

# Corporate Groups Want to Overtake *Chevron* Deference to Agencies, Amicus Briefs Show

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## ACKNOWLEDGMENTS

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## ABOUT PUBLIC CITIZEN

Public Citizen is a national nonprofit organization with more than 500,000 members and supporters. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues, including consumer rights in the marketplace, product safety, financial regulation, worker safety, safe and affordable health care, campaign finance reform and government ethics, fair trade, climate change, and corporate and government accountability. In addition, Public Citizen chairs the Coalition for Sensible Safeguards.

## ABOUT THE COALITION FOR SENSIBLE SAFEGUARDS

The Coalition for Sensible Safeguards is an alliance of more than 180 consumer, labor, scientific, research, faith, community, environmental, small business, good government, public health, and public interest groups — representing millions of Americans. We are

joined in the belief that our country's system of regulatory safeguards should secure our quality of life, pave the way for a sound economy, and benefit us all.

## Key Findings

Public Citizen and the Coalition for Sensible Safeguards analyzed the 81 amicus briefs, filed on behalf of 259 entities and individuals, that were submitted to the U.S. Supreme Court in two cases, *Loper Bright v. Raimondo* and *Relentless v. Department of Commerce*. We found that virtually all of the briefs submitted by corporate-friendly trade associations, politicians, and nonprofit organizations expressed strong opposition to *Chevron* deference and supported overturning the 40-year-old precedent, while most of the briefs submitted by progressive environmental groups, labor organizations, and nonprofit organizations expressed strong support for *Chevron* deference. Furthermore, the number of amici in opposition to *Chevron* deference outnumber the amici in support, at 176 and 83, respectively.

## Introduction

On January 17, 2024, the Supreme Court heard oral argument in *Loper Bright v. Raimondo* and *Relentless v. Department of Commerce*. The outcome of those two important cases could expand the power of judges by overruling a long-standing precedent concerning judicial deference to federal agency decisions. Specifically, in these cases, the Supreme Court is reconsidering a legal doctrine referred to as *Chevron* deference.

## What is *Chevron* Deference?

*Chevron* deference is a longstanding legal doctrine that instructs judges to defer to federal agencies in circumstances where Congress has delegated decisions to the agency, rather than to evaluate regulatory challenges based on the judges' policy preferences.

The doctrine is derived from a 40-year-old Supreme Court case called *Chevron v. Natural Resources Defense Council*, which established a framework for judicial review of agency regulations. Applying the doctrine in cases where a party has challenged agency action, judges first consider whether the statutory text on which the agency action is based is clear and, if it is not clear, they then defer to the agency's interpretation of the law if that interpretation is reasonable.

*Chevron* deference respects Congress's decision to delegate authority to an agency and the agencies' subject-matter expertise about the laws they implement. In the words of *Chevron*, "[j]udges are not experts in the field."<sup>1</sup> And as the Supreme Court unanimously recognized in that case, federal agencies, unlike federal judges, are accountable to the

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<sup>1</sup> *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 865 (1984).

public through the democratic process. In addition, unlike judges, agencies engage with the public and face congressional oversight.

Federal courts apply the *Chevron* deference doctrine through a two-step process. In cases challenging agency actions, a court first determines whether the statute that authorized the agency action provides a clear answer. If the law is clear, the court applies that clear meaning to determine whether the agency acted lawfully. If, however, the law is ambiguous or leaves a gap for the agency to fill, the court considers whether the agency's interpretation is reasonable. If the agency's interpretation is reasonable, the court defers to it, respecting the agency's expertise and Congress' decision to delegate to the agency the authority to implement the statute.

As the Supreme Court explained in its 1984 opinion, "When a challenge to an agency construction of a statutory provision, fairly conceptualized, really centers on the wisdom of the agency's policy, rather than whether it is a reasonable choice within a gap left open by Congress, the challenge must fail. In such a case, federal judges—who have no constituency—have a duty to respect legitimate policy choices made by those who do."<sup>2</sup>

## Impact of Overturning *Chevron*

Corporations and trade associations often challenge in court regulations issued to protect consumers, workers, the environment, and public health and safety. The reason is simple: operating with fewer regulations is very often cheaper for corporations, although the lower cost comes at the expense of the public interest—clear air, clean water, safe and effective drugs, occupational safety, etc.

*Chevron* deference, based on respect for agency expertise and Congress's decision to delegate authority, helps an agency in litigation brought to challenge an agency's regulation. In cases where courts apply *Chevron* deference, agencies generally win. Therefore, if the Supreme Court overturns or limits the *Chevron* doctrine, corporations expect to be more successful in striking down new regulations in court.

To be sure, progressive groups that favor *Chevron* deference also sometimes challenge agency regulations. After all, *Chevron* favors the agency, regardless of who the challenger is. Nonetheless, because corporations generally favor a weaker regulatory system and progressive groups generally favor a stronger regulatory system, the impact of eliminating or weakening *Chevron* deference is likely to favor the corporate side.

