Overview*, NAT’L AGRIC. L. CTR. (June 14, 2025, at 20:39 CT), <https://nationalaglawcenter.org/overview/adminlaw> [<https://perma.cc/823H-K7PT>].

12. *Id.*

13. *Id.*

14. *Chevron, U.S.A., Inc. v. Nat’l Res. Def. Council, Inc.*, 467 U.S. 837, 843–44 (1984).

15. *Chevron Deference*, LEGAL INFO. INST., CORNELL L. SCH. (June 14, 2025, at 20:43 CT), https://www.law.cornell.edu/wex/chevron_deference [<https://perma.cc/B9V5-TWK9>].

16. *Chevron*, 467 U.S. at 842–45.

17. *Chevron Deference*, *supra* note 15.

18. *Id.*

19. *Id.*

20. *See, e.g.*, 33 U.S.C. § 1251.

21. *See Chevron Deference*, *supra* note 15.

concern for legal challenges.²² Because ambiguous language is splashed across agricultural and environmental laws, *Chevron* significantly boosted agency authority within the agricultural realm.²³ For over forty years, when farmers challenged federal agencies, the deck was consistently stacked in the government's favor.²⁴

The ramifications for agriculture are significant when a single regulatory agency is responsible for creating and interpreting rules. *Chevron*'s requirement of courts to defer mindlessly to agencies' expertise is equivalent to the fox guarding the henhouse where the balance of power is concerned.²⁵ The unfortunate truth is that beneath the facade of expertise, agency officials have been more inclined to promote their own agendas, rather than using their technical skills to determine the most accurate interpretation of statutes. *Chevron* resulted in agencies interpreting laws instead of merely implementing them. This shift effectively transformed modern administrative law into an unconstitutional delegation of judicial authority to the executive branch.²⁶

Lower federal courts have cited *Chevron* over 18,000 times.²⁷ *Chevron* emerged as a preferred tool for agencies to defend regulations effectively and is the most frequently referenced administrative holding.²⁸ Thousands of regulations concerning agriculture, food, water, climate, and air have been defended using *Chevron* as a precedent.²⁹

22. *Id.*

23. Bennett Chris, *Chevron Deference: Strangling Farmers One Regulation at a Time?*, KAN. FARM BUREAU (Oct. 19, 2017), <https://www.kfb.org/Article/Chevron-Deference-Strangling-Farmers-One-Regulation-at-a-Time> [https://perma.cc/JWM2-VJY7].

24. *Id.*

25. *The Supreme Court Rules that the Fox Can Guard the Henhouse (Because the Fox Told Them He Can)*, OGLETREE DEAKINS (May 24, 2013), <https://ogletree.com/insights-resources/blog-posts/the-supreme-court-rules-that-the-fox-can-guard-the-henhouse-because-the-fox-told-them-he-can/> [https://perma.cc/S57H-PQ4E].

26. See generally Severino Carrie, *Chevron and the Myth of Agency Expertise Should Be Put to Rest*, NAT'L REV. (June 12, 2024), <https://www.nationalreview.com/bench-memos/chevron-and-the-myth-of-agency-expertise-should-be-put-to-rest/> [https://perma.cc/LVZ9-ZL4H].

27. Kent Barnett & Christopher J. Walker, *Chevron and Stare Decisis*, 31 GEO. MASON L. REV. 475, 477 (2024).

28. Jesse Klein, *What the Supreme Court's Chevron Decision Means for Agriculture*, AGRIC. DIVE (July 3, 2024), <https://www.agriculturedive.com/news/chevron-doctrine-explainer-agriculture/720533/> [https://perma.cc/QB5U-5Y23].

29. *Id.*

III. THE NEW *LOPER BRIGHT* ERA

This gross power imbalance plagued our democracy until June of 2024, when the United States Supreme Court, in a 6-3 ruling, overturned *Chevron* in *Loper Bright Enterprises v. Raimondo*.³⁰ Throughout the years, numerous critics of *Chevron* sought to challenge it. The Court selected *Loper Bright* to reevaluate and effectively place a “tombstone on *Chevron*.”³¹ An exhaustive discussion and analysis of the intricate academic and judicial skepticism regarding *Chevron* would require thousands of words. Therefore, I will briefly summarize the inescapable demise of *Chevron* that *Loper Bright* successfully achieved by examining the benefits that *Loper Bright* offers to the agricultural industry.

Loper Bright is specifically concerned with the interpretation of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) by the National Marine Fisheries Service (NMFS).³² A group of fishing boat operators challenged NMFS’s interpretation of the MSA, which required them to pay a fee for onboard observers to monitor fishing practices.³³ The D.C. Circuit Court relied on *Chevron* and deferred to the agency’s interpretation of the MSA, ultimately upholding the observer requirement.³⁴ The D.C. Circuit concluded that the NMFS offered a reasonable interpretation of the statute, and that *Chevron* required the Court to accept this interpretation.³⁵ The Supreme Court granted certiorari.³⁶

The majority opinion, authored by Justice Roberts, articulated that the framers anticipated that courts would frequently encounter statutory ambiguities and expected them to apply their legal judgment to resolve such issues.³⁷ Quoting *Marbury v. Madison*, “[i]t is emphatically the province and duty of the judicial department to say what the law is.”³⁸ The Administrative Procedure Act (APA) is consistent with that approach, as it requires courts to decide legal questions and does not mandate any deference to agencies.³⁹ Therefore, *Chevron* cannot be squared with the APA.

30. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 369, 412–13 (2024).

31. *Id.* at 417 (Gorsuch, J., concurring).

32. *Id.* at 380 (majority opinion); 16 U.S.C. § 1853.

33. *Loper Bright*, 603 U.S. at 381; 16 U.S.C. § 1853.

34. *Loper Bright Enters., Inc. v. Raimondo*, 45 F.4th 359, 372 (D.C. Cir. 2022).

35. *Id.* at 365.

36. *See Loper Bright*, 603 U.S. at 369.

37. *Id.* at 373.

38. *Id.* at 385 (quoting *Marbury v. Madison*, 5 U.S. 137, 177 (1803)).

39. *Id.* at 391–92.

