American Academy of Environmental Engineers & Scientists

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We will begin our presentation in a few minutes…

Leadership and Excellence in Environmental Engineering and Science

ENSP 4000/6000

OUTLINE

SOURCES OF AMERICAN LAW

- I. "Primary" Sources
  - **A. U.S. Constitution**
    [A'. States' Constitutions]
  - Separation of Powers
  - Bill of Rights
  - **B. Federal Legislation (Statutes; United States Code)**
  - *[B'. States' Statutes]*
  - Legislative Process: Lobbying; Debate
  - Amendments; Repeal

- C. Regulatory Law ("Regulations promulgated thereunder")
  - Enabling Legislation
  - Legal Authority of Regulatory Agency, delegated from Chief Executive to Agency
    - Agency Rulemaking
    - Notification Requirements
    - Recordkeeping Requirements
  - Administrative Process and Procedure
    - Administrative Procedures Act (APA)
    - Constitutional Law (e.g., Commerce Clause, "Takings" Clause, Due Process)
    - Agency Rules / Regulations (Agency Rulemaking)
    - Investigative Powers
    - Enforcement
    - Adjudication (ALJ Proceedings)
    - Judicial Oversight (Appeals Process, into the Courts)

- D. Case Law (Judicial Review, Court-Made Law)
  - Common Law
    - Civil Law
    - Criminal Law
  - Cases brought under Statutes

- II. "Secondary" Sources
  - Legal Scholarship
  - Journalism
    - THE END

Business and Economics Journalism, Focus on Climate Crisis

- Bloomberg Business Week, Bloomberg Green

- Forbes

- Marketplace (American Public Media), Marketplace Morning Edition

  - Marketplace Podcast Series *How We Survive,* focused on Climate Change

    - Season 7, Episode 4: *The Climate Crisis is an Economic Crisis*, with hosts Amy Scott and Kai Ryssdal, and science writer Elizabeth Kolbert. September 29, 2025.

    - Season 6, Episodes 1 – 6, September 11, 2024 – October 16, 2024. Host Kai Ryssdal. Focus is on the U.S. Department of Defense and its (then) recognition of climate change as a threat to national security. The Changing Threat, The Last Frontier, Embrace the (Energy) Suck, The Disappearing Islands, Wargames, The Uncertain Future

Judicial Review: Recommended Sources for Followup (Podcasts, Law and Policy, Economics and Policy)

- ## Strict Scrutiny (Crooked Media): U.S. Supreme Court (SCOTUS) and its "shadow docket" rulings

  - December 5, 2025: SCOTUS Greenlights Racial Gerrymandering in Texas

  - December 8, 2025: We Need To Talk About Trump's Maritime Murders

  - The Trump v. Slaughter Case, argued Monday, December 8

  - "for jurisprudence heads," a West Coast tour coming in March 2026: "This year, the courts aren't just shaping policy. They are throwing the Constitution into a blender and reshaping the entire future of the country. Focus on today's arguments in a case about the firing of the head of an "independent agency."

  - Independent federal agencies are agencies created by Congress that are outside the Cabinet structure (e.g., U.S. Forest Service, within the Department of Agriculture.) Until today's challenge, these agencies were designed to operate outside of the direct control of the President, ensuring less political interference in their functions.

Independent Agencies

- The six U.S. independent agencies are
  - Commodity Futures Trading Commission
  - Consumer Financial Protection Bureau
  - Federal Communications Commission
  - Consumer Product Safety Commission
  - Federal Deposit Insurance Corporation
  - Environmental Protection Agency

  Other government bodies also designed to operate independently of political interference and with specific mandates (e.g., administration, regulation) include NASA, SEC, the Federal Reserve, and the Social Security Administration.

The Trump v. Slaughter Case, in Brief

- As stated in the U.S.S.Ct. ruling on September 22, 2025, on the "emergency docket," the Court granted the President's request to stay the July 17, 2025 of the U.S. District Court for the District of Columbia, that granted relief to the petitioner Rebecca Kelley Slaughter, formerly of the Federal Trade Commission (FTC). Monday's oral arguments were made to the Court for a decision on the legal questions.

  - Questions presented: (1) Whether the statutory removal protections for members of the Federal Trade Commission violate the separation of powers, and, if so, whether *Humphrey's Executor v. United States,* 295 U.S. 602 (1935), should be overruled. And (2) Whether a federal court may prevent a person's removal from public office, either through relief at equity or at law.

Justice Kagan's Dissent from the grant of the application for stay

- Justice Kagan was joined in her dissent by Justices Sotomayor and Jackson.

