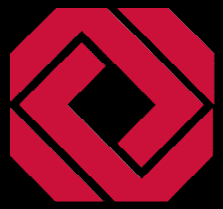

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The *Chevron* Two-Step: SCOTUS might turn the once judicial administrative "deference" dance craze into the macarena of administrative law.

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A wider lens on workplace law

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Our Topics For Today

- History of and growth of administrative agencies
- The more things change, the more they stay the same – pre-*Chevron*
- *Chevron U.S.A Inc. v. Natural Resources Defense Council, Inc., et al.*
- What is the Chevron deference?
- *Loper Bright Enterprises* case
- Future of judicial deference

History and growth of administrative agencies

Administrative law began with the Interstate Commerce Commission

1887

Field v. Clark – non-delegation doctrine

1892

J.W. Hampton v. United States – Congress can delegate legislative power as long as the statute included an "intelligible principle" to guide executive action

1928

New Deal expanded regulatory agencies

1930s

History and growth of administrative agencies

Schechter Poultry Corp. v. United States – the sick chicken case

1935

1946

Truman signed the Administrative Procedure Act into law

Freedom of Information Act – FOIA

1966

1975

Sunshine Act –amended the APA

Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., et al.

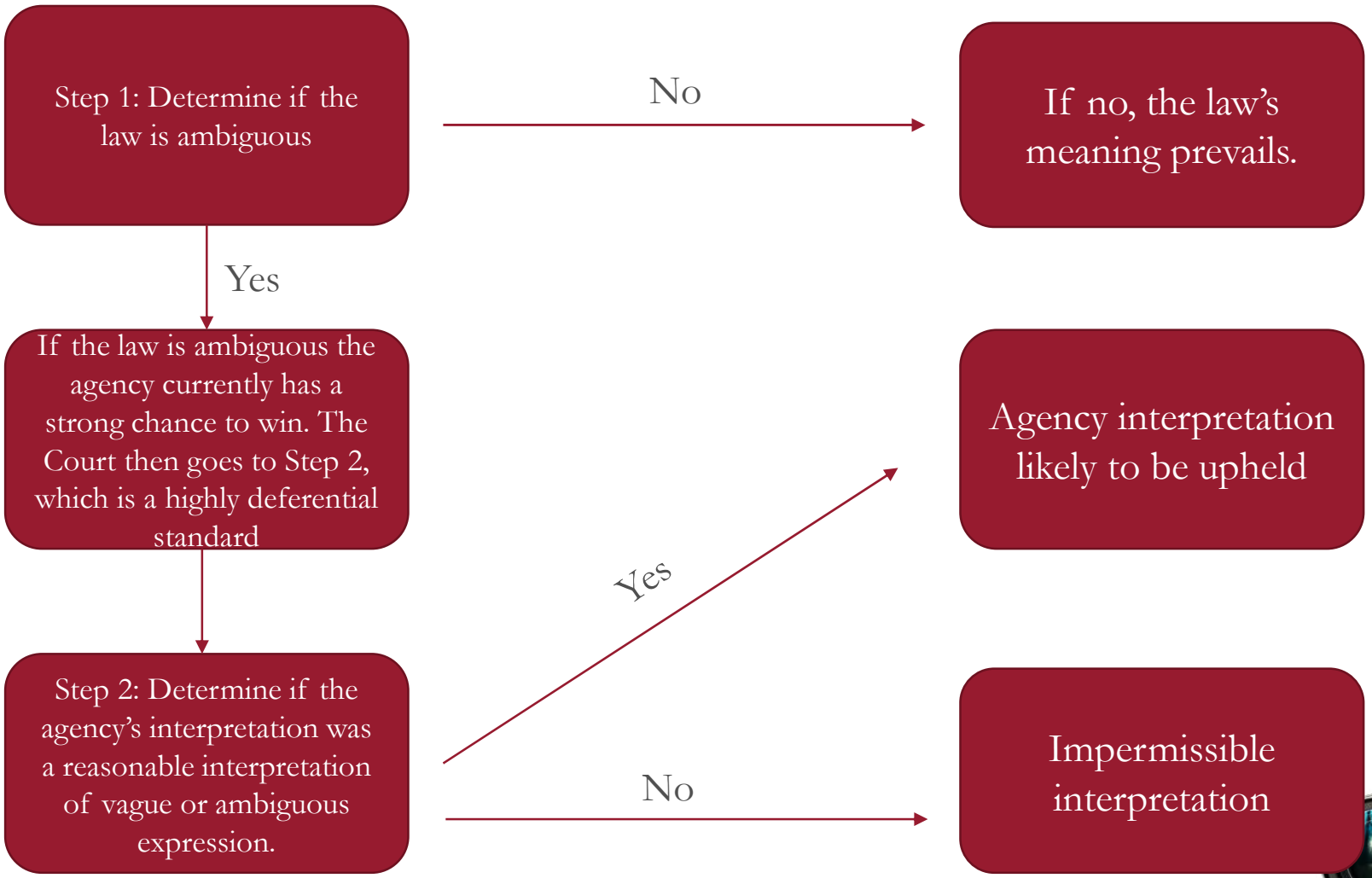
Chevron

V.

NRDC

Did the Clean Air Act permit the Environmental Protection Agency to define the term "stationary source" to mean whole industrial plants only?

The Chevron Deference Process*



* Not to be confused with the *Auer* deference, which only applies to an agency's interpretation of its own ambiguous regulation.

The *Chevron* two-step

What could have been…

West Virginia v. EPA (2022)

- Did the Environmental Protection Agency have the authority to regulate greenhouse gas emissions in virtually any industry, so long as it considered cost, non-air impacts, and energy requirements?
- Congress did not grant the Environmental Protection Agency in Section 111(d) of the Clean Air Act the authority to devise emissions caps based on the generation shifting approach the Agency took in the Clean Power Plan.
- Major Questions Doctrine invoked