The effect on litigation outcomes is likely to be felt particularly in the lower courts, i.e., the federal district and appeals courts that hear most legal challenges, since few make their way to the Supreme Court. Lower courts are bound by Supreme Court precedent, and studies have shown that lower courts have frequently relied on *Chevron* deference to

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<sup>2</sup> *Id.* at 866.

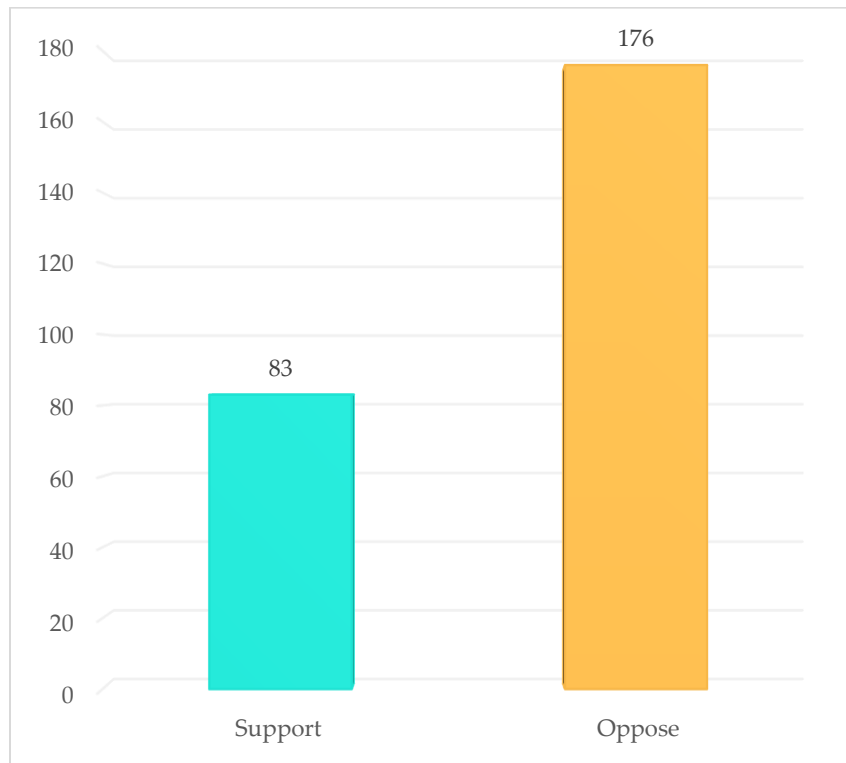
uphold regulations, even to a higher degree than the Supreme Court has. Corporations may also increase “judge-shopping,” that is, filing their cases in courts where they think the judges will be more likely to rule in their favor if the judges are no longer bound to defer to agencies’ reasonable interpretations.

In addition, abandoning or limiting *Chevron* deference could also affect agency rulemaking. In combination with other pending attacks on agency authority, eliminating deference may chill agencies from using the authority delegated to them by Congress to issue strong public protections.

## Corporate Interests Overwhelmingly Oppose *Chevron* Deference

In *Loper Bright Enterprises v. Raimondo* and *Relentless v. Department of Commerce*, 81 amicus briefs were filed on behalf of 259 unique entities: 176 opposing *Chevron* deference, and 83 supporting *Chevron* deference.

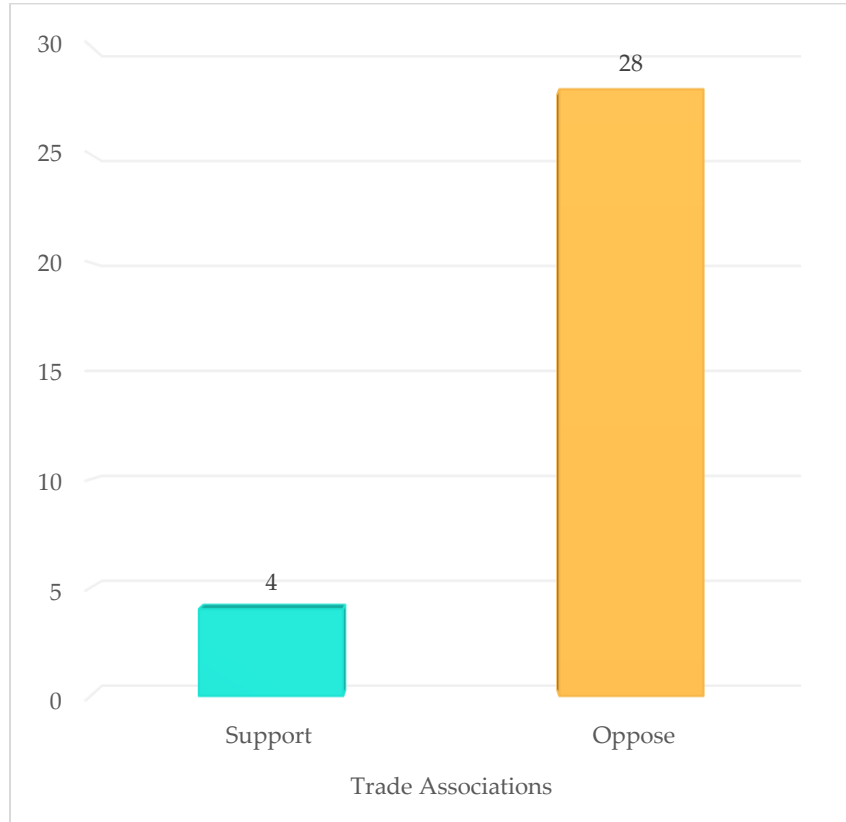
Figure 1 – Signers of Amicus Briefs  
(Support vs. Opposition for *Chevron* Deference)