Next, the majority held that *stare decisis* did not necessitate *Chevron*'s retention.⁴⁰ It stated that, "*Chevron* has proved to be fundamentally misguided" and "unworkable."⁴¹ The Court noted that while early rulings offered due respect to federal agencies responsible for enforcing the law, the *Chevron* case went too far in granting excessive deference.⁴² Now under *Loper Bright*, when faced with conflicting interpretations of a statute, courts are directed to independently interpret it and implement Congress's intent within the bounds of constitutional limits.⁴³

Justices Thomas and Gorsuch joined the majority and wrote separately.⁴⁴ Thomas emphasized that *Chevron* was both unlawful under the APA and unconstitutional, as it undermined the separation of powers by compelling judges to relinquish their constitutional responsibility to address statutory ambiguities.⁴⁵ He continued by stating that *Chevron* excessively empowered the executive branch to exercise authorities not conferred upon it.⁴⁶ Finally, Justice Gorsuch expressed that the principle of *stare decisis* did not necessitate continued adherence to *Chevron*.⁴⁷

The dissent, authored by Justice Kagan and joined by Justices Sotomayor and Jackson, defended the *Chevron* framework on the same grounds that have been used to justify it for the past forty years.⁴⁸ Justice Kagan wrote that it is part of the "warp and woof of modern government" and that it "reflect[s] what Congress would want," which is expert agencies—and not judges—making policy.⁴⁹ Justice Kagan continued on to say that the judiciary's role is only to ensure that an agency's interpretations are reasonable, allowing courts to stay out of policymaking.⁵⁰ She stated, "agencies often know things about a statute's subject matter that courts could not hope to."⁵¹ The dissent also argued that *Chevron* is narrower than the majority implied; aligns with the APA; has consistently been used and depended on by lower courts; set forth a reasonable default rule; is workable; and should be upheld under *stare decisis*.⁵²

40. *Id.* at 407.

41. *Id.*

42. *Id.* at 409.

43. *Id.* at 412–13.

44. *Id.* at 413 (Thomas, J., concurring), 416 (Gorsuch, J., concurring).

45. *Id.* at 413 (Thomas, J., concurring).

46. *Id.* at 415.

47. *Id.* at 417 (Gorsuch, J., concurring).

48. *Id.* at 448 (Kagan, J., dissenting).

49. *Id.* at 449.

50. *Id.* at 458.

51. *Id.* at 456.

52. *Id.* at 473.

IV. A BRIGHT FUTURE UNDER *LOPER BRIGHT*

So, what does the shift to *Loper Bright*'s independent judgment test signify for the agricultural industry? At a macro level, this ruling will primarily affect the agricultural sector regarding: food and drug safety regulations; environmental and animal standards; and the formulation of the Farm Bill, farm subsidies, and crop insurance.⁵³ From a substantive level, various regulations may come under scrutiny, including: recent measures to enhance the Packers and Stockyards Act; rules under the Waters of the United States (WOTUS); wetland determinations under the NCRS; pesticide regulations; and the EPA's new regulation imposing limits on per- and polyfluoroalkyl substances (PFAS).⁵⁴

It is crucial to acknowledge that several principles constrain the effects of *Loper Bright*.⁵⁵ First we must consider *Loper Bright*'s scope.⁵⁶ The APA sets forth requirements for formal adjudications, and establishes two primary processes for formulating administrative rules: formal rulemaking, which requires a hearing and is similar to courtroom proceedings; and informal rulemaking, which only necessitates public notice.⁵⁷ *Chevron* applied solely to actions carrying the force of law, such as formal adjudication or informal notice and comment rulemaking.⁵⁸ As a result, *Loper Bright* will not be strictly binding on the judicial review of informal agency actions, such as agency guidance documents or policy manuals.⁵⁹ However, the Court's majority in *Loper Bright* focused on the importance of the separation of powers, stating that interpreting laws is, "the proper and peculiar province of the courts[.]" and not agencies.⁶⁰ Given the interpretative nature of

53. Schroeder, *supra* note 10.

54. *Id.*

55. *After Chevron: What the Supreme Court's Loper Bright Decision Changed, and What It Didn't*, CLEARY GOTTLIEB (July 11, 2024), <https://www.clearygottlieb.com/news-and-insights/publication-listing/after-chevron-what-the-supreme-courts-loper-bright-decision-changed-and-what-it-2020didnt> [<https://perma.cc/F3DY-4XVQ>].

56. *Loper Bright's Implications for the Food and Drug Administration and Regulated Industry*, FOLEY HOAG (July 22, 2024), <https://foleyhoag.com/news-and-insights/publications/alerts-and-updates/2024/july/loper-brights-implications-for-the-food-and-drug-administration-and-regulated-industry/> [<https://perma.cc/UU38-BBSX>].

57. BEN HARRINGTON & DANIEL J. SHEFFNER, CONG. RSCH. SERV., R46930, INFORMAL ADMINISTRATIVE ADJUDICATION: AN OVERVIEW 4–5 (2021); DANIEL T. SHEDD & VANESSA K. BROWN, CONG. RSCH. SERV., R41546, A BRIEF OVERVIEW OF RULEMAKING AND JUDICIAL REVIEW 1–3 (2017).

58. *Loper Bright's Implications for the Food and Drug Administration and Regulated Industry*, *supra* note 56.

59. *Id.*

60. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) (quoting THE FEDERALIST NO. 78, at 525 (Alexander Hamilton)).

statutory implementation tools, the scope of *Loper Bright* may one day extend to informal agency publications.⁶¹ However, it is essential to recognize that this ruling affects only formal agency actions today.⁶²

The second principal that must be taken into account is retroactivity.⁶³ The Court in *Loper Bright* stated that this ruling does not “call into question prior cases that relied on the *Chevron* framework.”⁶⁴ The cases decided on *Chevron* are “still subject to statutory *stare decisis*,” and “[m]ere reliance on *Chevron* cannot constitute a ‘special justification’ for overruling such a holding.”⁶⁵ Justice Elena Kagan argued in her dissent that, “Courts motivated to overrule an old *Chevron*-based decision can always come up with something to label a ‘special justification.’”⁶⁶ Although it is challenging to prospectively evaluate the re-litigation of previously settled law based on *Chevron*, the majority emphasized that it did not intend to open Pandora’s box by revisiting prior decisions made under *Chevron*.⁶⁷

The final principal to consider is timeframe.⁶⁸ Historically, challenges to rules under the APA have been constrained by the six-year statute of limitations from the date a rule is finalized.⁶⁹ This limitation eliminated many lawsuits from the 18,000 judicial cases in which courts applied *Chevron*.⁷⁰ However, in July 2024, the Supreme Court also decided *Corner Post, Inc. v. Board of Governors of Federal Reserve System*.⁷¹ The Court held that the right of action under the APA’s six-year statute of limitations now accrues when an individual plaintiff is harmed by final agency action, rather than when the agency action occurs.⁷² The combination of *Corner Post* and *Loper Bright* will likely have substantial

61. *Loper Bright’s Implications for the Food and Drug Administration and Regulated Industry*, *supra* note 56.

