How the U.S. Should Regulate AI After the End of *Chevron* Deference

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How the U.S. Should Regulate AI
After the End of *Chevron* Deference

By Kelsey Quinn

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COVER ILLUSTRATION: New Lines Institute from Getty Images: AI robot (Yuichiro Chino), AI brain (Andriy Onufriyenko), U.S. Capitol (FotografieLink), binary data (Tetiana Lazunova)

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Our purpose is to shape U.S. foreign policy based on a deep understanding of regional geopolitics and the value systems of those regions.

U.S. Sen. Chuck Schumer and other members of the Bipartisan Senate AI Working Group (L to R) Sens. Todd Young, Martin Heinrich, and Mike Rounds, address the news media on May 15, 2024. (Bill Clark / CQ-Roll Call, Inc via Getty Images)

Executive Summary

The recent decision by the U.S. Supreme Court in *Loper Bright Enterprises v. Raimondo* overruled the decades-long precedent set by *Chevron U.S.A. Inc. v. NRDC* that directed courts to defer to a federal agency's interpretation of any ambiguous statutes passed by Congress as long as that interpretation was considered "reasonable." The impact that the removal of this precedent, termed *Chevron* deference, will have on the ability of agencies to adequately implement regulations is not just significant – it's urgent.

Chevron deference has been used countless times in civil cases challenging federal agencies' regulations. Congress is often unclear in its language, sometimes intentionally and sometimes due to a lack of subject matter expertise, and this precedent has allowed federal agencies to implement regulations intended to protect the American people in ways Congress did not foresee when drafting laws.

As Congress begins the process of establishing regulatory law governing the fast-emerging field of artificial intelligence, the high court's ruling is likely to have a profound effect. Because Congress does not have the requisite knowledge of AI technologies to draft clear and comprehensive laws, the AI regulations it institutes will likely end up in court, where judges no longer need to adhere to the *Chevron* deference. This makes immediate action to adapt to the new legal landscape a priority.

Upon the loss of *Chevron* deference, courts will now refer to the precedent set by an earlier case, called *Skidmore* deference, wherein federal agencies' interpretations must demonstrate "persuasive reasoning" rather than simply being "reasonable." This change means agencies must somehow develop arguments that involve complex technical details yet are sufficiently persuasive to an audience unfamiliar with the field to justify every regulation they impose. Agencies tasked with ensuring the basic health, safety, and security of American citizens are vulnerable to an onslaught of litigation, and their power to adequately perform their duties as assigned by Congress is in danger. It is now uncertain if the U.S. government will be able to ensure clean water, safe food and drugs, or even protect technological advancements with national security implications from being sold to its adversaries.

The agencies that will struggle to meet this "persuasive" threshold the most will be those with the authority to regulate highly technical fields and industries. Judges are not expected to be subject matter experts in technical fields, as their area of expertise is interpreting law. However, it will now be left up to the determination of a judge if an agency's deeply technical and scientifically sound argument is compelling prior to deferring to the agency's interpretation. For jargon-heavy technical fields, this is a difficult barrier to overcome. In future cases challenging regulations on scientific and technological topics, the ability of federal regulatory agencies to adequately defend their interpretations is most at risk.

Perhaps the field most affected is artificial intelligence, over which no federal regulatory agencies yet exist. It is almost universally accepted that some regulations on the proliferation of artificial intelligence must be put in place to protect both individuals' rights and national security. However, no federal agency has specific authority over AI, and no comprehensive

federal legislation has been passed to regulate its use and development. To compound the difficulties inherently present in the process of regulating AI, few individuals, even those who are tech-savvy, have a sufficient conceptual understanding of artificial intelligence. Without *Chevron* deference, it would fall to the discretion of judges, who, like most people, are not familiar with the workings of AI, to determine whether disputed regulations implemented on AI systems are valid and the justification for their existence is persuasive. This development is likely to significantly hinder the nascent attempts to implement important regulations on artificial intelligence to safeguard the American people and the nation's security.

However, as comprehensive regulations have not been created to control the proliferation of artificial intelligence, there is an opportunity for legislators to rapidly adjust their approach and still address the concerns AI presents. These actions should be taken swiftly and be immediately incorporated into the overall strategy developing in Congress to address the AI question.

