

After The Supreme Court's Overturn Of Chevron Deference, Anti-Regulation Groups And Business Organizations Are Preparing For Legal Challenges And Congressional Lobbying

SUMMARY:

In the cases of *Loper Bright* and *Relentless*, the Supreme Court overturned Chevron deference, holding that the courts cannot defer to agency interpretation of the law when a statute is ambiguous. The decision turns power over to the courts instead of federal agencies, and is expected to create more legal challenges that could revoke regulations and require Congress to write and amend statutes with specificity or face an overwhelming influx of legal challenges that could create chaos in the federal circuit courts. Experts have warned that businesses and industries could challenge a host of regulations. **Already, several anti-regulatory organizations are now preparing themselves for legal challenges and lobbying in a post-Chevron world.**

28 trade associations and corporate-friendly politicians, think tanks, and legal organizations [joined briefs](#) opposing Chevron deference. Some groups have [challenged](#) federal regulatory power— including the Chamber of Commerce challenging the Federal Trade Commission's ban of non-competes, and the e-cigarette industry challenging the Food And Drug Administration's ban of non-tobacco flavored e-cigarettes—and would stand to benefit from decreased regulation on their industries.

The **Balancing Act Project** (BAP) is a new national lobbying organization which says it was created to prepare Congress for the power vacuum that would be created when Chevron is overturned. The group is led by executives at the public relations firm Nahigian Strategies, including Trump's 2017 transition team leader Ken Nahigian. Nahigian [compared](#) the potential overturning of Chevron to the Dobbs decision, saying "nobody seemed to really think through what's next, because they're just looking for the outcome."

Nahigian claimed "we're not anti-regulation" and said potential regulatory changes were a "bipartisan thing." However, he claimed legislative leeway given to federal agencies created burdensome regulations that hurt small businesses and exacerbated inflation. BAP [touted](#) the opportunity for businesses affected by regulations to have a "stronger voice" post-Chevron, and acknowledged that because "you're going to have regulated entities that are completely mired in litigation" business leaders would "most likely lobby Congress" into action.

Pacific Legal Foundation (PLF) is a public interest law firm that "defends Americans against government overreach and abuse." The firm filed an amicus brief in the case challenging Chevron deference, and [claimed](#) overturning the precedent would restore constitutional separation of powers and give Americans the chance to push back when "agencies wield their power improperly."

PLF represented [multiple plaintiffs](#) suing the federal government over regulations, and in many cases, PLF claimed that overturning Chevron would give their clients legal ground to advance their cases. Some of the firm's lawsuits include a challenge to the Federal Trade Commission's non-compete ban, a lawsuit over the Department of Labor's minimum salary requirements, and multiple lawsuits challenging environmental regulations. PLF has [already asked](#) the Supreme Court to remand one case if the court overturns Chevron, and filed a motion to expedite in another.

Competitive Enterprise Institute (CEI) is an anti-regulation nonprofit funded by conservative activist Leonard Leo which aims to "reform America's unaccountable regulatory state." CEI has referred to regulations by federal agencies as "regulatory dark matter." In June 2024, two plaintiffs backed by CEI filed a lawsuit challenging the Department of Energy's authority to regulate water efficiency in certain consumer appliances. The case was filed in Judge Kacsmaryk's court in Northern District of Texas, a court notorious

for [judge shopping](#), and is the latest development in CEI's years-long challenge of federal regulation of appliances.

Americans For Prosperity is the Koch-funded, anti-regulatory group [behind the legal challenge](#) to Chevron deference. The group has vocally criticized a host of federal regulation, claiming that federal regulatory power creates overreach and inefficiency. **Americans For Prosperity is [supporting several anti-regulatory cases that cite the long-dormant nondelegation doctrine, which prevents Congress from delegating broad authority to agencies.](#)** In April 2024, they [filed](#) an amicus brief in an ongoing case challenging the Bureau of Land Management's ability to regulate behavior on federally owned land under the nondelegation doctrine, a legal doctrine that could be affected by the change in precedent. Americans For Prosperity also filed briefs in two other cases involving the nondelegation doctrine.

The expansion of the nondelegation doctrine in the future could be the next step in curtailing agency power post-Chevron.

The Supreme Court Overturned Chevron Deference And Will Likely Lead To Sweeping Legal Challenges Of Federal Regulations Across Industries

The Supreme Court Overturned Chevron Deference In Two Cases Challenging The Precedent

June 2024: The Supreme Court Ruled That The Courts May Not Defer To Agency Interpretation Of A Law Because The Statute Is Ambiguous. "Held: The Administrative Procedure Act requires courts to exercise their independent judgment 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; Chevron is overruled." [Loper Bright Enterprises et al. v. Raimondo, Secretary of Commerce, et al., Opinion, [6/28/24](#)]

- **Loper Bright And Relentless Were Decided Jointly.** "Together with No. 22–1219, Relentless, Inc., et al. v. Department of Commerce, et al., on certiorari to the United States Court of Appeals for the First Circuit." [Loper Bright Enterprises et al. v. Raimondo, Secretary of Commerce, et al., Opinion, [6/28/24](#)]

The Loper Bright Case Allows The Court To Reevaluate Chevron v. Natural Resources Defense Council, A Case That Set A Precedent For When Courts Should Defer To Federal Agencies To Interpret The Law. "Their action means they will reconsider a 1984 case – *Chevron v. Natural Resources Defense Council* – that sets forward factors to determine when courts should defer to a government agency's interpretation of the law." [CNN, [5/01/23](#)]

Relentless, Inc. v. The U.S. Department Of Commerce Challenges The Government's Authority To Require Fishermen To Pay For At-Sea Monitors. "The court announced 13 October that it would take up the case of *Relentless, Inc. v. the U.S. Department of Commerce*, a lawsuit filed by Atlantic herring fishermen in 2020 challenging the government's authority to require fishermen to pay for at-sea monitors on their vessels. The fishermen claim the monitors can cost as much as USD 700 (EUR 640) per day." [Seafood Source, [10/16/23](#)]

- **New York Times: Relentless Is "Almost Identical" To Loper Bright Enterprises v. Raimondo.** "The new case is almost identical to one the court agreed to hear in May, Loper Bright Enterprises v. Raimondo, No. 22-451. The court's usual practice when asked to hear a follow-on case concerning the same issues is to hold the new case until the earlier one is resolved and then return it to the lower courts for reconsideration in light of the ruling in the first one." [New York Times, [10/13/23](#)]

Center For American Progress: “It Seems That The Conservative Justices Will Likely Narrow Chevron; It Is Just A Question Of By How Much.” “At issue in both *Loper Bright v. Raimondo* and *Relentless v. Department of Commerce* is a challenge to a regulation created by the National Marine Fisheries Service, under the Magnuson-Stevens Fishery Conservation and Management Act, requiring commercial fishing vessels to pay for federal monitors who collect data to ensure that fisheries remain sustainable and viable for decades to come. Rather than address the narrow and technical question on this regulation, however, the Supreme Court opted instead to take up the broader and far more existentially threatening question of whether to completely do away with 40-year-old precedent known as Chevron deference. [...] Unfortunately, it seems that the conservative justices will likely narrow Chevron; it is just a question of by how much.” [Center For American Progress, [1/17/24](#)]

Overtuning Chevron Would Give Greater Power To Judges To Interpret Statutes And Create Uncertainty About Whether Congress Could Handle More Precise Legislation

American Enterprise Institute Op-Ed: Post-Chevron, “Courts Will Work Harder To Interpret Statutes With Judicial Tools Instead Of Judicial Deference.” “Perhaps that is the post-Chevron future. Courts will work harder to interpret statutes with judicial tools instead of judicial deference. Judges may still sometimes conclude that a given statute can reasonably be read more than one way, and that the agency’s view of the statute might deserve some weight. And that weight could depend significantly on whether it is the product of genuine agency expertise across multiple administrations, not just the latest administration’s new agenda and ambitions.” [Adam J. White - American Enterprise Institute, [5/1/24](#)]