  - "On top of granting certiorari before judgment in this case, the Court today issues a stay [of the lower court's order] enabling the President to immediately discharge, without any cause, a member of the Federal Trade Commission (FTC). That stay, granted on our emergency docket, is just the latest in a series. … " (citations omitted)

  - "Under the relevant statutes, the entities just listed [NLRB case, FTC case] are 'classic independent agenc[ies]" – "'multi-member bipartisan commission[s]' whose members serve staggered terms and cannot be removed except for good reason." (citation omitted). Yet the majority, stay order by stay order, has handed full control of all those agencies to the President. He may now remove – so says the majority, though Congress said differently – any member he wishes, for any reason or no reason at all. And he may thereby extinguish the agencies' bipartisanship and independence." … Our emergency docket should never be used, as it has been this year, to permit what our own precedent bars. Still more, it should not be used, as it also has been, to transfer government authority from Congress to the President, and thus to reshape the Nation's separation of powers."

Monday, December 8, Headlines

- BBC: US Supreme Court appears poised to expand Trump['s power to fire federal officials

- SCOTUSblog: Court seems likely to side with Trump on president's power to fire FTC commissioner

- Fox News: SCOTUS poised to side with Trump on FTC firing – a showdown that could topple 90-year-old precedent

- HuffPost: The Supreme Court is Going to Slaughter Independent Agencies

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SOURCES OF ADMINISTRATIVE LAW

AND SELECTED TOPICS

Government Regulation: Administrative Law

- "American government, whether federal, state, or local, is characterized by administrative agencies." *

- Congressional creation of federal administrative agencies
  - U.S. Constitution, Article I, Section 1: All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.
  - Article I, Section 8, Clause 18: [The Congress shall have the Power …] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

- Presidential creation of federal administrative agencies
  - Article II, Section 1: The executive Power shall be vested in a President of the United States of America.

Congress: the Delegation of Legislative Power

- The Congressional power to delegate its oversight to an agency extends to a delegation of its rulemaking authority.

- Enabling legislation specifies the name, the composition, and the powers of the agency being created.

- The "necessary and proper clause" has been construed by the courts as the power to establish, by legislation, administrative agencies to oversee the execution, or implementation, of laws on behalf of Congress.

  - For example, if Congress enacts legislation (the National Environmental Policy Act of 1969, NEPA) to establish a National Environmental Policy under the general authority to "lay and collect Taxes … to pay the Debts and provide for the general Welfare of the United States," it can create a Council on Environmental Quality (CEQ) within the Executive Office of the President to oversee NEPA implementation.

The President and Agency Creation

- The President, as Chief Executive, can create an administrative agency by rearranging divisions and functions of existing agencies.

  - For example, in 1970 President Nixon created the Environmental Protection Agency (EPA) by combining divisions and functions of agencies that administered programs with human health and environmental quality as their focus. The EPA coordinates federal environmental responsibilities.

Administrative Agencies: The Administrative Procedure Act*
Executive, Legislative, and Judicial Powers

- Executive Functions: Agency Adjudication

  - Recordkeeping Requirements
  - Investigative Powers, e.g., information gathering for compliance monitoring
  - Prosecutorial Powers, where violations of regulations or permits are cited
  - Agency Notice of Violations (NOV) and Issuance of Complaint
  - Complaints Brought by Private Citizens and Organizations and Prosecuted by the Agency
  - Administrative Law Judge (ALJ) Trial-Type Proceedings

- Legislative Functions: Agency Rulemaking

  - "Legislative" Rules (Regulations): Constitutionally Valid; Valid under the Delegation Doctrine; Consistent with the Enabling Legislation; Compliant with the Administrative Procedure Act (APA)
  - Procedural Rules: under the APA, Informal Rulemaking; Formal Rulemaking; and Exempted Rulemaking
  - "Interpretive" Rules: Policy "Guidance," setting forth Agency Interpretations of Statutes and Enforcement Policies; Not Binding on the Courts
  - Proposed Rules and Final Rules, after Notice and Comment and/or a Public Hearing

Administrative Agencies: Administrative Activities

- Providing Information to Regulated Entities and to the General Public
  - Web Based Compliance Assistance Centers
  - Hotlines
  - Seminars
  - Publications

- Advising

- Information Gathering (Conducting Research)

- Issuing Permits

- Managing Government Property

Presidential Executive Orders

- https://duckduckgo.com/?q=schoolhouse+rock+i%27m+just+a+bill+snl&iar=videos&t=ffab&iai=https%3A%2F%2Fwww.youtube.com%2Fwatch%3Fv%3DDJUDSeb2zHQ0

- Schoolhouse Rock "I'm Just a Bill" Saturday Night Live version

The Chevron Deference Doctrine

- The Supreme Court made a major change to its approach to statutory construction in the landmark 1984 decision, *Chevron v. Natural Resources Defense Council,* 467 U.S. 837 (1984). "Prior to *Chevron,* judicial review of (challenged) agency constructions of the statutes they implement was characterized by pervasive inconsistency and unpredictability." *

- "In reviewing agency actions, courts must make sure that regulations are consistent with the Congressional legislation that the regulations implement."**

The *"Chevron* Two-Step"

- Step One:

- In *Chevron,* the Court held that where statutory language is clear, or Congress' intention is clear, courts must determine whether the agency's action is consistent with the unambiguous Congressional mandate. The court's judgment is independent, with no "deference" to an agency's interpretation provided that that interpretation was a "permissible construction of the statute."