62. *Id.*

63. *Id.*

64. *Loper Bright*, 603 U.S. at 376.

65. *Id.*

66. *Id.* at 477–78 (Kagan, J., dissenting).

67. *Id.* at 412 (majority opinion).

68. *Loper Bright’s Implications for the Food and Drug Administration and Regulated Industry*, *supra* note 56.

69. *Id.*

70. Barnett & Walker, *supra* note 27, at 477.

71. See *Corner Post, Inc. v. Bd. of Governors of the Fed. Rsrv. Sys.*, 603 U.S. 799, 807 (2024).

72. *Id.* at 809.

implications for the agricultural industry as the timeframe to challenge is now much broader.⁷³

While the ruling in *Loper Bright* is constrained, this case is sure to bring about new changes given the profound impact that *Chevron* has had on agriculture. *Chevron* gave power to agencies to interpret laws in a way which often created burdensome and expensive obstacles for agricultural producers.⁷⁴ Some notable examples include: the EPA and Army Corps of Engineers' WOTUS rule; USDA's NCRS wetland determinations; and the EPA's Endangered Species Act.⁷⁵ Furthermore, farmers have often found themselves caught in a regulatory tug-of-war as agencies alter rules based on the political priorities of different administrations.⁷⁶ The key change brought by *Loper Bright* is that now, every federal agency involved in agriculture will have reduced discretion to impose new regulations that Congress did not authorize. In one fell "*Loper Bright*" swoop, the Supreme Court considerably shrunk administrative overreach, which had been to the detriment of farmers and ranchers for decades. This decision also restored the balance of power, ensuring that unelected bureaucrats cannot enforce regulations beyond what Congress has expressly permitted.

V. WHAT OVERTURNING *CHEVRON* MEANS FOR THE WAY CONGRESS DOES ITS BUSINESS: CONGRESS'S NEW CHALLENGE

The outcome of *Loper Bright* will undoubtedly resonate far beyond the realms of the fishing industry. This decision is expected to influence every stage of the public policy lifecycle, from legislation to regulation and eventually to litigation, by the boat load. Since this policy lifecycle starts with the fundamental process of drafting a bill in Congress, *Loper Bright* will alter how Congress drafts laws.⁷⁷

In *Loper Bright*, the D.C. Circuit interpreted that an omission in the MSA created an ambiguity in the statute, and under *Chevron*, it deferred to the NMFS's

73. *Loper Bright's Implications for the Food and Drug Administration and Regulated Industry*, *supra* note 56.

74. Rachel Schutte, *What the Chevron Doctrine Decision Means for Ag*, FARM PROGRESS: FARM FUTURES (June 29, 2024), <https://www.farmprogress.com/farm-policy/what-the-chevron-doctrine-decision-means-for-ag#> [https://perma.cc/B62Z-2TD6].

75. *Id.*

76. *Id.*

77. Mark Ruge et al., *What Overturning Chevron Means for the Way Congress Does Its Business*, K&L GATES (July 18, 2024), <https://www.klgates.com/What-Overturning-Chevron-Means-for-the-Way-Congress-Does-Its-Business-7-18-2024> [https://perma.cc/P8GX-WKAV].

reasonable interpretation.⁷⁸ This decision was based partly on the statutory language that permitted the NMFS to take actions, “necessary and appropriate for the conservation and management of the fishery.”⁷⁹ However, the Supreme Court held that the broad “necessary and appropriate” language was not specific enough to grant the agency authority to require observers, nor did the statute’s overall ambiguity.⁸⁰ This raises the question of how specific Congress needed to be in the MSA to require observers. More importantly, in the future, how specific does Congress need to be when drafting laws?

The Court provided some helpful guidance on pages 405 through 411 and in footnotes 5 and 6 of its opinion.⁸¹ In short, the Court said delegations of authority must be specific to give agencies “a degree of discretion.”⁸² The Court gave as an example that a statute that “‘expressly delegate[s]’ to an agency the authority to give meaning to a particular statutory term.”⁸³ Understandably, specific bill drafting is not how Congress does its usual business.⁸⁴ The United States Code is filled with ambiguous language that grants extensive authority. Legislators have traditionally relied on broad statutory language, and sometimes even silence, to enable agencies to act however they see fit.⁸⁵ This approach has been adopted most frequently to provide agencies with the flexibility needed to tackle future challenges that are difficult to predict, technically complex, and socially significant.⁸⁶ Moreover, the devil can be in the details in an increasingly political and polarized Congress.⁸⁷ Oftentimes it is more advantageous to leave the specifics to agencies to resolve later so that compromises within Congress may be reached. Finally, the Court in *Loper Bright* acknowledged that laws’ ambiguities might sometimes unintentionally arise on Congress’s part.⁸⁸

The *Loper Bright* decision imposes a significant new requirement on Congress to provide more specific authorizations of authority, creating a dilemma.⁸⁹ If Congress narrowly drafts laws, it may overlook areas where agency

78. *Loper Bright Enters., Inc. v. Raimondo*, 45 F.4th 359, 363 (2022).

79. *Id.* at 365.

80. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412–13 (2024).

81. *Id.* at 395 nn.5–6, 405–411.

82. *Id.* at 394.

83. *Id.*

84. Ruge et al., *supra* note 77.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Loper Bright*, 603 U.S. at 400.

89. Ruge et al., *supra* note 77.

action is intended, whereas drafting too broadly could lead to judicial rejection.⁹⁰ This necessity for precision mandates a deeper understanding of issues by Congress, as it will no longer suffice to broadly address matters and leave ambiguous language for agencies to interpret. Consequently, Congress will require more experts to obtain technical advice for new laws, particularly in committees involved in legislative drafting.⁹¹ This shift may allow for greater participation from regulated entities, environmental organizations, corporations, and experts in their respective fields in shaping the law. Additionally, it will be increasingly crucial for Congress to understand how administrative judges and federal courts interpret broad statutes.⁹² The principles of *stare decisis* and existing case law will likely guide Congress in drafting effective and resilient statutes against future judicial challenges.⁹³

Justice Antonin Scalia believed that Congress is up to the task, stating, “Congress knows to speak in plain terms when it wishes to circumscribe, and in capacious terms when it wishes to enlarge, agency discretion.”⁹⁴ However, only time will reveal how Congress will approach the need for more specific instructions for federal agencies. Although Congress’s future actions remain uncertain, removing *Chevron* from agricultural regulations could enhance congressional activity in addressing these challenges. In the context of the contentious Farm Bill, *Loper Bright* will compel Congress to draft more detailed measures to prevent judicial challenges and facilitate effective implementation by regulators.⁹⁵

VI. A NEW ERA FOR ENVIRONMENTAL REGULATIONS

Chevron deference emerged from a challenge to the EPA’s interpretation of the Clean Air Act (CAA) and has since been a staple in litigation involving EPA regulation.⁹⁶ The Court’s departure from the *Chevron* framework will have significant repercussions for the EPA, as thousands of environmental cases have been adjudicated based on *Chevron* principles.⁹⁷ For decades, Congress has crafted

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *City of Arlington v. FCC*, 569 U.S. 290, 296 (2013).