Overtuning Chevron Would Lead To More Legal Challenges Revoking Regulations, Unless Congress Stepped In. “While the uncertainty would be bad for some businesses, the upshot of removing Chevron deference is that more legal challenges would lead to more revoked regulations, absent Congress stepping in to restore court-repealed rules or proactively clarify ambiguous statutes.” [Roll Call, [6/5/24](#)]

Federal Circuit Courts Could Create Chaos Through Conflicting Decisions, Unless Congress Writes Statutes And Amends Existing Laws With Specificity To Prevent Legal Challenges. “Experts generally agree that in the wake of Chevron’s demise, federal circuit courts could create a messy hodgepodge of conflicting decisions, with regulations upheld in some areas but overturned elsewhere. Such circuit splits normally get resolved by the Supreme Court, but the expected volume of regulatory challenges would likely overwhelm its docket. That chaos can be avoided, but only if Congress can write statutes, and amend those already on the books, with a level of specificity that forecloses the legal ambiguities that provide openings for lawsuits.” [Roll Call, [6/5/24](#)]

Overtuning Chevron Would Likely Prompt Legislation Challenging Regulations In Industries Including Banking, Manufacturing, And Telecom

Bloomberg: The Environmental Protection Agency’s Recent Regulation Of “Forever Chemicals” Would Likely Be Challenged. “The Environmental Protection Agency’s recent moves to regulate per- and polyfluorinated substances, or ‘forever chemicals,’ under the Safe Drinking Water Act and the Comprehensive Environmental Response, Compensation and Liability Act will likely be subject to litigation challenges, but we expect deference issues to weigh heavily on how those efforts are crafted — and possibly even shift outcomes.” [Bloomberg, [6/4/24](#)]

Bloomberg Law: If Chevron Was Diminished, Federal Bank Regulators Would Be Weakened And Face More Litigation Challenging Them. “If the standard is discarded—or even diminished—federal bank regulators, specifically the Office of the Comptroller of the Currency and the Board of Governors for the Federal Reserve, will be left weakened and exposed. We can, in turn, expect more litigation challenging the regulatory

and enforcement activities of the OCC and FRB—and, possibly, those of the Federal Deposit Insurance Corporation as well.” [Bloomberg Law, [7/5/23](#)]

Bloomberg: The Federal Communications Commission’s Regulations Over Telecom Would Likely Be Challenged. “The Federal Communications Commission’s effort to restore federal broadband regulation over AT&T, Charter, Comcast and others faces a perilous future without deference, and the Federal Trade Commission’s attempt to regulate ‘surveillance advertising’ by online platforms like Alphabet and Meta will struggle to survive in court.” [Bloomberg, [6/4/24](#)]

Dozens Of Corporate Interests Called For Chevron’s Overturn, And Now Would Stand To Benefit From Decreased Regulation On Their Industries

28 Trade Associations And Corporate-Friendly Politicians, Think Tanks, And Legal Organizations Joined Briefs Opposing 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 and the National Association of Home Builders among others. [...] Along with trade associations, many conservative, corporate-friendly politicians, think tanks, and legal organizations also joined briefs opposing Chevron deference.” [Public Citizen, “Corporate Groups Want To Overturn Chevron Deference To Agencies, Amicus Briefs Show,” [1/25/24](#)]

The Chamber Of Commerce Opposed Chevron Deference And Sued The Federal Trade Commission Over Their Non-Compete Ban, A Rule That Could Be At Risk Post-Chevron. “The U.S. Chamber of Commerce, which represents more than 300,000 businesses, has argued that Chevron deference has let Congress ‘outsource core policy decisions (particularly controversial ones) to agencies through broadly worded statutes.’ [...] The Chamber of Commerce sued the U.S. Federal Trade Commission to challenge a new rule barring noncompete clauses in employment contracts. Such rules ‘often raise major legal and policy questions on which Congress would be expected to have a view, without specific congressional authorization,’ it said. [...] That FTC rule and others could be at risk should the Supreme Court overhaul Chevron deference.” [Reuters, [6/11/24](#)]

- **The Chamber Of Commerce Said They Stood “Ready To Help Businesses Navigate This New Regulatory Terrain.”** “The Chamber stands ready to help businesses navigate this new regulatory terrain. After the Supreme Court issues its decision, we will work closely with members to assess the impact of the decision. Regardless of the outcome, the Chamber will continue to urge courts to faithfully interpret statutes that govern federal agencies and to ensure that federal agencies act in a reasonable and lawful manner.” [Chamber Of Commerce, [6/20/24](#)]

E-Cigarette Companies Opposed Chevron And Accused The Food And Drug Administration Of Overreaching Its Legal Authority By Banning All Non-Tobacco Flavored E-Cigarettes. “E-cigarette manufacturers, distributors and retailers want the Supreme court to rein in Chevron deference. They have accused the U.S. Food and Drug Administration of reaching ‘far beyond’ its legal authority to essentially ban all non-tobacco flavored e-cigarettes, which these companies say have been used by millions of addicted cigarette smokers to transition away from traditional cigarettes.” [Reuters, [6/11/24](#)]

The Balancing Act Project Is A New Lobbying Organization Preparing For A “Post-Chevron World” Where Businesses Affected By Regulatory Action Litigate Or Lobby Congress

The Balancing Act Project Is A New National Lobbying Organization Seeking To Reshape The Regulatory Environment After The Overturn Of Chevron

The Balancing Act Project Is A New National Lobbying Organization Seeking To Reshape The Regulatory Environment. “Maloy, and Utah’s other Republican House representatives, Blake Moore, John Curtis and Burgess Owens, headlined the event hosted by the Balancing Act Project, a new national lobbying organization that selected Utah as the location to launch its effort to reshape the country’s regulatory environment.” [DesertNews, [5/30/24](#)]

The Group Says It Was Created To Prepare Congress For The Power Vacuum That Would Be Created If Chevron Deference Is Overturned. “The nonpartisan, nonprofit organization says it was created to prepare Congress for the power vacuum that will be created if a 1984 decision that gives broad policymaking authority to unelected federal officials is repealed.” [DesertNews, [5/30/24](#)]

The Balancing Act Project Claimed They Advanced A National Conversation On The Need For Congress To Approve Significant Federal Agency Regulations. “The Balancing Act Project - or BAP - advances a national conversation centered on the need for Congress to provide final approval for significant federal agency regulations that impact American industries and their consumers; thereby returning the final say to the people and resetting the relationship between the branches of government.” [Balancing Act Project, accessed [6/24/24](#)]

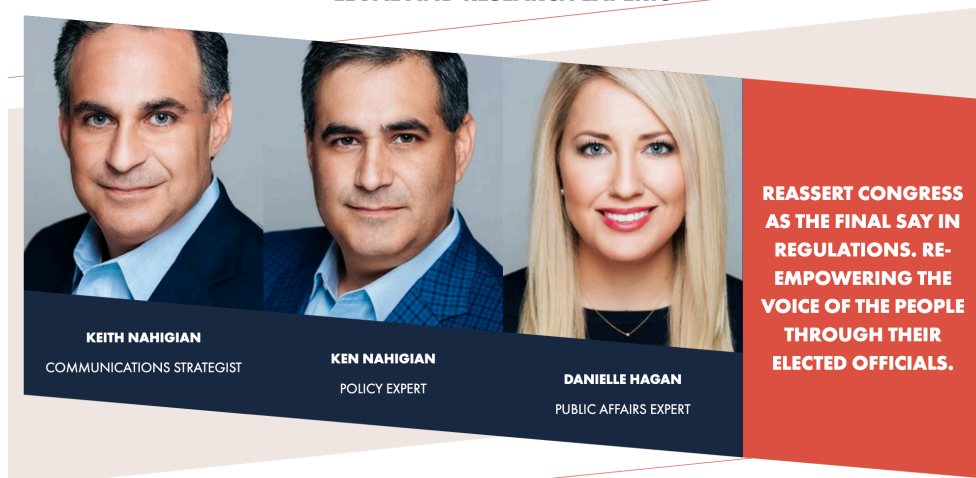
The Balancing Act Project Said They Supported Legislation That Would “Restore Equilibrium To The Regulatory Process By Ensuring The People’s Voice.” “The Balancing Act Project supports legislation that would restore equilibrium to the regulatory process by ensuring the People’s voice in the interpretation of major regulatory proposals. While the Congressional Review Act - CRA - currently provides a limited check on such proposals, the BAP aims to reset the relationship between the branches of government. This check on regulatory power would strike a balance between those accountable to the People, and the expertise of federal regulators.” [Balancing Act Project, accessed [6/24/24](#)]