Policy Recommendations:

1. Clear definitions of artificial intelligence terms must be established in coordination with relevant stakeholders.
2. Congress must at least partially codify *Chevron*.
3. Congress should establish a federal agency to regulate and oversee AI.
4. The AI agency's authority must be explicit while affording some flexibility to accommodate industry advancements.
5. The AI regulatory agency must coordinate with the technology industry and academia.
6. The judicial system should incentivize judges to obtain basic AI competencies.

Introduction

The U.S. Supreme Court's June 28 decision in *Loper Bright Enterprises v. Raimondo* overruled *Chevron* deference, a four-decade-old precedent used by the federal government to approach ambiguities in regulatory laws.[1] The loss of this doctrine is monumental for the entire field of administrative law and will have tangible and immediate impacts on the activity of every federal agency in the United States.

Chevron deference required courts to defer to an agency's interpretation of regulatory laws passed by Congress when those laws were ambiguous or vague.[2] In the post-*Chevron* world, the interpretation of unclear statutes will be up to the judgment of the courts. Judges may now decide if an agency's interpretation of statutes is "persuasive" rather than "reasonable," as was the precedent set under *Chevron U.S.A. Inc. v. NRDC*.[3]

After the *Chevron* decision, Congress assumed *Chevron* deference would be afforded to knowledgeable agencies when it passed legislation that aimed to enhance the well-being of American citizens, leaving the regulatory details necessary to implement those laws to those with the requisite expertise. The *Loper Bright* decision weakens agencies' power to implement regulatory laws and transfers that power to individual judges, even for highly technical regulations and fields in which the judges are not subject matter experts.

The loss of *Chevron* deference will particularly affect the nascent field of artificial intelligence policy and regulation. AI likely will be incorporated into nearly all aspects of society, and implementing appropriate and measured regulations on AI will require combining multiple areas of expertise. Congress and the executive branch have only recently begun establishing regulatory standards and appropriate boundaries for the development and applications of artificial intelligence, with no binding federal laws passed regulating AI and only a few passed at the state level.[4]

The dearth of experts within Congress on artificial intelligence means members of Congress must rely heavily on outside experts, typically housed within

The U.S. Supreme Court's ruling in *Loper Bright Enterprises v. Raimondo* upended four decades of regulatory practice. (Craig Hudson for The Washington Post via Getty Images)

federal agencies, to realize congressional intent within laws.[5] The loss of *Chevron* deference means those within Congress who aspire to pass legislation to regulate AI and protect the public good must spell out specifics when drafting laws, perhaps to a level that they simply lack the knowledge to achieve. The *Loper Bright* decision requires a swift and intentional new approach to prevent the regulatory landscape of artificial intelligence from being dictated entirely by non-experts.

What is the *Chevron* Doctrine?

The *Chevron* deference doctrine originates from a 1984 case, *Chevron U.S.A. Inc. v NRDC*,[6] in which the Natural Resources Defense Council (NRDC) challenged Chevron's use of the Environmental Protection Agency's interpretation of the term "stationary source" within the language of the Clean Air Act Amendments of 1977. The NRDC argued in favor of another interpretation that would label individual pollution-emitting devices as "stationary source(s)" rather than entire plants as a singular stationary "bubble" that contained multiple pollution-emitting devices. The Court unanimously ruled in favor of the EPA's interpretation.

The result of this decision was the creation of the *Chevron* deference doctrine and a two-step process the courts could apply to challenges brought to regulatory laws. The *Chevron* doctrine dictates that when regulatory laws contain ambiguous language or

do not explicitly address an issue, courts should defer to the interpretation of these laws determined by the appropriate and authorized agency, provided such interpretations are "reasonable."[7] This approach has fundamentally shaped the U.S. regulatory apparatus for over four decades. Since this ruling, the *Chevron* deference precedent has been cited in thousands of court cases and has afforded agencies the ability to address issues not explicitly codified into law by Congress but that can be reasonably interpreted to be within the bounds of existing laws defining the agency's responsibilities and authorities.[8]

Chevron deference has allowed regulatory agencies tasked with critical responsibilities such as keeping air and water clean and ensuring dangerous chemicals are kept out of the food supply to adapt to varied circumstances and technological advancements. Without this flexibility and deference to agencies, Congress would be required to intervene on a host of highly specific regulatory issues, which it can only do by passing legislation. Since its establishment, *Chevron* has been considered a critical component of how the United States has ensured safety standards for commercial products and limited potential harms caused by industries.