95. Klein, *supra* note 28.

96. John P. Elwood et al., *Chevron Overturned: Impacts on Environmental, Energy, and Natural Resources Regulation*, ARNOLD & PORTER (July 2, 2024), <https://www.arnoldporter.com/en/perspectives/advisories/2024/07/chevron-overturned-impacts-on-environmental> [<https://perma.cc/9KLT-FXMW>].

97. *Id.*

statutes related to environmental regulations to reflect advancements in scientific and technological understanding, empowering the EPA to address questions that evolve.⁹⁸ *Loper Bright* will influence how all environmental regulators in the United States—particularly the EPA—operate, allowing a new era of environmental regulations to emerge.⁹⁹

VII. NOTHING NEW UNDER THE SUN: THE EPA UNDER *LOPER BRIGHT*

While considering *Loper Bright*, it is essential to acknowledge that certain aspects of environmental regulations and the operations of the EPA are unlikely to change significantly.¹⁰⁰ Firstly, in recent years the EPA has adapted to the Court's diminished reliance on *Chevron* when defending its interpretations, which has led the Department of Justice (DOJ) to place less emphasis on *Chevron* in its legal arguments.¹⁰¹ During this time, the EPA has strategically shifted its focus, reducing the prominence of *Chevron* in many, though not all, rulemakings and prioritizing arguments that its statutory interpretations represent the best understanding, irrespective of *Chevron*.¹⁰² This is an important shift as invoking *Chevron* had previously been a sensible approach and presumably a slam dunk win for the EPA to address concerns about possible overreach.¹⁰³

According to a study from 2003 to 2013, cases applying *Chevron* had an estimated win rate of nearly 94% for the 70% of cases that advanced past the first step of the framework.¹⁰⁴ Among the 51 major rules and actions taken by federal agencies during President Biden's term, only five cited *Chevron* to defend agency

98. Kevin Poloncarz & Katarina Resar Krasulova, *How Will EPA Regulate in Loper Bright's Uncertain Wake?*, BLOOMBERG L. (April 2024), <https://www.bloomberglaw.com/document/XBLHSBAC000000> [<https://perma.cc/VQC7-EVT3>].

99. *Id.*

100. *Environmental Law Implications of Loper Bright and the End of Chevron Deference*, SIDLEY (July 2, 2024), <https://environmentalenergybrief.sidley.com/2024/07/02/environmental-law-implications-of-loper-bright-and-the-end-of-chevron-deference/> [<https://perma.cc/V3FN-MAZ9>].

101. James Kunhardt & Anne Joseph O'Connell, *Judicial Deference and the Future of Regulation*, BROOKINGS (Aug. 18, 2022), <https://www.brookings.edu/articles/judicial-deference-and-the-future-of-regulation/> [<https://perma.cc/EY5J-N3DP>].

102. *Environmental Law Implications of Loper Bright and the End of Chevron Deference*, *supra* note 100.

103. See Kent Barnett & Christopher J. Walker, *Chevron in the Circuit Courts*, 116 MICH. L. REV. 1, 6 (2017) (discussing how agencies won far more often in circuit courts in cases where *Chevron* deference was applied).

104. *Id.*

actions.¹⁰⁵ Four relate to environmental issues, while one addresses sex discrimination in educational institutions.¹⁰⁶ This data reflects that the EPA had largely disregarded *Chevron* when defending their actions, likely in anticipation of the *Loper Bright* decision. It also suggests that they viewed dependence on *Chevron* as a possible sign of weakness. Consequently, the practical impact of *Loper Bright* on environmental regulations may not be substantial in the short term, as the EPA had already largely ceased using *Chevron* to support its administrative rules.¹⁰⁷

Secondly, the Court's recent enunciation of the major questions doctrine may significantly impact forthcoming EPA rulemakings more than *Loper Bright*.¹⁰⁸ In recent years, the Supreme Court has broadened the scope of the major questions doctrine, which states that the courts are to presume that, absent explicit statutory language, Congress did not delegate the authority to address major political or economic issues to federal agencies.¹⁰⁹ The major questions doctrine is particularly relevant to the EPA's interpretations of older environmental statutes, such as the CAA, to address contemporary challenges.¹¹⁰ A recent example of this is the regulation of greenhouse gases in response to climate change.¹¹¹ In the 2022 case of *West Virginia v. EPA*, the Court limited the EPA's authority to regulate carbon dioxide emissions under the CAA.¹¹² Many of the significant rules proposed by the EPA in recent years, including those concerning greenhouse gas emissions and emerging contaminants such as PFAS, would likely be subject to the major questions doctrine due to extensive economic implications.¹¹³ If this is the case, the issue of deference would not come into play.

105. *Environmental Law Implications of Loper Bright and the End of Chevron Deference*, *supra* note 100.

106. Kunhardt & O'Connell, *supra* note 101.

107. *Environmental Law Implications of Loper Bright and the End of Chevron Deference*, *supra* note 100.

108. Elwood et al., *supra* note 96.

109. Cynthia A. Faur & Michael Mostow, *The Future of Environmental Regulation After the Supreme Court Decisions in Loper Bright and Corner Post*, QUARLES (July 23, 2024), <https://www.quarles.com/newsroom/publications/the-future-of-environmental-regulation-after-the-supreme-court-decisions-in-loper-bright-and-corner-post> [<https://perma.cc/JWN6-KRF2>].

110. Elwood et al., *supra* note 96.

111. See generally *Climate Change Regulatory Actions and Initiatives*, U.S. ENV'T PROT. AGENCY (Mar. 25, 2025), <https://www.epa.gov/climate-change/climate-change-regulatory-actions-and-initiatives> [<https://perma.cc/68CM-9ZM7>].

112. *West Virginia v. Env't Prot. Agency*, 597 U.S. 697, 735 (2022).