The Balancing Act Project Claimed They Were The First “Unifying Organization” In “Rebalancing Reform.” “The BAP serves as a convener of disparate industry stakeholders and consumers to drive the message of rebalancing reform, and work to solve the problem. Until now, there has been no unifying organization designed to effectuate meaningful change. The BAP is led by top policy, communications, legal, and research experts who together will tell the full story of the problem and drive results.” [Balancing Act Project, accessed [6/24/24](#)]

The Balancing Act Project Is Run By The Leaders Of Nahigian Strategies

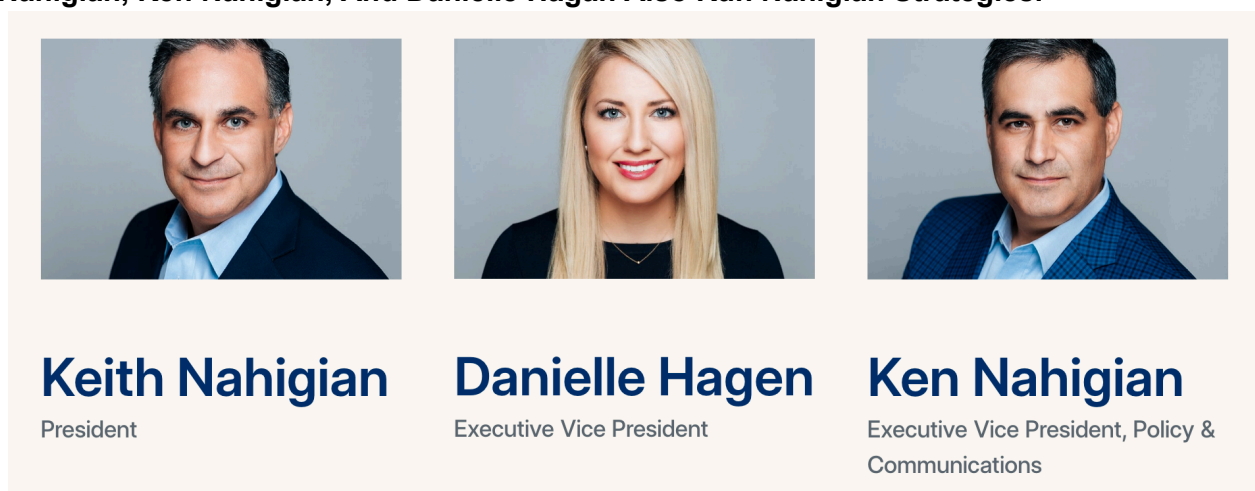
The Balancing Act Project Was Led By Keith Nahigian, Ken Nahigian, And Danielle Hagan.

**LED BY TOP POLICY, COMMUNICATION,
LEGAL AND RESEARCH EXPERTS**



[Balancing Act Project, accessed [6/24/24](#)]

Keith Nahigian, Ken Nahigian, And Danielle Hagan Also Run Nahigian Strategies.



[Nahigian Strategies, accessed [6/25/24](#)]

Keith Nahigian Founded Nahigian Strategies, A Public Relations Firm, In 2000. “In 2000, Keith started Nahigian Strategies to give growing organizations access to a wide range of public relations, media and creative solutions for companies and organizations ranging from small start-up businesses and nonprofits to multinational corporations. Keith believes that every organization has a story to tell. When the story is told well and strategically, that organization will be better equipped to reach its goals.” [Balancing Act Project, accessed [6/24/24](#)]

Ken Nahigian Led The Trump Transition Team And Keith Nahigian Worked For Multiple GOP Presidential Campaigns. “Nahigian Strategies is run by brothers Ken Nahigian — who led the Trump transition team in early 2017 — and Keith Nahigian, who has worked for multiple GOP presidential campaigns.” [POLITICO, [11/11/19](#)]

The Balancing Act Project’s Founder Compared Overturning Chevron To Overturning Dobbs And Said He Expected A Flood Of Litigation To Follow

Ken Nahigian Compared The Potential Overturning Of Chevron To The Dobbs Decision, Saying “Nobody Seemed To Really Think Through What’s Next.” “Nahigian compares the potential overturning of Chevron to the 2022 Dobbs v. Jackson Women’s Health Organization decision overturning Roe v. Wade when ‘nobody seemed to really think through what’s next, because they’re just looking for the outcome.’” [Managed Healthcare, [3/7/24](#)]

Ken Nahigian Said He Expected A Flood Of Litigation And Reopening Past Regulatory Decisions If Chevron Was Overturned. “He anticipates a flood of litigation if Chevron is overturned. A variety of healthcare organizations and interest groups, including the American Cancer Society, the American Academy of Pediatrics, the Leukemia & Lymphoma Society and the American Lung Association filed amicus briefs, asking the court to maintain the stability provided by the Chevron deference. Industries with regulatory environments rely on that regulatory certainty. ‘Anything creating uncertainty will be seen as unwelcome’ to them, says Nahigian. He anticipates that overturning Chevron could also reopen past regulator decisions to determine whether agencies exceeded their authority.” [Managed Healthcare, [3/7/24](#)]

The Balancing Act Project Claimed They Were Not “Anti-Regulation” But Touted The Ability Of Businesses Affected By Federal Regulation To Have A “Stronger Voice” Through Lobbying Congress

Ken Nahigian Said “We’re Not Anti-Regulation” And Claimed Regulatory Changes Were “A Bipartisan Thing.” “During a phone call earlier that week, Ken Nahigian said the mission was simply to get lawmakers talking about writing more precise laws, not necessarily to take a machete to the Code of Federal Regulations. ‘We’re not anti-regulation. Regulation is essential,’ he said. ‘We want to have a conversation about accountable [policymaking] and rulemaking.’ ‘If I’m a [Democratic] legislator, I’d want to maintain my statutory intent. And I’d also want to make sure conservative federal judges aren’t determining these issues,’ Nahigian said. ‘If you’re a Republican, you want small government, you want agency accountability, you want to maintain your congressional intent. So, I just feel like this is a bipartisan thing.’” [Roll Call, [6/5/24](#)]

Keith Nahigian Claimed That Legislative Leeway Given To Unaccountable Agencies Created Burdensome Regulation That Harmed Small Businesses And Exacerbated Inflation. “According to Nahigian, the legislative leeway given to unaccountable agencies has led to a burdensome body of regulation that harms small businesses, frustrates important projects and exacerbates inflation for America’s working people.” [DesertNews, [5/30/24](#)]

The Balancing Act Project Touted The Opportunity For Businesses Affected By Regulations To Have A “Stronger Voice” And Event Speakers Discussed The “Opportunity To Reshape The Entire Regulatory Process.” “Still, it’s clear that the Balancing Act Project sees the possibility for paring down the regulatory state. In advertising the event, the group wrote, ‘The potential reversal of Chevron deference could empower businesses affected by regulations to challenge decisions made by agencies, ultimately giving citizens and businesses a stronger voice through their elected representatives.’ And at the roundtable itself, speaker after speaker talked excitedly about how the decision could reduce federal oversight. ‘This is an opportunity to reshape the entire regulatory process in the United States, but we need Congress to act,’ said Utah Republican state Rep. Robert Spendlove, a senior economist at Zions Bank.” [Roll Call, [6/5/24](#)]