Chevron Two-Step: Step Two

- Where the court determines that Congress has not directly addressed the precise question at issue, the question becomes whether the agency's interpretation is "based on a *permissible* construction of the statute." It must be "reasonable" and not "arbitrary, capricious, or an abuse of discretion."

- "This highly deferential test requires a court to uphold any reasonable agency construction of an ambiguous agency-administered statute."*

Chevron Deference: The Rationale

- 1. All agency actions are authorized by Congress. Agency personnel are experts in what they do. They're there to execute the Congressional mandates. Judicial review should be "deferential" to (superior) agency expertise.

- 2. From the *Loper Bright* dissenting opinion:

  > **Justice Elena Kagan: "It's best to defer to people who do know, who have had long experience on the ground, who have seen a thousand of these kinds of situations. And, you know, judges should know what they don't know."**

3. Unelected judges should not decide policy. Policy making belongs with politically accountable executive branch agencies.

Loper Bright Enterprises, Inc. v. Gina Raimondo,

603 U.S. 369 (June 28, 2024)

- The Supreme Court Delivers a Historic Victory Overruling the Chevron Doctrine

- LOPER BRIGHT ENTERPRISES ET AL. *v.* RAIMONDO, SECRETARY OF COMMERCE, ET AL.
- CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

  - No. 22–451. Argued January 17, 2024—Decided June 28, 2024*

- The Court granted certiorari in these cases limited to the question whether *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, should be overruled or clarified. Under the *Chevron* doctrine, courts have sometimes been required to defer to "permissible" agency interpretations of the statutes those agencies administer—even when a reviewing court reads the statute differently. *Id.*, at

- 843. In each case below, the reviewing courts applied *Chevron*'s framework to resolve in favor of the Government challenges by petitioners to a rule promulgated by the National Marine Fisheries Service pursuant to the Magnuson-Stevens Act, 16 U. S. C. §1801 *et seq.*, which incorporates the Administrative Procedure Act (APA), 5 U. S. C. §551 *et seq.*

- *Held*: The Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous; *Chevron* is overruled. Pp. 7–35.

- (a) Article III of the Constitution assigns to the Federal Judiciary the responsibility and power to adjudicate "Cases" and "Controversies"—concrete disputes with consequences for the parties involved. The Framers appreciated that the laws judges would necessarily apply in resolving those disputes would not always be clear, but envisioned

- ———————— *Together with No. 22–1219, *Relentless, Inc.*, et al. v. *Department of Commerce, et al.*, on certiorari to the United States Court of Appeals for the First Circuit.

Effect of Loper Bright on the Business Community*

- On June 28, 2024, the U.S. Supreme Court handed down its landmark decision in *Loper Bright Enterprises v. Raimondo,* one that Justice Elena Kagan in dissent predicted would "cause a massive shock to the legal system."

- Six months later, it is time to examine the ruling's aftershocks, watching closely to see if they eventually turn into broader legal and business trends.

- The Supreme Court's decision in *Loper* centered on the applicability of the Chevron doctrine, which had guided courts for nearly four decades. Under *Chevron*, courts deferred to reasonable agency interpretations of ambiguous statutes. In *Loper*, however, the Court ruled that such deference improperly expanded the power of administrative agencies beyond the scope of statutory authority granted by Congress.

Loper Bright Industries v. Raimondo, NPR, Planet Money, The Indicator

- *22-451 Loper Bright Enterprises v. Raimondo (06/28/2024)*
- Better than a lecture in the classroom: The NPR economics and business podcast *The Indicator*:
-
- **Goodbye, Chevron. Hello, lawsuits!**
- JULY 18, 20246:36 PM ET
- By
- [Adrian Ma](#)
- ,
- [Darian Woods](#)
- ,
- [Cooper Katz McKim](#)
- ,
- [Kate Concannon](#)
- 9-Minute Listen
- **[Download](#)**
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-

Loper Bright, quoting from Forbes

- On June 28, 2024, the U.S. Supreme Court handed down its landmark decision in *Loper Bright Enterprises v. Raimondo*, one that Justice Elena Kagan in dissent predicted would "cause a massive shock to the legal system."*

More from *The Indicator*

- **The conservative roots behind the Chevron doctrine**
- JULY 17, 20247:02 PM ET
- By
- [Darian Woods](#)
- ,
- [Adrian Ma](#)
- ,
- [Cooper Katz McKim](#)
- ,
- [Kate Concannon](#)
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Need a PDH Certificate?
Board Certified Individuals will be emailed a PDH Certificate for attending this event within the next week.

Questions?
Email Marisa Waterman at mwaterman@aaees.org with any questions you may have.

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