113. Faur & Mostow, *supra* note 109.

Thirdly, it is essential to emphasize that *Loper Bright* does not eliminate or disregard some judicial deference to the EPA's decision-making processes.¹¹⁴ The ruling maintains judicial deference regarding agency rulemaking that is grounded in factual determinations and technical judgments, provided there is a clear delegation from Congress.¹¹⁵ Courts may defer to the EPA's factual findings and technical assessments in situations with delegated authority.¹¹⁶ However, the extent of this deference is constrained. The majority opinion in *Loper Bright* clarified that even with clear delegation to the EPA, courts will actively scrutinize the agency's determinations.¹¹⁷ The reviewing court serves as an independent interpreter of the law "by recognizing constitutional delegations, 'fix[ing] the boundaries of [the] delegated authority' . . . and ensuring the agency has engaged in 'reasoned decisionmaking' within those boundaries."¹¹⁸ For instance, laws that explicitly allow the EPA discretion in establishing human health and environmental standards, such as National Ambient Air Quality Standards (NAAQS), are based on the best available science and the agency's expert judgment.¹¹⁹ The majority opinion in *Loper Bright* reaffirmed that judicial deference would continue to apply in these contexts going forward.¹²⁰

Moreover, regarding statutory interpretation, the Supreme Court highlighted that although the legal interpretations provided by agencies are not binding, they can carry significant persuasive weight, especially in cases where the issues involve factual matters within the agency's expertise or where interpretations were issued concurrently with the statute and have remained consistent over time.¹²¹ Under *Loper Bright*, the EPA's legal analysis, no matter how sound, is no longer entirely determinative.¹²² As courts conduct independent legal analyses of statutes, other litigants with similar technical and legal expertise in environmental matters may present their interpretations for judicial consideration.¹²³ The extent to which

114. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024).

115. *Environmental Law Implications of Loper Bright and the End of Chevron Deference*, *supra* note 100.

116. *Id.*

117. *Loper Bright*, 603 U.S. at 395.

118. *Id.* (quoting H. Monaghan, *Marbury and the Administrative State*, 83 COLUM. L. REV. 1, 27 (1983); *Michigan v. Env't Prot. Agency*, 576 U.S. 743, 752 (2015)).

119. See RICHARD K. LATTANZIO, CONG. RSCH. SERV., RL30853, CLEAN AIR ACT: A SUMMARY OF THE ACT AND ITS MAJOR REQUIREMENTS 3 (2022).

120. *Loper Bright*, 603 U.S. at 400.

121. *Id.* at 388.

122. *Environmental Law Implications of Loper Bright and the End of Chevron Deference*, *supra* note 100.

123. *Id.*

the EPA's statute analysis will be persuasive to a court depends on individual judges. However, the court's proverbial "ear" is not altogether lost in the *Loper Bright* decision.

VIII. THE EPA'S BRIGHT NEW FUTURE UNDER *LOPER BRIGHT*

While certain environmental policymaking, rulemaking, and regulation elements will remain unchanged, several changes are anticipated considering *Loper Bright*. The most significant change is likely the reduction of drastic fluctuations in agency policy that frequently occurred with shifts in presidential administrations.¹²⁴ Critics argue that removing *Chevron* may result in inconsistent rulings and increased instability regarding environmental regulations, particularly amongst lower courts.¹²⁵ However, under *Chevron*, agencies could depend on judicial deference to broaden or narrow their authority.¹²⁶ Consequently, *Chevron* oftentimes facilitated significant swings in agency policy whenever presidential administrations changed every four or eight years.¹²⁷ These swings were particularly prominent in the environmental sectors.¹²⁸ Changes in presidential administrations typically result in changes in EPA leadership and policy priorities, affecting the agency's interpretations of statutes.¹²⁹ The transitions between Democratic and Republican administrations have frequently prompted changes in the EPA's interpretation of the CWA's jurisdiction over WOTUS.¹³⁰ The *Loper Bright* majority strongly criticized this pattern and emphasized that agency interpretations merit the greatest weight when consistently maintained.¹³¹ By diminishing the weight accorded to agency interpretations, the *Loper Bright* decision will likely decrease the frequency and magnitude of changes in the EPA's positions with each administration transition.¹³² This shift may contribute to

124. Elwood et al., *supra* note 96.

125. Daniel C. Esty et al., *In the Wake of the Chevron Decision*, YALE SCH. OF THE ENV'T (July 16, 2024), <https://environment.yale.edu/news/article/wake-chevron-decision> [<https://perma.cc/NQ9Y-EXDD>].

126. Elwood et al., *supra* note 96.

127. *Id.*

128. *Id.*

129. George Gigounas et al., *US Environmental Law Post-Chevron: Changes Ahead*, DLA PIPER (July 15, 2024), <https://www.dlapiper.com/en-us/insights/publications/2024/07/us-environmental-law-post-chevron> [<https://perma.cc/TMX7-25S6>].

130. *See Here We WOTUS Again*, BROWNSTEIN (Aug. 31, 2023), <https://www.bhfs.com/insights/alerts-articles/2023/here-we-wotus-again> [<https://perma.cc/5DLA-L3TY>].

131. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024).

132. Gigounas et al., *supra* note 129.

greater stability in overall agency policy and reduced volatility for regulated industries.¹³³

A more apparent result of *Loper Bright* is that courts must implement stricter judicial review of environmental regulations.¹³⁴ The majority in *Loper Bright* emphasized that courts, not executive agencies, hold the power and responsibility to interpret federal statutes.¹³⁵ Accordingly, courts will independently review and interpret federal environmental regulations, ultimately having the final say on the most accurate interpretations of these laws, even in cases where multiple reasonable interpretations exist.¹³⁶ This shift may lead to more frequent invalidations of EPA interpretations of environmental regulations and related regulatory actions.

Loper Bright will also strengthen some of the challenges against EPA actions. Although *Chevron* did not completely shield the EPA's actions from legal contests, the "playing field" was certainly tipped in the EPA's favor.¹³⁷ In the wake of *Loper Bright*, the number of challenges to EPA actions may rise, along with changes in legal strategies.¹³⁸ The Court has directed lower courts to utilize various statutory interpretation tools to ascertain a statute's best interpretation.¹³⁹ For those contemplating challenging an EPA action, *Loper Bright* provides a more equal playing field as the EPA may no longer prevail by offering only a "reasonable" or "permissible" view of a statute.¹⁴⁰

Next, there may be increased challenges to previous EPA actions, especially concerning the often-contentious CAA.¹⁴¹ While the majority in *Loper Bright* clarified that it did not intend to overturn previous judicial decisions that relied on *Chevron*, the Court's recent ruling in *Corner Post* may permit the reevaluation of certain decisions.¹⁴² The CAA allows late judicial review of agency action based

133. Elwood et al., *supra* note 96.

134. Gigounas et al., *supra* note 129.

135. *Loper Bright*, 603 U.S. at 403.

