

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

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## Our Agenda

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- 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)

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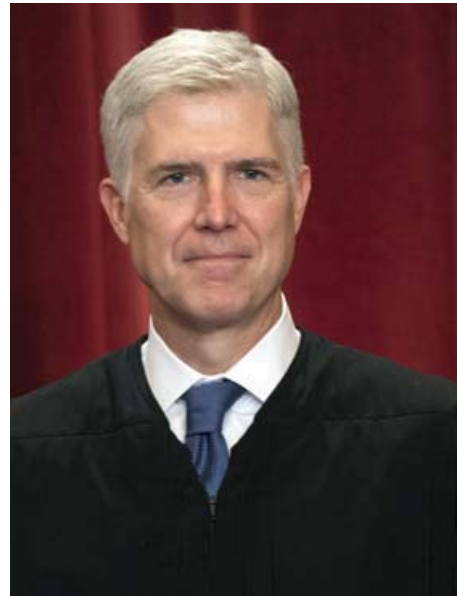
The original “two step”—

- (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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12<sup>th</sup> Annual Advanced Texas Administrative Law Seminar session

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