Of the 32 trade associations that joined briefs, nearly 90 percent, 28 in total, submitted amicus briefs in opposition. The vast majority of these 28 trade associations represent the interests of the largest and most powerful corporations in America and include the U.S.

Chamber of Commerce<sup>3</sup> and the National Association of Home Builders<sup>4</sup> among others. [Figure 2]

Figure 2 – Trade Associations Signing Amicus Briefs (Support vs. Opposition for *Chevron* Deference)



The four trade associations writing in support of *Chevron* joined together in one amicus brief.<sup>5</sup> Three out of the four trade associations on the brief—American Sustainable Business Council (ASBC), Main Street Alliance, and South Carolina Small Business Chamber of Commerce—are members of the Coalition for Sensible Safeguards.<sup>6</sup>

Along with trade associations, many conservative, corporate-friendly politicians, think tanks, and legal organizations also joined briefs opposing *Chevron* deference. Among

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<sup>3</sup> Brief for The Chamber of Commerce of the United States of America as Amici Curiae Supporting Petitioners at 1, *Loper Bright Enterprises v. Raimondo*, No. 22-451 (U.S. July 24, 2023), available at <https://bit.ly/3tWoJgS>.

<sup>4</sup> Brief for Eight National Business Organizations as Amici Curiae Supporting Petitioners at 1, *Loper Bright Enterprises v. Raimondo*, No. 22-451 (U.S. July 2023), available at <https://bit.ly/3vMiHzM>.

<sup>5</sup> Brief for Small Business Associations as Amici Curiae Supporting Respondents at 1-2, *Loper Bright Enterprises v. Raimondo*, No. 22-451 (U.S. Sept. 2023), available at <https://bit.ly/427VvIg>.

<sup>6</sup> See *Leadership & Members*, Coalition for Sensible Safeguards, available at <https://sensiblesafeguards.org/members/> (last visited Jan. 23, 2024).

these briefs is one submitted by U.S. Senator Ted Cruz (R-Texas), House Speaker Rep. Mike Johnson (R-La.), and 34 other members of Congress.<sup>7</sup>

As illustrated in Table 1 below, all conservative nonprofits and legal organizations submitting amicus briefs opposed *Chevron* deference. All progressive nonprofits and legal organizations submitting amicus briefs supported *Chevron* deference. Law professors, a law-student group, and historians who joined amicus briefs in support of *Chevron* deference outnumbered those in opposition by 24 to 6.

Table 1 – *Chevron* Amicus Brief Signers by Type

Organization or Individual Type	Support	Oppose	Total
Federal and state government officials	26	65	91
Conservative nonprofits and legal organizations		68	68
Trade associations	4	28	32
Legal academics and experts	24	6	30
Progressive nonprofits and legal organizations	27		27
Former state court judges		6	6
Practicing physicians	2		2
New England commercial fishermen		2	2
Asset management company		1	1
<b>Total</b>	<b>83</b>	<b>176</b>	<b>259</b>

## Conclusion

In conclusion, opponents of a strong regulatory system are making a hard push for the Supreme Court to abandon *Chevron* deference. If they succeed, public health, safety, environmental, worker, and consumer protections will pay the price. If so, it will be important for Congress to pass the Stop Corporate Capture Act (H.R. 1507),<sup>8</sup> a bill that would codify *Chevron* deference.

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<sup>7</sup> Brief for U.S. Senator Ted Cruz, Congressman Mike Johnson, and 34 Other Members of Congress Supporting Petitioners at 1-2, *Loper Bright Enterprises v. Raimondo*, No. 22-451 (July 24, 2023), available at <https://bit.ly/3HvfCql>.

<sup>8</sup> H.R. 1507, 118th Cong. § 12 (2023).