Ken Nahigian Acknowledged That “You’re Going To Have Regulated Entities That Are Completely Mired In Litigation” But Claimed Business Leaders Would Lobby Congress Into Action. “He thinks, however, that ending Chevron would force lawmakers to get into the nitty-gritty, if only because the business world would demand it. ‘You’re going to have regulated entities that are completely mired in litigation, and that’s going to create just a lot of uncertainty within our economy. And then you’re going to have those entities most likely lobbying Congress to try to correct that problem because it’s really slowing down their enterprise,’ he said. ‘I mean, follow the money, right?’” [Roll Call, [6/5/24](#)]

May 2024: The Balancing Act Project Hosted Its First Event About Federal Regulations After Chevron Is Overturned

May 30, 2024: The Balancing Act Project Hosted Its First Event With Utah Governor Spencer Cox To Discuss The Harms Of Regulation. “The Balancing Act Project will host Utah Governor Spencer Cox, Utah members of U.S. Congress and trade organizations for a discussion on the impacts of the current government imbalance between Congress and federal agencies in creating and enforcing regulations. The discussion will explore how increases in regulations are linked to Americans paying more for groceries, clothing, gas, and electricity; the government imbalance on behalf of affected industries and consumers, championing legislation to reassert Congress’ outlined role in regulatory frameworks; and re-empower the voice of the people through their elected officials.” [Balancing Act Project, accessed [6/24/24](#)]

- **Founder Keith Nahigian Said They Chose Utah To Launch Their Efforts Because Of The State’s Questioning Of Washington.** “Maloy, and Utah’s other Republican House representatives, Blake Moore, John Curtis and Burgess Owens, headlined the event hosted by the Balancing Act Project, a new national lobbying organization that selected Utah as the location to launch its effort to reshape the country’s regulatory environment. ‘We chose Utah because Utah has a tradition of questioning the one-size-fits-all approach from Washington,’ Balancing Act Project founder Keith Nahigian said.” [DesertNews, [5/30/24](#)]

The Balancing Act Project Called Utah A “Leading State In Regulatory Reform” And An “Example Of Rejecting Agency Deference.” “As a leading state in regulatory reform, Utah serves as an example of rejecting agency deference to ensure a fair and balanced judicial system. In federal and state courts across the country, Americans often face challenges when disputing executive agency decisions due to doctrines that require judges to defer to agency interpretations of the law. While the Supreme Court has been slow to end Chevron and Auer deference in the federal courts, state courts and legislators are taking action. Utah ended deference to state agencies and more will follow their lead.” [Balancing Act Project, accessed [6/24/24](#)]

- **February 2024: Utah’s Governor Signed The “Utah Constitutional Sovereignty Act” Which Established A Process To Overrule Federal Rules And Decisions.** “A bill recently signed into law in Utah sets up a process for the state to overrule or otherwise ignore federal rules and decisions, the latest move in a Republican-led push against what they see as federal overreach. The Utah bill, introduced as the ‘Utah Constitutional Sovereignty Act,’ was signed into law by Gov. Spencer Cox on January 31.” [CNN, [2/19/24](#)]
- **A Sponsor Of The Act Cited An EPA Regulation On Smog And Air Pollution As A Policy That Could Be Affected.** “Utah Sen. Scott Sandall, who sponsored the Sovereignty Act, said he hoped the bill spreads to other states. [...] Yet he had certain policies in mind. In particular, he mentioned a dispute with the Environmental Protection Agency’s ‘good neighbor’ rule, a regulation to cut down on smog and air pollution crossing state lines.” [CNN, [2/19/24](#)]

Event Participants Included Salt Lake Chamber, Utah Mining Association, Utah Food Industry Association, Utah Bankers Association, And Other Utah Business Groups.

PARTICIPANTS

Salt Lake Chamber
Utah Valley Chamber
Utah Mining Association
Utah Petroleum Association
Utah Food Industry Association
Utah Manufacturers Association
Utah's Credit Unions
Utah Bankers Association

[Balancing Act Project, accessed [6/24/24](#)]

July 2024: The Balancing Act Project Was Scheduled To Host Its Second Event To “Imagine A Post-Chevron World”

July 30, 2024: The Balancing Act Project Was Scheduled To Host Its Second Event To “Imagine A Post-Chevron World.” “Any day now, the Supreme Court is expected to release an opinion on the constitutionality of federal agencies to interpret the intent of Congress. The potential reversal of Chevron deference could empower businesses affected by regulations to challenge decisions made by agencies, ultimately giving citizens and businesses a stronger voice through their elected representatives. The Balancing Act Project (BAP) is hosting its second event to imagine a post-Chevron world, a roundtable in DC with leading industry groups and a bi-partisan congressional delegation.” [Balancing Act Project, accessed [6/24/24](#)]

The Event Called For Business And Industry Groups, Legal Professionals, Trade Associations, And The General Public To Attend.

EVENT DETAILS

WHO SHOULD ATTEND

- Businesses and Industry Groups
- Legal and Compliance Professionals
- Public Interest and Advocacy Groups
- Government Agencies and Officials
- Trade Associations and Professional Organizations
- Academic and Research Institutions
- Investors and Financial Analysts
- Media and Journalists
- Non-Governmental Organizations (NGOs)
- General Public

[Balancing Act Project, accessed [6/24/24](#)]

Pacific Legal Foundation Is A Conservative Public Interest Law Firm Backing Multiple Clients Suing The Biden Administration Over Federal Regulations And, In Many Cases, Noted That Their Cases Would Be Revived After Chevron’s Overturn

Pacific Legal Foundation Is A Conservative Public Interest Law Which Opposes Chevron Deference

Pacific Legal Foundation Is A Public Interest Law Firm That Filed An Amicus Brief In Loper Bright

Pacific Legal Foundation Is A Public Interest Law Firm That “Defends Americans Against Government Overreach And Abuse.” “Pacific Legal Foundation is a national public interest law firm that defends Americans against government overreach and abuse. We represent every client free of charge, including brewers, farmers, doctors, miners, homeowners, and musicians. The Supreme Court is our title fight. A Supreme Court case affects every American for generations: It determines the level of respect your rights are given.” [Pacific Legal Foundation, accessed [6/17/24](#)]

Pacific Legal Foundation Claimed Overturning Chevron Was About “Restoring The Constitutional Separation Of Powers” And Pushing Back When “Agencies Wield Their Power Improperly.” “But Bagley is wrong: Chevron’s opponents do care. Overturning Chevron isn’t about incapacitating the government; it’s about restoring the constitutional separation of powers. It would give Americans—like the fishermen in the Loper Bright Enterprises case—a fair shot in court when agencies wield their power improperly.” [Pacific Legal Foundation, [3/1/24](#)]

The Pacific Legal Foundation Filed An Amicus Brief In *Loper Bright Enterprises v. Raimondo* In Support Of The Petitioners.

No. 22-451

In The
Supreme Court of the United States

LOPER BRIGHT ENTERPRISES, ET AL.,
Petitioners,

v.

GINA RAIMONDO, SECRETARY OF
COMMERCE, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the U.S. Court
of Appeals for the District of Columbia Circuit

**MOTION FOR LEAVE TO FILE BRIEF AS
AMICUS CURIAE AND BRIEF AMICUS
CURIAE OF PACIFIC LEGAL FOUNDATION
IN SUPPORT OF PETITIONERS**

[Supreme Court Amicus Brief, [12/13/22](#)]

2021-2022: Pacific Legal Foundation Received \$547,120 From DonorsTrust, A Dark Money Fund Connected To Conservative Activist Leonard Leo's Network.

2022: DonorsTrust Gave Pacific Legal Foundation \$395,120.