136. Gigounas et al., *supra* note 129.

137. See generally DAVID C. TRIMBLE, U.S. GOV'T ACCOUNTABILITY OFF., GAO-11-650, ENVIRONMENTAL LITIGATION: CASES AGAINST THE EPA AND ASSOCIATED COSTS OVER TIME 13–14 (2011) (showing no decline in legal actions filed against the EPA).

138. *Environmental Law Implications of Loper Bright and the End of Chevron Deference*, *supra* note 100.

139. *Loper Bright*, 603 U.S. at 412–13.

140. *Environmental Law Implications of Loper Bright and the End of Chevron Deference*, *supra* note 100.

141. See 42 U.S.C. §§ 7401–7671.

142. *Loper Bright*, 603 U.S. at 412; *Corner Post, Inc. v. Bd. of Governors of the Fed. Rsrv. Sys.*, 603 U.S. 799, 825 (2024).

on issues arising after the statutory review period has elapsed.¹⁴³ The D.C. Circuit has determined that a judicial decision can constitute “after-arising grounds.”¹⁴⁴ Given the changes created by both *Corner Post* and *Loper Bright*, it is reasonable to assume that some will seek to contest early EPA actions.¹⁴⁵ Particularly cases under the CAA that were not previously litigated on the merits, as several cases decided in this domain would now fall under the APA’s statute of limitations.¹⁴⁶

Finally, given *Loper Bright*, the EPA will acquire new powers to influence the court.¹⁴⁷ According to the Supreme Court’s 1944 ruling in *Skidmore v. Swift*, the persuasiveness of an agency’s interpretation will rely on factors such as 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.”¹⁴⁸ Consequently, it is reasonable to anticipate that the EPA will emphasize thoroughly developing its interpretive foundations within rules, regulations, and informal guidance to sway the judicial interpretive processes as effectively as possible. Additionally, we will likely see increased input from the EPA in the legislative process where it sees opportunities to persuade Congress.

IX. A NEW ERA FOR FARMING AND FOOD ADMINISTRATIVE REGULATIONS

The Court’s decision in *Loper Bright* will also herald a new era for agricultural and food-related administrative agencies. This ruling is expected to have a significant influence on federal laws pertaining to food and drug safety, as well as those related to farming and ranching practices.¹⁴⁹ By considerably limiting the power of federal agencies to interpret ambiguous laws, the *Loper Bright* ruling enables farmers to more easily contest regulations they perceive as unjust or

143. 42 U.S.C. § 7607(b)(1).

144. See, e.g., *Honeywell Int’l., Inc. v. Env’t Prot. Agency*, 705 F.3d 470, 472–73 (D.C. Cir. 2013).

145. *The Supreme Court’s Double Hammer to Agencies: Loper Bright and Corner Post Set New Precedents for Challenging Federal Agency Action*, CROWELL (June 11, 2024), <https://www.crowell.com/en/insights/client-alerts/the-supreme-courts-double-hammer-to-agencies-loper-bright-and-corner-post-set-new-precedents-for-challenging-federal-agency-action> [https://perma.cc/5Z4Z-XZ48].

146. BENJAMIN M. BARCZEWSKI & JONATHAN M. GAFFNEY, CONG. RSCH. SERV., LSB11197, *CORNER POST AND THE STATUTE OF LIMITATIONS FOR ADMINISTRATIVE PROCEDURE ACT CLAIMS 1* (2024).

147. Gigounas et al., *supra* note 129.

148. *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

149. Eric Sfiligoj, *How Will the Chevron Ruling Impact Agriculture?*, CROPLIFE (Sept. 17, 2024), <https://www.croplife.com/management/legislation/how-will-the-chevron-ruling-impact-agriculture/> [https://perma.cc/JY8S-RRRZ].

excessively burdensome, especially concerning land use and environmental regulations that directly affect their operations.¹⁵⁰ Ultimately, *Loper Bright* provides farmers greater leverage in disputes with federal agencies regarding legal interpretations. Because of this, many groups believe that the outcome of *Loper Bright* will positively affect the agricultural community, as it ultimately protects the livelihoods of farmers and ranchers from excessive regulatory burdens.¹⁵¹

X. SOME THINGS NEVER CHANGE

While *Loper Bright* is expected to impact the Food and Drug Administration (FDA) and USDA in several respects, it is essential to note that a significant aspect of these agencies' regulatory agendas is likely to remain unchanged.¹⁵² The *Loper Bright* ruling directly addresses notice-and-comment rulemaking.¹⁵³ Regulations enacted by agencies through this process will no longer be afforded the deference traditionally granted under *Chevron*.¹⁵⁴ However, a key component of the FDA and USDA's regulatory agendas is guidance documents, which were never governed under *Chevron*.¹⁵⁵ Guidance documents offer the FDA or USDA's interpretation of statutory or regulatory requirements, but are non-binding.¹⁵⁶ In the first half of 2024, the FDA published more than 100 guidance documents, while it issued or amended fewer than 30 notice-and-comment rules during the same period.¹⁵⁷ Following the departure from *Chevron*, the FDA may issue more guidance documents rather than pursuing more formal notice-and-comment rule making. Stakeholders often adhere to guidance documents despite their non-binding nature, making this approach potentially preferable for the FDA.¹⁵⁸ This strategy could help agencies avoid the more stringent judicial scrutiny imposed on

150. Klein, *supra* note 28.

151. *American Agri-Women Applaud Supreme Court's Landmark Decision in Loper Bright v. Raimondo*, AM. AGRI-WOMEN (July 2, 2024), <https://www.americanagriwomen.org/post/american-agri-women-applaud-supreme-court-s-landmark-decision-in-loper-bright-v-raimondo> [<https://perma.cc/RE9B-LXG8>].

152. *The Potential Implications of Loper Bright for FDA and FDA-Regulated Industries*, SIDLEY (June 28, 2024), <https://www.sidley.com/en/insights/newsupdates/2024/06/the-potential-implications-of-loper-bright-for-fda-and-fda-regulated-industries> [<https://perma.cc/GVY6-L8A8>].

153. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 405 (2024).