Those in favor of leaving *Chevron* deference intact often rely on *stare decisis* (letting prior precedent stand) and the argument that federal agencies are more well-equipped to handle the technical details than the court system. Agencies such as the EPA are staffed with subject-matter experts who can speak authoritatively to specific implementations of laws that Congress did not foresee or explicitly write into the language of a law. Members of Congress, although typically knowledgeable and supported by many staffers, are often not, nor are expected to be, subject matter experts within the fields that pertain to laws they are drafting. This is doubly true when considering laws regulating complex science and technology. Legislators voting on laws regulating the use of specific plastics in consumer products are not required to have PhDs in polymer science, for example.

Those constructing regulatory laws typically confer with experts in the field during the drafting process and then provide authority to the appropriate agencies to deal with specific implementations of these laws within reasonable limitations. *Chevron* deference affords agencies the leeway to interpret imperfect and imprecise laws and establish regulations that cover a range of hyper-specific issues and novel innovations that have not yet been discovered without the threat of long legal battles.

Not allowing agencies staffed with experts to determine technical definitions and establish appropriate regulatory standards undermines the ability of the government to protect citizens from potentially harmful outcomes of specific activities. Congress has relied on federal agencies to effectuate laws intended to promote the public good for decades, but after the *Loper Bright* decision, much of that power has been transferred to the courts. It is now unclear if congressional intent to regulate industry to the benefit of the American people will be possible without significant delays and difficulties.

However, danger can also come from giving agencies such broad power to interpret laws. Typically, such power is rooted within the judiciary, not agencies that fall under the purview of the executive branch. Conservatives have long voiced concerns that *Chevron* deference gives the executive branch and federal bureaucrats far too much power and undermines the courts' ability to curb executive overreach.[9,10,11] The United States is well-known for having a large amount of red tape to navigate while developing new products or technology. For example, attempts to create a novel drug for a deadly disease, which should be encouraged, can be met with mountains of paperwork and an approval process that could significantly hinder the ability to develop, test, roll out, market, and administer that medication.

The major questions *Chevron* deference presents in practice are essential:

- Should the U.S. prioritize safety or innovation?
- How much power should be granted to experts who fall under the executive branch's purview?
- What entity should be viewed as the "expert" when it comes to interpreting laws rooted in deeply technical subjects?

To be sure, agencies take actions and interpret laws passed by Congress in ways that, on their face, seem

unnecessarily constraining and beyond what the average person would deem appropriate action to be taken under an agency's given authority. The issue at hand in *Loper Bright Enterprises v. Raimondo* is one example. Fishery companies were required to cover the financial costs incurred by hosting third-party observers if the National Marine Fisheries Service (NMFS) was unable to provide its own observers. These costs could be up to $710 a day.[12] This specific implementation would cause significant financial strain on fishery companies and, to most people, would seem unreasonable. The high court majority's disagreements with the current use of *Chevron* deference are not entirely unfounded, but the dissent's concerns regarding overturning *Chevron* and placing all interpretive power, even on deeply technical matters, exclusively in the hands of non-expert judges is valid as well.