(499) Pacific Legal Foundation 555 Capitol Mall Sacramento, CA 95814	94-2197343	501(c)(3)	150,000	0	N/A	N/A	for equality documentary
(500) Pacific Legal Foundation 555 Capitol Mall Sacramento, CA 95814	94-2197343	501(c)(3)	245,120	0	N/A	N/A	for general operations

[Donors Trust, [Form 990](#), 2022]

2021: DonorsTrust Gave Pacific Legal Foundation \$152,000

(464) Pacific Legal Foundation 930 G Street Sacramento, CA 95814	94-2197343	501(c)(3)	152,000	0	N/A	N/A	\$151,750 for general operations/ \$250 in support of the Coalition for TJ v. Fairfax County School Board project
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[Donors Trust, [Form 990](#), 2021]

DonorsTrust Is An Influential Right-Wing Donor Group Non-Profit Dubbed The "Dark Money ATM Of The Right." "They all have one thing in common: They received anonymous funding funneled through a single conservative dark money behemoth. That's the news in the latest IRS filing from DonorsTrust—a conservative, Koch-aligned nonprofit which does not need to reveal the names of its donors and has been called the 'dark money ATM of the right.'" [The Daily Beast, [11/22/21](#)]

POLITICO: DonorsTrust Is The "Biggest Beneficiary Of Leo's Primary Dark Money Vehicle." "This makes the Federalist Society the second biggest beneficiary of Leo's primary dark money vehicle, aside from Donors Trust, another conservative nonprofit." [POLITICO, [5/2/23](#)]

Pacific Legal Foundation Is Counsel In Multiple Lawsuits Challenging Federal Regulatory Power And Noted That Overturning Chevron Would Mean Likely Victory In The Cases

PLF Is Counsel For A Business Owner Challenging The FTC's Non-Compete Ban, Which Could Be Undermined If Chevron Is Overturned

Adam Servin Founded A Tree Removal Company Which Asks Employees To Sign A One-Year Non-Compete Agreement. "Adam Servin founded ATS Tree Services in 2014, offering tree removal services and firewood sales in Pennsylvania. [...] As part of that mutual commitment, ATS asks new employees to sign a one-year non-competes agreement, meaning an employee who leaves must wait one year before working at a competitor tree care company in the same geographic area as ATS." [Pacific Legal Foundation, accessed [6/17/24](#)]

2024: The Federal Trade Commission (FTC) Issued A New Rule Banning Non-Competes. "Unfortunately, the Federal Trade Commission sees these agreements differently. In 2024, the FTC issued a new rule banning non-competes agreements in the United States. The FTC views non-competes agreements as a coercive tool employers use to prevent employees from leaving for other opportunities, thereby harming competition in the labor market. This is wrong." [Pacific Legal Foundation, accessed [6/17/24](#)]

Pacific Legal Foundation Is Representing Servin's Lawsuit Against The FTC. "Adam and ATS fear that banning reasonable, limited non-competes agreements like theirs will create a race to the bottom as companies will not have the same incentive to invest in their employees if they can be readily hired away by competitors. Represented by Pacific Legal Foundation at no charge, ATS is fighting the FTC's unchecked power grab in federal court to preserve its ability to provide good jobs and valuable training, hold a powerful federal agency

accountable to the rule of law, and restore the proper limits of the FTC's authority as Congress intended.” [Pacific Legal Foundation, accessed [6/17/24](#)]

Pacific Legal Foundation Implied In Banning Non-Compete Agreements, The FTC Was Operating Outside Of The Boundaries Set By Congress. “Agencies must operate within the boundaries set by Congress and the Constitution. The FTC's unilateral decision to ban non-compete agreements undermines Adam's right to run his business free of unjust government interference. It also wipes out laws in 46 states, blatantly overriding the judgment of state lawmakers and courts, as well as the will of their citizens. And it invalidates millions of existing non-compete agreements and reorganizes the employment relationships of nearly one in five Americans without even a fig leaf of involvement from Congress.” [Pacific Legal Foundation, accessed [6/17/24](#)]

Bloomberg Law: The FTC's Proposed Non-Compete Ban Could Be Threatened By The Supreme Court's Decision On *Loper Bright/Relentless*. “Both the proposed non-compete ban and the FTC's ability to issue competition-related rules could be affected by the Supreme Court's *Loper Bright/Relentless* decisions. Those cases could also have an impact on the FTC's consumer protection rulemaking authority, which the agency has used more frequently in the past and which has been less controversial.” [Bloomberg Law, accessed [6/17/24](#)]

- ***Loper Bright And Relentless*' Rulings Could Do Away With The Chevron Deference Precedent.** “At issue in both *Loper Bright v. Raimondo* and *Relentless v. Department of Commerce* is a challenge to a regulation created by the National Marine Fisheries Service, under the Magnuson-Stevens Fishery Conservation and Management Act, requiring commercial fishing vessels to pay for federal monitors who collect data to ensure that fisheries remain sustainable and viable for decades to come. Rather than address the narrow and technical question on this regulation, however, the Supreme Court opted instead to take up the broader and far more existentially threatening question of whether to completely do away with 40-year-old precedent known as Chevron deference.” [Center For American Progress, [1/17/24](#)]

PLF Is Counsel For A Business Owner Suing The Department Of Labor Over Its Minimum Salary Requirements For Professional Employees And Noted Overturning Chevron Would Give Mayfield's Lawsuit “A Fair Hearing”

Pacific Legal Foundation Claimed That Business Owner Robert Mayfield Was “Forced To Pay Higher Base Salaries” To His Managers Because The Department Of Labor Sets A Minimum Salary Requirement For Professional Employees. “Robert Mayfield's family business, R.U.M. Enterprises, runs 13 Dairy Queen restaurants and a Wally's Burger Express in Texas. The business employs more than 350 people. Hourly employees start at \$15 per hour—above state and federal minimum wage—while those who advance to management positions are moved to a salary package with opportunities for bonuses. The Fair Labor Standards Act establishes a default rule that employees should be paid hourly. But it carves out several exemptions, including for ‘executive, administrative, or professional’ employees, who may be paid a set salary instead of an hourly wage. In interpreting this law, the Department of Labor sets a minimum salary someone must make to qualify as an executive, administrative, or professional employee. Never mind that the law says nothing about minimum salary, or that businesses like R.U.M. have spent decades figuring out how to compensate and incentivize good restaurant managers. Because of the Department of Labor's interpretation of the law, Robert is forced to pay higher base salaries when he'd rather incentivize his managers with bonuses tied to company profits.” [Pacific Legal Foundation, [3/1/24](#)]

Mayfield Is Suing The Department Of Labor, Claiming The Agency Has No Right To Set A Minimum Salary Requirement For Salaried Employees. “With recent news that the Department of Labor wants to hike the minimum salary for exempt employees to \$70,000—forcing Robert to convert some managers to hourly workers ineligible for bonuses—Robert is now suing the Department of Labor in federal court, arguing the

agency has no right to set a minimum salary requirement for salaried employees.” [Pacific Legal Foundation, [3/1/24](#)]

Pacific Legal Foundation Said Overturning Chevron Would Give Mayfield’s Lawsuit “A Fair Hearing.” “Overturning Chevron would prevent courts from automatically deferring to the Department of Labor’s interpretation of the Fair Labor Standards Act, giving Robert’s lawsuit a fair hearing.” [Pacific Legal Foundation, [3/1/24](#)]

Robert Mayfield Is A Client Of The Pacific Legal Foundation. “Who wins if Chevron is overturned? Real people like Robert Mayfield, Arlen Foster, Cameron Edwards, and Shannon Poe—Pacific Legal Foundation clients battling unjust agency actions.” [Pacific Legal Foundation, [3/1/24](#)]

May 2024: Mayfield Filed A Motion To Expedite Appeal In The Fifth Circuit Court.

No. 23-50724

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ROBERT MAYFIELD, AND
R.U.M. ENTERPRISES, INCORPORATED,

Plaintiffs – Appellants,

v.

UNITED STATES DEPARTMENT OF LABOR, AND
MARTIN WALSH, SECRETARY, U.S. DEPARTMENT OF LABOR,

Defendants – Appellees.

