



The End of the Dance? The *Chevron* Two-Step
and New Directions for Administrative Law

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Our Agenda

- Where is *Chevron* going—and who decides?
 - A new Justice and a new Administration
 - Where the Supreme Court has been taking *Chevron* and *Auer*
 - Where the Supreme Court might take *Chevron* and *Auer*
- Federal Administrative Law Update
 - Supreme Court
 - D.C. Circuit
 - Fifth Circuit

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Judicial Deference to Executive Interpretations:

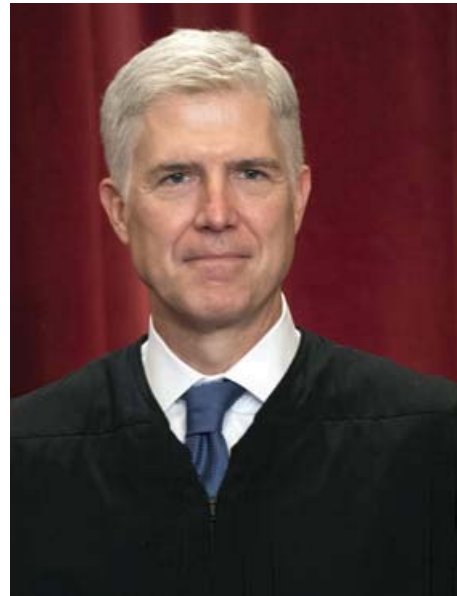
Where We've Been
and Where We Might Be Going

Chevron v. NRDC (1984)

The original “two step”—

- (1) “whether Congress has **directly spoken** to the precise question at issue. If the intent of Congress is clear, that is the end of the matter”
- (2) if not, “the question ... is whether the agency's answer is based on a **permissible construction** of the statute.”

Chevron v. NRDC (1984)



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More variations

- *Chevron* "Step Zero" (*Mead*) —should *Chevron* even apply?
 - "major questions" (*King v. Burwell*)
 - procedural impropriety (*Encinco Motorcars*)
 - but not jurisdictional questions (*City of Arlington v. FCC*)
- *Chevron* "Step 1.5" (*Prill*) —should Court defer to agency interpretation of ambiguous provision when agency didn't recognize the ambiguity?

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