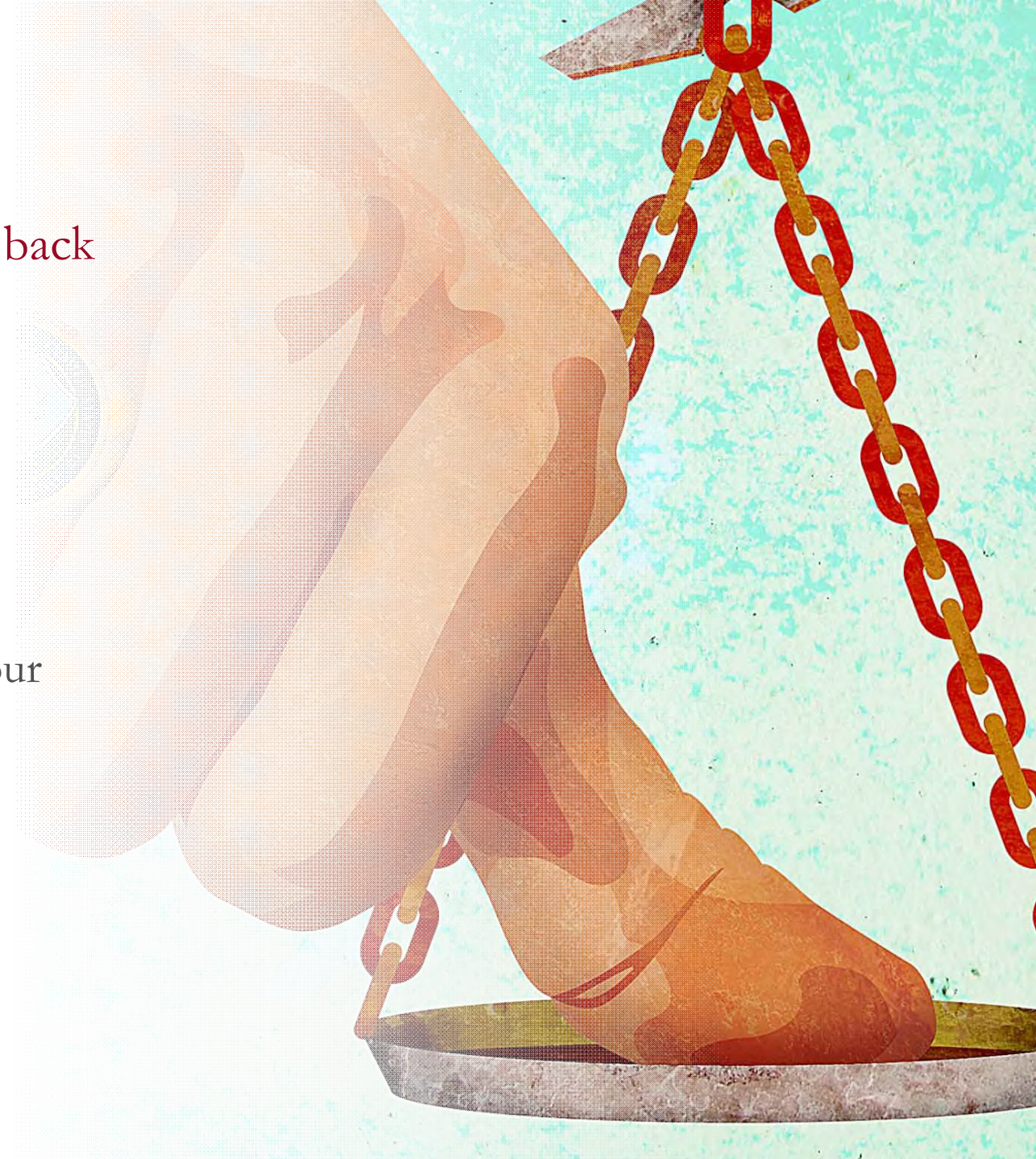
Loper Bright Enterprises

- Do the NOAA Fisheries have the authority to require commercial fishing companies to pay for the costs of placing the agency's observers on fishing vessels?

- Loper Bright specifically asked the Supreme Court to rule on two questions regarding *Chevron*.

The impact of scaling back or eliminating *Chevron*

- Potential to be one of the most important developments in administrative law in our legal careers
- Even playing field
- Agencies will be less likely to push the envelope



Pre-*Chevron* Standard

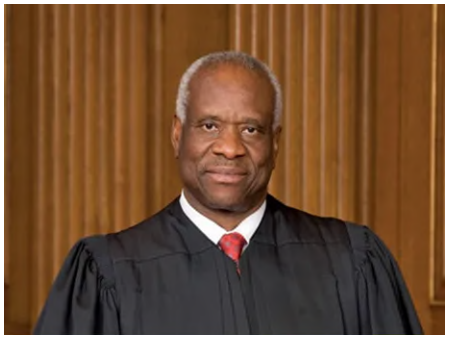
- *Webster v. Luther*, 163 U.S. 331 (1896) – "highest respect" standard
- *Bates & Guild Co. v. Payne*, 194 U.S. 106 (1904) – "strong presumption of correctness" standard
- *Burnet v. Chicago Portrait Co.*, 285 U.S. 1 (1932) – "great weight" standard

Pre-*Chevron* Standard

- *Fed. Sec. Adm'r v. Quaker Oats Co.*, 318 U.S. 218 (1943) – agencies should be allowed to exercise discretion and informed judgment
- *Billings v. Truesdell*, 321 U.S. 542 (1944) – "persuasive weight" standard
- *Motor Vehicle Manufacturers Association v. State Farm*, 463 U.S. 29 (1983) "hard look review"

How will each Justice rule?

Chief Justice Roberts



Justice Thomas

Justice Alito

Justice Sotomayor

Justice Kagan

Justice Gorsuch

Justice Kavanaugh

Justice Coney Barrett