On Appeal from the United States District Court
for the Western District of Texas, Austin
Honorable Robert L. Pitman, U.S. District Judge

**PLAINTIFFS-APPELLANTS’ UNOPPOSED MOTION TO
EXPEDITE APPEAL**

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[Robert Mayfield, et al. v. United States Department of Labor, et al., Motion to Expedite Appeal, filed [5/20/24](#)]

PLF Is Counsel For A Farmer Who Lost His Legal Challenge Against The Natural Resources Conservation Service And Called On The Supreme Court To Remand The Case If Chevron Is Overturned

Farmer Arlen Foster Tried To Contest The Wetland Certification On His Land And Was Denied By The Natural Resources Conservation Service. “Arlen Foster is a third-generation farmer in South Dakota. His father planted a tree belt on the south side of the family farm in 1936. Each winter the tree belt collects snow that melts in the spring, accumulating in a low spot in the middle of the farm. The Natural Resources Conservation Service calls this puddle a wetland protected by federal law. The wetland certification limits how

much the Fosters can farm their land. The Swampbuster Act allows landowners like Arlen to ask the government to review mistaken wetland certifications. But when Arlen asked for a review, the Natural Resources Conservative Service refused, saying Arlen had to provide new evidence about his puddle before the agency would reconsider.” [Pacific Legal Foundation, [3/1/24](#)]

In Foster’s Lawsuit, The Eighth Circuit Court Of Appeals Deferred To The Agency’s Interpretation Of The Swampbuster Act. “When Arlen sued, the district court and Eighth Circuit Court of Appeals deferred to the agency’s interpretation of the Swampbuster Act.” [Pacific Legal Foundation, [3/1/24](#)]

- **The Swampbuster Act Regulations Wetland Certificates.** “According to Swampbuster regulations, a final wetland certification remains valid and in effect as long as the land is devoted to agricultural use or until the person affected by the certification requests a review.” [DTN Environmental, [8/10/23](#)]

Pacific Legal Foundation Asked The Supreme Court To Grant, Vacate, And Remand Arlen’s Case If The Court Overturned Chevron. “PLF has asked the Supreme Court to grant, vacate, and remand Arlen’s case if the Court overturns Chevron. The end of Chevron could finally free the Fosters to farm their own land.” [Pacific Legal Foundation, [3/1/24](#)]

Arlen Foster Is A Client Of The Pacific Legal Foundation. “Who wins if Chevron is overturned? Real people like Robert Mayfield, Arlen Foster, Cameron Edwards, and Shannon Poe—Pacific Legal Foundation clients battling unjust agency actions.” [Pacific Legal Foundation, [3/1/24](#)]

PLF Is Counsel For A Farmer Suing Over The Fish And Wildlife Service’s Regulation Of His Land Usage Under The Endangered Species Act And Noted Overturning Chevron Would Allow The Courts To “Fairly” Decide The Ongoing Lawsuit

Cameron Edwards Is A Farmer On Land Also Home To Lesser Prairie-Chicken, A Threatened Species Protected Under The Endangered Species Act, Which Regulates Usage Of The Land. “Cameron Edwards has a farm in Kansas. His family maintains 3,000 acres of grassland for cattle grazing. The land is also home to the lesser prairie-chicken, a threatened species under the Endangered Species Act. Environmental stewardship is important to the Edwards family. Maintaining healthy grassland is good for both their cattle and the lesser prairie-chicken.” [Pacific Legal Foundation, [3/1/24](#)]

Pacific Legal Foundation Claimed The Fish And Wildlife Service “Believes It Can Impose Regulations On Landowners Without Being Limited By Economic Impacts.” “The Endangered Species Act requires the agency to balance conservation efforts with the economic impact of regulations. But the Fish and Wildlife Service has its own interpretation of the law: It believes it can impose regulations on landowners without being limited by economic impacts.” [Pacific Legal Foundation, [3/1/24](#)]

PLF Said Overturning Chevron Would Allow The Courts To “Fairly” Decide Edwards’ Ongoing Lawsuit. “Cameron Edwards is suing. Overturning Chevron would make courts consider his case fairly on the merits, instead of deferring to the Fish and Wildlife Service’s interpretation of the Endangered Species Act.” [Pacific Legal Foundation, [3/1/24](#)]

Cameron Edwards Is A Client Of The Pacific Legal Foundation. “Who wins if Chevron is overturned? Real people like Robert Mayfield, Arlen Foster, Cameron Edwards, and Shannon Poe—Pacific Legal Foundation clients battling unjust agency actions.” [Pacific Legal Foundation, [3/1/24](#)]

PLF Is Counsel For A Miner Found Liable For Civil Penalties After Violating The EPA’s Interpretation Of The Clean Water Act And Claimed Overturning Chevron Would Mean A “Likely Victory” For The Miner

Shannon Poe Is A “Mining Enthusiast” Who Was Found Liable For \$150,000 In Civil Penalties For Violating The EPA’s Interpretation Of The Clean Water Act. “Shannon Poe is a mining enthusiast in Idaho. He uses a section dredge to mine metals and minerals from streambeds—a practice that is usually encouraged because it removes pollutants from water. But environmental groups have accused Shannon and other miners of violating the Clean Water Act. After one group filed a citizen suit against Shannon, a federal district court pointed to a 1990 case in which the Ninth Circuit broadly differed to the EPA’s dubious interpretation of the Clean Water Act and found Shannon liable. He was ordered to pay \$150,000 in civil penalties and effectively banned from mining in Idaho without a federal permit.” [Pacific Legal Foundation, [3/1/24](#)]

PLF Claimed Overturning Chevron Would Mean A Likely Victory For Poe’s Legal Challenge After His Punishment. “Shannon sued, asking the Ninth Circuit to limit broad deference to agencies like the EPA. Overturning Chevron would mean a likely victory for Shannon, restoring his livelihood.” [Pacific Legal Foundation, [3/1/24](#)]

Shannon Poe Is A Client Of The Pacific Legal Foundation. “Who wins if Chevron is overturned? Real people like Robert Mayfield, Arlen Foster, Cameron Edwards, and Shannon Poe—Pacific Legal Foundation clients battling unjust agency actions.” [Pacific Legal Foundation, [3/1/24](#)]

Competitive Enterprise Institute Is An Anti-Regulation Nonprofit Known For Coining The Term “Regulatory Dark Matter” And Has Already Filed A Lawsuit Challenging The EPA’s Authority

Competitive Enterprise Institute Is An Anti-Regulation Nonprofit

Competitive Enterprise Institute Is A Nonprofit Opposing “America’s Unaccountable Regulatory State.” “CEI’s mission is to reform America’s unaccountable regulatory state. We develop and advocate policies to eliminate harmful bureaucratic controls so people can live in a freer, healthier, and more prosperous nation.” [Competitive Enterprise Institute, accessed [6/13/24](#)]

Competitive Enterprise Institute Has Detailed “Regulatory Dark Matter,” Referring To “Thousands Of Executive Branch And Independent Agency Actions” That Are “Subject To Little Scrutiny” And “Carry Practical, Binding Regulatory Effects.” “As detailed in compilations by CEI’s Clyde Wayne Crews, Jr., ‘regulatory dark matter’ refers to the thousands of executive branch and independent agency actions including guidance documents, proclamations, memoranda, bulletins, circulars, letters and more that are subject to little scrutiny or democratic accountability but carry practical, binding regulatory effects.” [Competitive Enterprise Institute, accessed [6/25/24](#)]

March 2024: Competitive Enterprise Institute Hosted A Capitol Hill Lunch Briefing On Administrative Law Courts Reform. “Please join CEI for a Capitol Hill lunch briefing on ALC reform featuring keynote remarks from Rep. Harriet Hageman, who serves on the House Judiciary Committee. Panelists include CEI experts Stone Washington and Ryan Young, NCLA Senior Counsel Peggy Little, PLF Attorney Josh Robbins and Senior Legal Fellow Will Yeatman, moderated by Matthew Adams, CEI Government Affairs Manager.” [Competitive Enterprise Institute, [3/5/24](#)]

The Competitive Enterprise Institute Filed An Amicus Brief In *Loper Bright Enterprises v. Raimondo* In Support Of The Petitioners.

IN THE
Supreme Court of the United States

LOPER BRIGHT ENTERPRISES, et al.,
Petitioners,

v.

GINA RAIMONDO, in her official capacity as
Secretary of Commerce, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF *AMICI CURIAE* THE
COMPETITIVE ENTERPRISE INSTITUTE AND
THE MANHATTAN INSTITUTE
IN SUPPORT OF PETITIONERS

[Supreme Court Amicus Brief, [12/12/22](#)]

2020: The Competitive Enterprise Institute Received \$250,000 From The 85 Fund.