154. Nathan A. Beaver, *FDA: The Effects of Loper on the Regulatory Agenda*, FOLEY & LARDNER LLP (Aug. 1, 2024), <https://www.foley.com/insights/publications/2024/08/fda-effects-loper-regulatory-agenda/> [<https://perma.cc/4K4W-W3PQ>].

155. *Id.*

156. Beaver, *supra* note 154.

157. *Id.*

158. *Id.*

notice-and-comment rulemaking under *Loper Bright*.¹⁵⁹ Additionally, since compliance with guidance documents is voluntary, the FDA's enforcement mechanisms may be less affected than situations involving formal regulations.¹⁶⁰

Furthermore, the changes brought about by *Loper Bright* may not be as pronounced within these areas due to the diminished reliance on *Chevron* by the courts. Before *Loper Bright*, the Supreme Court was increasingly reluctant to employ *Chevron* in cases involving statutory interpretation related to the FDA and USDA.¹⁶¹ For instance, in two 2022 cases concerning the FDA, although *Chevron* was frequently referenced during oral arguments, the Supreme Court resolved the statutory interpretation issues without mentioning *Chevron*.¹⁶² Likewise, lower courts have followed this trend.¹⁶³

XI. A BRIGHT FUTURE UNDER *LOPER BRIGHT* FOR THE FDA & USDA

While large parts of these agencies' agendas are unlikely to change, there are several changes *Loper Bright* will have on the operational frameworks of the FDA and USDA that will impact American food and farmers. Previously, under *Chevron*, the FDA and USDA enjoyed considerable leeway in forming policies where Congress had not specified its intent or left gaps in legislation.¹⁶⁴ This situation was frequent due to the extensive regulatory scope of the FDA and USDA and the limited statutes governing them.

The *Loper Bright* ruling emphasized that the APA encapsulates the "elemental proposition reflected by judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment."¹⁶⁵ The Court clarified that statutes must possess a definitive, singular best meaning, stating, "if [an interpretation] is not the best, it is not permissible."¹⁶⁶ Consequently, courts will likely adopt a more scrutinizing approach towards the FDA and USDA decision-making processes, particularly when the agencies' statutory

159. *Id.*

160. *Id.*

161. *The Potential Implications of Loper Bright for FDA and FDA-Regulated Industries*, *supra* note 152.

162. *See* *Am. Hosp. Ass'n v. Becerra*, 596 U.S. 724, 739 (2022); *Becerra v. Empire Health Found.*, 597 U.S. 424, 445 (2022).

163. *The Potential Implications of Loper Bright for FDA and FDA-Regulated Industries*, *supra* note 152.

164. *Loper Bright's Implications for the Food and Drug Administration and Regulated Industry*, *supra* note 56.

165. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 392 (2024).

166. *Id.* at 400.

interpretations hinge on navigating complex legal questions rather than merely addressing definitions of scientific terms.¹⁶⁷

Next, considering the implications of *Loper Bright*, FDA and USDA regulations may face more challenges from more robust opponents.¹⁶⁸ The removal of *Chevron* allows regulated companies to contest unfavorable and burdensome rules more successfully.¹⁶⁹ Specifically, actions taken by these agencies that involve legal or mixed questions of law and scientific or technical facts may be reassessed without the customary deference to agency interpretations.¹⁷⁰ Courts have favored the FDA and USDA for the past four decades.¹⁷¹ For example, two years after *Chevron*, the Supreme Court reversed the D.C. Circuit to support the FDA's interpretation of a statutory provision on adulterated foods.¹⁷² More recently, the Southern District of New York dismissed a challenge to the FDA's generally-regarded-as-safe (GRAS) rule under *Chevron* step two.¹⁷³ Given judges' increased influence in making these determinations, legal challenges may be more likely to succeed under *Loper Bright*. Potential future litigation involving the FDA and USDA will likely encompass inquiries into: whether an ingredient is carcinogenic; whether an applicant has submitted complete reports regarding the safety of a food additive or drug; and whether a food product is considered "adulterated" under existing laws.¹⁷⁴ Next, it is essential to note that factual determinations may still serve as valuable guidance for the courts, and agencies' conclusions will not be ignored or entirely disregarded within this updated legal framework.¹⁷⁵

Next, under *Loper Bright*, farmers may face less bureaucratic red tape from federal agencies, but possibly more in-court litigation with an equal "playing field."¹⁷⁶ For example, *Loper Bright* has already reopened a federal dispute

167. *The Potential Implications of Loper Bright for FDA and FDA-Regulated Industries*, *supra* note 152.

168. *Id.*

169. *Id.*

170. *Id.*

171. Liam Bendicksen, Aaron S. Kesselheim & C. Joseph Ross Daval, *FDA and Chevron Deference: A Case Review*, 78 FOOD AND DRUG L.J. 371, 371 (2023).

172. *See Young v. Cmty. Nutrition Inst.*, 476 U.S. 974, 980–82 (1986).

173. *Ctr. for Food Safety v. Becerra*, 565 F. Supp. 3d 519, 535–39 (S.D.N.Y. 2021).

174. *See The Potential Implications of Loper Bright for FDA and FDA-Regulated Industries*, *supra* note 152.

175. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 402 (2024).

176. Varu Chilakamarri et al., *The End of Chevron Deference: What the Supreme Court's Ruling in Loper Bright Means for the Regulated Community*, K&L GATES (June 28, 2024), <https://www.klgates.com/The-End-of-Chevron-Deference-What-the-Supreme-Courts-Ruling->

regarding wetland determinations between a farmer in South Dakota and the USDA's NRCS.¹⁷⁷ The USDA had determined that a water pool on the farmer's property qualified as a "wetland" under 16 U.S.C. § 3822 (the Swampbuster Act), and therefore disallowed him from farming the land.¹⁷⁸ When the farmer first challenged the USDA's determination, the court deferred to the USDA's "expertise" and upheld their decision.¹⁷⁹ Additional examples of FDA and USDA rule-makings that may be susceptible to future litigation under *Loper Bright* include: challenges to the FDA's market exclusivity determinations; the classification and approval of FDA-regulated products and substances (including those that are already approved); front-of-pack food labeling; Delaney clause determinations; the declaration of E. coli O157:H7 as an adulterant in ground beef; interpretations of "unfair practices" under the Packers and Stockyards Act; reconsideration of federal crop insurance regulations; marijuana rescheduling; and numerous other issues.¹⁸⁰

Loper Bright limits the power of federal agencies and will likely lower bureaucratic obstacles encountered by those in the agricultural industry.¹⁸¹ Regulations related to food and drug safety and environmental and animal welfare standards will now be more challenging to enforce and implement.¹⁸² This may result in decreased compliance costs and fewer and stronger legal disputes with

in-Loper-Bright-Means-for-the-Regulated-Community-6-28-2024 [<https://perma.cc/YWT6-3KMK>].

