JUNE 2025

UT LAW CLE

TEXAS Law
The University of Texas at Austin
School of Law

LOPER BRIGHT

PREPARING FOR THE UNCERTAIN

4:45 to 5:30 p.m.
Otis Hotel Austin and Live Webcast
Thursday, June 5, 2025

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Loper Bright – Preparing for the Uncertain

A. Changing the paradigm for interpretive tax guidance
   1. The Supreme Court's Loper Bright decision
   2. Memorial Hermann decision
   3. April 9, 2025 Presidential Memorandum

B. The Potential Impact on Regulatory Guidance and Considerations for Colleges & Universities

C. *Loper Bright* and the Potential Impact to Other Areas

D. Practical Considerations for Tax Return Positions and Tax Advice
   1. Ability to rely on various authorities for providing tax advice and taking positions on federal tax filings such as Forms 990, 990-T, and 4720
   2. Advising on tax positions

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Changing the Paradigm

The *Loper Bright* Decision

The Loper Bright Decision

Background

- On June 28, 2024, the United States Supreme Court released its opinion in Loper Bright Enterprises v. Raimondo, and Relentless, Inc. v. Department of Commerce
- Former Chevron two step test for the validity of federal regulations *(Chevron deference)*
  - Whether the regulation is inconsistent with the plain meaning of a statute, and
  - Whether the regulation reflects an unreasonable interpretation of the statute
- This decision overturned the Chevron doctrine that compelled federal courts to defer to a federal agency's reasonable interpretation of an ambiguous statute
- New *Loper Bright* Approach
  - Courts required to exercise their independent judgement 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

The Loper Bright Decision

Background

The majority opinion based its holding on the following assertions:

- The Supreme Court has not deferred to an agency interpretation under the *Chevron* doctrine since 2016, but lower courts continued to apply it since it remained on the books.
- *"Chevron has been a distraction from the question that matters: Does the statute authorize the challenged agency action?"*
- Experience has shown that the *Chevron* doctrine is unworkable. *"The defining feature of its framework is the identification of statutory ambiguity, but the concept of ambiguity has always evaded meaningful definition."*
- *"Chevron was a judicial invention that required judges to disregard their statutory duties."*

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The Loper Bright Decision

Background

- The *Loper Bright* decision could lead to a greater divergence of opinions among courts when they are confronted with challenges to regulatory validity.
- An executive agency must adopt the 'best' interpretation of a statute, rather than choose from a range of reasonable readings, which may limit the ability of a new administration to undo the regulatory actions of its predecessors.
- This development may pose compliance challenges or opportunities for taxpayers.

Title search: Loper Bright – Changing the Tax Paradigm

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