(21) Competitive Enterprise Institute 1310 I Street NW 7th Floor Washington, DC	52-1351785	501 c 3	250,000	n/a	general support
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[85 Fund, [Form 990](#), 2020]

- **2020: Leonard Leo Said He Planned To Work With His Newly Rebranded 85 Fund To “Funnel Tens Of Millions Of Dollars” Into Conservative Issues.** “Mueller and Leo say they plan to work with two existing non-profit groups, which will be rebranded as the Concord Fund and the 85 Fund, to funnel tens of millions of dollars into conservative fights around the country.” [Axios, [1/7/20](#)]

June 2024: Competitive Enterprise Institute Appeared To Judge Shop A Lawsuit Challenging The Department Of Energy’s Consumer Appliance Water Regulations In The Northern District Of Texas

Two Plaintiffs Filed A Complaint In Word, et al. v. U.S. Department of Energy, Against The Department Of Energy Challenging Their Enforcement Of Consumer Appliance Water Efficiency Regulations

February And April 2024: The Department Of Energy Adopted New Cap Water Usage Energy Efficiency Standards. “In the latest case in Kacsmaryk’s court, lawyers with the Competitive Enterprise Institute took aim at the new energy-efficiency standards that the Energy Department adopted in February and April that cap water usage by both types of machines.” [Reuters, [6/14/24](#)]

June 2024: Two Plaintiffs Filed A Complaint Against The Department Of Energy Claiming The Department Went Beyond Its Statutory Authority In Increasing The Stringency Of Water Efficiency Rules Of Certain Consumer Appliances. “Plaintiffs Bill Word and David Daquin bring this action for declaratory and injunctive relief against the U.S. Department of Energy (‘DOE’). DOE has gone beyond its statutory authority in increasing the stringency of water efficiency rules of certain consumer appliances without lawful authority. More precisely, DOE lacks the authority to increase the stringency of such rules for appliances other than showerheads, faucets, water closets, and urinals. This lawsuit seeks to confine the actions of the DOE to the exercise of its lawful statutory authority.” [Word, et al. v. U.S. Department of Energy, filed [6/13/24](#)]

The Plaintiffs Alleged The Department Of Energy Did Not Have The Authority To Amend The Standards For Water Efficiency Of Clothes Washers, Dishwashers, And Other Appliances. “Defendant does not have the authority to amend the standard for water efficiency of clothes washers, dishwashers, or other appliances other than showerheads, faucets, water closets, or urinals. Defendant has without lawful authority amended the appliance regulations concerning water efficiency as to dishwashers and clothes washers.” [Word, et al. v. U.S. Department of Energy, filed [6/13/24](#)]

The Plaintiffs Were Represented By Competitive Enterprise Institute.

/s/ Devin Watkins
Devin Watkins
Dan Greenberg
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[ed 06/13/24](#) [Page 13 of 13](#) [PageID 13](#)

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Counsel for the Plaintiffs

[Word, et al. v. U.S. Department of Energy, filed [6/13/24](#)]

Word, et al. v. U.S. Department of Energy Was Filed In The Northern District Of Texas And Assigned To Judge Kacsmark, The Preferred Venue For Right-Wing Judge Shopping

The Case Was Filed In U.S. District Court Northern District Of Texas (Amarillo).

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

Bill Word, David Daquin,
Plaintiffs,
v.
U.S. Department of Energy
Defendant.

[Word, et al. v. U.S. Department of Energy, filed [6/13/24](#)]

The New York Times: Cases Filed In Amarillo, Texas Have “A 100 Percent Chance Of Having The Case Assigned To Judge Matthew Kacsmark.” “It was filed in Amarillo. Why Amarillo? By filing there, Mr. Paxton had a 100 percent chance of having the case assigned to Judge Matthew Kacsmark — appointed to the

bench by President Donald Trump in 2019 and a former deputy general counsel to the First Liberty Institute, which frequently litigates religious liberty cases before the Supreme Court.” [The New York Times, [2/05/23](#)]

Brennan Center: Kacsmaryk’s Court Is The Preferred Venue For Right-Wing Activists Looking To Judge Shop. “If you are a right-wing activist looking to persuade a federal judge to impose your views on the country, what do you do? For starters, you go shopping. Judge shopping, that is. Head to the courthouse in Amarillo, Texas. No matter if you aren’t from there. There is precisely one federal district judge in Amarillo. His name is Matthew Kacsmaryk. And odds are high that he will issue a ruling just as you seek, one that imposes a highly conservative, indeed theocratic, worldview. He might even issue an injunction that purports to cover the entire country.” [Brennan Center For Justice, [3/20/24](#)]

Competitive Enterprise Institute First Started Their Fight Against Dishwasher Regulations In 2018

2018: CEI Petitioned The Department Of Energy To Address Slow Dishwasher Cycle Times. “In March 2018, CEI petitioned DOE to address this problem, which resulted from government regulations supposedly aimed at increasing energy efficiency. CEI’s petition argues these regulations have harmed consumers, wasting huge amounts of people’s time and making life miserable for families. The average dishwasher cycle today is more than 2 hours, while decades ago it was one hour.” [Competitive Enterprise Institute, [7/2/19](#)]

2019: The Department Of Energy Announced New Rulemaking In Response. “Responding to a petition from the Competitive Enterprise Institute (CEI), the Department of Energy (DOE) today announced a new rulemaking related to the problem of slow dishwasher cycle times.” [Competitive Enterprise Institute, [7/2/19](#)]

The Biden Administration Reversed The Rulemaking, Prompting 13 State Attorneys General To Sue In Federal Court. “Unfortunately, the Biden DOE shut down this effort, but 13 state attorneys general are fighting back by suing the agency in federal court. CEI joined FreedomWorks in submitting an amicus brief documenting both the longer cycle times and the consumer dissatisfaction with them.” [Competitive Enterprise Institute, [7/18/23](#)]

January 2024: The First Circuit Court Of Appeals Issued An Opinion That Scrutinized The Department Of Energy’s Authority To Regulate Water Use In Consumer Appliances. “Today, the U.S. Court of Appeals for the Fifth Circuit issued an opinion that creates new possibilities for consumer choice and manufacturer innovation in the area of consumer appliances. [...] In its opinion today, the Court of Appeals carefully scrutinized the U.S. Department of Energy’s (DOE) authority to regulate water use in dishwashers and clothes washers. In fact, the court suggested that DOE may be entirely without authority to regulate dishwasher water use at all. The court said that DOE should have considered the impact of slow dishwashers on the handwashing of dishes – because handwashing causes an increase in total water and energy usage – but failed to do so. It noted that the DOE’s failure to consider the impact of handwashing was arbitrary and capricious.” [Competitive Enterprise Institute, [1/8/24](#)]

Americans For Prosperity Is The Group Behind Chevron Deference’s Legal Challenge And Is Backing Other Regulatory Challenge Lawsuits That Could Be Influenced By The Precedent Falling

Americans For Prosperity Is The Anti-Regulation, Koch-Funded Group Behind The Chevron Deference Challenge

Americans For Prosperity Lawyers Represented The Plaintiffs In A Case Challenging Chevron Deference. “The lawyers who represent the New Jersey-based fishermen are working pro bono and belong to a public-interest law firm, Cause of Action, that discloses no donors and reports having no employees.

However, court records show that the lawyers work for Americans for Prosperity, a group funded by Mr. Koch, the chairman of Koch Industries and a champion of anti-regulatory causes.” [New York Times, [1/16/24](#)]

Americans For Prosperity Is Funded By Charles Koch And Champions Anti-Regulatory Causes.