177. John Hult, *Ruling That Dilutes Regulatory Power Could Ripple Through Farm and Ranch Country for Years* (July 3, 2024, at 18:36 CT), <https://southdakotasearchlight.com/2024/07/03/ruling-that-dilutes-regulatory-power-could-ripple-through-farm-and-ranch-country-for-years/> [<https://perma.cc/PS2A-D7B9>].

178. *Foster v. U.S. Dept. of Agric.*, 68 F.4th 372, 375 (8th Cir. 2023), *vacated sub nom.*, *Foster v. Dep't of Agric.*, 144 S. Ct. 2707 (2024); 16 U.S.C. § 3822.

179. *Foster*, 68 F.4th at 378.

180. See *The Potential Implications of Loper Bright for FDA and FDA-Regulated Industries*, *supra* note 152; Tish Eggleston Pahl and Kyla S. Kaplan, *Loper Bright + Corner Post = Supreme Court Opinions and Their Impact on FDA- and USDA-Regulated Industries*, OLSSON FRANK WEEDA TERMAN MATZ PC (July 9, 2024), <https://ofwlaw.com/loper-bright-corner-post-supreme-court-opinions-and-their-impact-on-fda-and-usda-regulated-industries/> [<https://perma.cc/5F37-SFU7>].

181. Ben Parker, *Supreme Court Overturns Chevron Deference, Reduces Federal Agencies' Authority*, GA. FARM BUREAU (Sept. 9, 2024, at 3:12 CT), <https://www.gfb.org/news/gfb-news-magazine/post/supreme-court-overturns-chevron-deference-reduces-federal-agencies-authority> [<https://perma.cc/ZGQ9-G4G7>].

182. *Id.*

agencies overall.¹⁸³ Many agricultural organizations view this ruling as a victory against regulatory overreach.¹⁸⁴

XII. LOOKING FORWARD: WHAT IS NEXT FOR THE AGRICULTURAL REGULATORY LANDSCAPE AFTER *CHEVRON*?

The *Loper Bright* ruling has repositioned Congress as the primary authority in formulating policy, curbs the overreach of administrative agencies, and returns to the courts their constitutional responsibility of interpreting laws.¹⁸⁵ While some view this decision as advantageous, it has undeniably introduced increased uncertainty in the short term.¹⁸⁶ Supporters of *Loper Bright* argue the ruling will increase accountability and reduce the power of unelected bureaucrats.¹⁸⁷ Critics warn the decision could lead to legal and administrative turmoil, making it harder for agencies to respond to new challenges and implement regulations effectively.¹⁸⁸

In Justice Kagan's dissent, she warned that this ruling grants judges excessive control over regulatory matters traditionally managed by expert agencies.¹⁸⁹ One of the dissent's largest concerns was that unelected judges may lack the necessary expertise to interpret laws that involve specialized knowledge of policy or science.¹⁹⁰ The majority rejected this idea, stating that courts hold this knowledge and there is no reason to think Congress intended to transfer this authority to the Executive Branch.¹⁹¹ Finally, the majority noted how case law is filled with examples of courts adjudicating complex trials encompassing intricate

183. *Id.*

184. Steve Cabbage, *Ag's Big Break With Fishermen's Win at Supreme Court*, FARM J. AG WEB (Sept. 12, 2024, at 10:31 CT), <https://www.agweb.com/news/policy/politics/ags-big-break-fishermens-win-supreme-court> [<https://perma.cc/4QXV-YA57>].

185. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 402 (2024).

186. *The Potential Implications of Loper Bright for FDA and FDA-Regulated Industries*, *supra* note 152.

187. See, e.g., *Senator Ricketts' Weekly Column: Reining in the Power of Unelected Bureaucrats*, PETE RICKETTS (July 12, 2024), https://www.ricketts.senate.gov/weekly_column/senator-ricketts-weekly-column-reining-in-the-power-of-unelected-bureaucrats/ [<https://perma.cc/GEX7-QDZQ>].

188. Leonardo Cuello, *Loper Bright Decision Will Collapse on Itself, Policy Evidence is More Important than Ever Before in Driving Progress*, GEORGETOWN UNIV. MCCOURT SCH. OF PUB. POL'Y: CTR. FOR CHILD. & FAMS. (July 31, 2024), <https://ccf.georgetown.edu/2024/07/31/loper-bright-decision-will-collapse-on-itself-policy-evidence-is-more-important-than-ever-before-in-driving-progress/> [<https://perma.cc/BXU3-WXKB>].

189. *Loper Bright*, 603 U.S. at 450 (Kagan, J., dissenting).

190. *Id.* at 456.

191. *Id.* at 395 (majority opinion).

fields of expertise.¹⁹² Moreover, there is no evidence that unelected judges do any worse than unelected agency bureaucrats.¹⁹³ The rationale behind *Chevron* requires us to assume that impartial scientific expertise guides all agency decisions.¹⁹⁴ While agencies possess a level of scientific and technical knowledge that federal courts generally lack, the separation of powers weakens significantly when unelected bureaucrats under the guise of impartial expertise, receive unquestioned deference from the judiciary.¹⁹⁵ And under *Chevron*, individual rights and the courts' capacity to intervene were subject to the whims of bureaucratic discretion.¹⁹⁶

In closing, predicting what will transpire moving forward under *Loper Bright* is difficult. Nevertheless, as discussed throughout this Note, there will likely be several positive changes in the agricultural regulatory sphere in the coming years because of *Loper Bright*. Courts will assume a more prominent role in interpreting agricultural laws, which could contribute to a more stable regulatory environment in the long run. The *Loper Bright* decision will stand as a pivotal moment in American jurisprudence as it addresses and curbs the unchecked administrative overreach that persisted for decades and finally returns us to those Schoolhouse Rock basics.¹⁹⁷

192. *Id.* at 402.

193. Craig Orji & Jason Hayes, *Why All the Hysteria Over Supreme Court's Loper Bright Ruling?*, MACKINAC CTR. FOR PUB. POL'Y (July 19, 2024), <https://www.mackinac.org/blog/2024/why-all-the-hysteria-over-supreme-courts-loper-bright-ruling> [<https://perma.cc/CDH6-ZKDD>].

194. *Id.*

195. *Id.*

196. *Id.*

197. PLAYNOWPLAYL8TER, *supra* note 5.