“However, court records show that the lawyers work for Americans for Prosperity, a group funded by Mr. Koch, the chairman of Koch Industries and a champion of anti-regulatory causes.” [New York Times, [1/16/24](#)]

Americans For Prosperity Criticized A Host Of Federal Regulations On Issues Like Labor And Energy

Americans For Prosperity Claimed That Labor Regulations Impeded Workers. “Regrettably, the government does not think the same. The average American worker faces over 179 licenses regulations restricting where and how they can work, a frustrating reality that hampers progress. Uber drivers, construction workers, freelancers, and countless independent workers must deal with a mountain of legal barriers that slow them and America down. Labor reform will let people chase their dreams without all the red tape.” [Americans For Prosperity, [6/21/24](#)]

Americans For Prosperity Claimed That Federal Regulations Interfered With Energy Projects. “What is the hardest part of building a solar energy farm, setting transmission lines, or a gas pipeline? If you think it is getting the money, the technology, or building the project, think again. The toughest challenge an energy project faces is Washington bureaucracy. Well-intended regulations have grown out of control and are forcing countless energy projects to sit and watch how their capital, technology, and labor sit idle as bureaucrats take years to green-light their projects.” [Americans For Prosperity [4/11/24](#)]

Americans For Prosperity Claimed That Leaving Policy Details To Agencies Created Regulatory Overreach And Inefficiency. “Leaving all the policy details to the agencies and the executive and leaving the door open for regulatory overreach has indirectly created the inefficient process we have right now.” [Americans For Prosperity [4/11/24](#)]

Americans For Prosperity Is Supporting Recent Anti-Regulatory Cases That Attempt To Resurrect The Nondelegation Doctrine

Conservatives Have Moved To Resurrect The Nondelegation Doctrine, Which Would Constrain The Ability Of Agencies To Act

Conservative Interest Groups Have Attempted To Convince The Supreme Court To Pare Back The Federal Government’s Regulatory Powers To Prevent Them From Making Rulings Without Clear Congressional Approval. “Bit by bit, conservative interests have convinced the Supreme Court to pare back the federal government’s regulatory powers, whittling away agencies’ ability to interpret ambiguous laws and preventing them from making rules on major issues without clear permission from Congress.” [E&E News, [4/8/24](#)]

The Nondelegation Doctrine Is A Long-Dormant Principle That The Supreme Court Has Refused To Resurrect In Recent Years. “The Supreme Court today refused to resurrect the nondelegation doctrine, the long-dormant principle that Congress cannot transfer its power to legislate to another branch of government.” [SCOUTS Blog, [6/20/19](#)]

Legal Cases Asking The Supreme Court To Resurrect The Nondelegation Doctrine Could Prevent Congress From Granting Agencies Regulatory Power. “The petitions she cited - Allstates Refractory Contractors v. Su and Consumers' Research v. Federal Communications Commission - ask the Supreme Court to resurrect the long-dormant nondelegation doctrine, which says one branch of government cannot authorize

another to carry out its powers. A revival of the doctrine could restrain Congress from granting EPA and other federal agencies the authority to tackle climate change. It would be a powerful tool in the hands of conservative groups seeking to dismantle what they call the ‘administrative state,’ the network of unelected agency officials who make rules for the entire country to follow.” [E&E News, [4/8/24](#)]

Americans For Prosperity Filed An Amicus Brief Supporting A Case Challenging The Bureau Of Land Management’s Ability To Regulate Behavior On Federally Owned Land On The Grounds Of The Nondelegation Doctrine

Gregory Pheasant Was Arrested For Riding His Dirt Bike Without A Taillight Through A Section Of Federally Owned Land Managed By The Bureau Of Land Management. “On the night of May 28, 2021, Gregory Pheasant was arrested for riding his dirt bike through Moon Rocks, Nevada, without a taillight. Moon Rocks is a section of federally owned public land managed by the Bureau of Land Management (‘BLM’). BLM’s authority to issue regulations derives from the Federal Land Policy and Management Act of 1976. Claiming authority under the Act, BLM had issued a rule requiring that all dirt bikes operating at night be affixed with a taillight, on pain of criminal penalty. Pheasant was charged with violating BLM’s taillight regulation, along with two other crimes.” [Cato Institute, [4/24/24](#)]

Pheasant Claimed The Charge Was Unconstitutional Under The “Nondelegation Doctrine,” Claiming Congress Unconstitutionally Delegated its Legislative Authority To The Executive Branch. “Pheasant moved to dismiss, arguing that the broken taillight charge was unconstitutional under the ‘nondelegation doctrine.’ Pheasant maintained that Congress had unconstitutionally delegated its legislative authority to the executive branch, and that crimes created by the executive branch pursuant to that power (including the taillight regulation) were void.” [Cato Institute, [4/24/24](#)]

- **The Nevada District Court Agreed, And The Government Appealed To The Ninth Circuit.** “The United States District Court for the District of Nevada agreed and dismissed two counts against Pheasant on nondelegation grounds. The government has now appealed the district court’s decision to the United States Court of Appeals for the Ninth Circuit.” [Cato Institute, [4/24/24](#)]

April 2024: Americans For Prosperity Filed An Amicus Brief In Support Of Pheasant.

No. 23-991

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff – Appellant,

v.

GREGORY W. PHEASANT,

Defendant – Appellee.

On Appeal from the United States District Court
for the District of Nevada
No. 3:21-cr-24
Hon. Robert C. Jones

BRIEF OF *AMICUS CURIAE* AMERICANS FOR PROSPERITY
FOUNDATION IN SUPPORT OF DEFENDANT – APPELLEE

[United States of America v. Pheasant, filed [4/25/24](#)]

If Chevron Is Overturned, The Nondelegation Doctrine Could Be Affected. “Another component of Chevron’s replacement could be a narrowing of the longstanding test for whether a statute violates the nondelegation doctrine, which currently requires Congress simply to provide an ‘intelligible principle’ to which the agency must conform.” [Bloomberg Law, [9/5/23](#)]

- **Chevron And The Nondelegation Doctrine Have Been Described As “Two Sides Of The Same Coin” Relating To Congress’ Responsibility To Define Delegated Powers.** “As commentators have since noted, Chevron deference and the nondelegation doctrine—which holds that Congress cannot vest another branch with its legislative powers—are two sides of the same coin. In other words, Congress must define outer limits to the power delegated to an agency in its enabling statutes, and, under Chevron, courts must defer to the agency’s reasonable interpretation of ambiguities in those delegations.” [Bloomberg Law, [9/5/23](#)]

Americans For Prosperity Filed An Amicus Brief In Two Additional Cases Citing The Nondelegation Doctrine

Allstates Refractory Contractors v. Su And Consumers' Research v. Federal Communications Commission Ask The Supreme Court To Resurrect The Nondelegation Doctrine. “The petitions she cited - Allstates Refractory Contractors v. Su and Consumers' Research v. Federal Communications Commission - ask the Supreme Court to resurrect the long-dormant nondelegation doctrine, which says one branch of government cannot authorize another to carry out its powers. A revival of the doctrine could restrain Congress from granting EPA and other federal agencies the authority to tackle climate change. It would be a powerful tool in the hands of conservative groups seeking to dismantle what they call the ‘administrative state,’ the network of unelected agency officials who make rules for the entire country to follow.” [E&E News, [4/8/24](#)]

Americans For Prosperity Filed An Amicus Brief In Allstates Refractory Contractors v. Su Et Al.

No. 23-819

IN THE
Supreme Court of the United States

ALLSTATES REFRACTORY CONTRACTORS, LLC,
Petitioner,

v.

JULIE A. SU, ET AL.,
Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit**

**BRIEF OF AMICUS CURIAE
AMERICANS FOR PROSPERITY FOUNDATION
IN SUPPORT OF PETITIONER**

[Allstates Refractory Contractors v. Su et al., filed [2/23/24](#)]

Americans For Prosperity Filed An Amicus Brief In Consumers’ Research v. FCC.

IN THE
Supreme Court of the United States

CONSUMERS' RESEARCH, ET AL.,
Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit**

**BRIEF OF *AMICUS CURIAE*
AMERICANS FOR PROSPERITY FOUNDATION
IN SUPPORT OF PETITIONERS**

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Counsel for Amicus Curiae November 30, 2023

[Consumers' Research v. FCC, filed [11/30/23](#)]

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