Legal Process for Establishing and Challenging Regulatory Statutes

1. Congress passes a law and authorizes a federal agency to implement regulations.

   Example: The Clean Air Act uses the term "stationary source" in the context of pollution emissions.
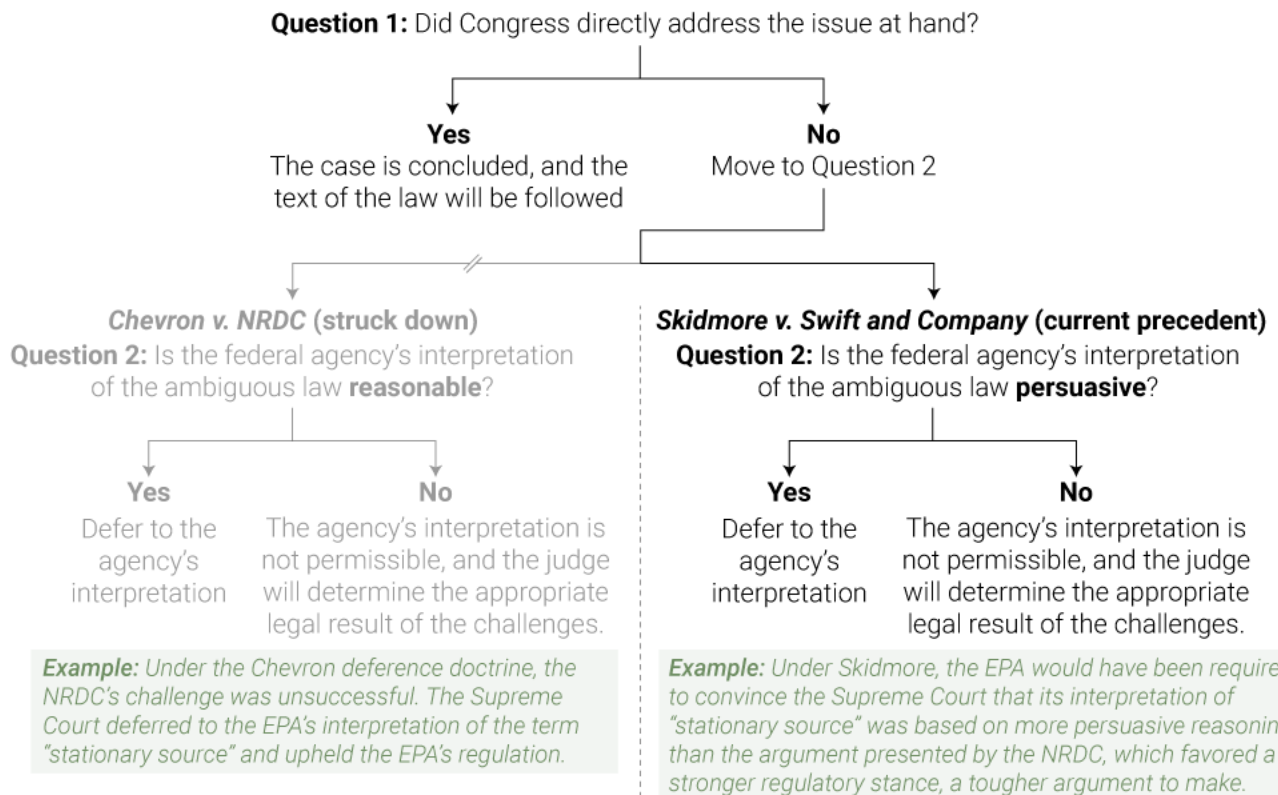
2. A federal agency implements specific regulations under that law.

   Example: The Environmental Protection Agency interprets "stationary source" to be a single plant within which multiple pollution-emitting devices may be housed.

3. A legal challenge is brought to a regulation imposed by that federal agency.

   Example: The Natural Resources Defense Council (NRDC) challenges the EPA's interpretation of "stationary source," in favor of a stricter interpretation in which each pollution-emitting device is a unique stationary source.

4. A court is presented with arguments from both sides and follows a two-step process:

Question 1: Did Congress directly address the issue at hand?

Yes
The case is concluded, and the text of the law will be followed

No
Move to Question 2

Chevron v. NRDC **(struck down)**
Question 2: Is the federal agency's interpretation of the ambiguous law **reasonable**?

Yes
Defer to the agency's interpretation

No
The agency's interpretation is not permissible, and the judge will determine the appropriate legal result of the challenges.

Example: Under the Chevron deference doctrine, the NRDC's challenge was unsuccessful. The Supreme Court deferred to the EPA's interpretation of the term "stationary source" and upheld the EPA's regulation.

Skidmore v. Swift and Company **(current precedent)**
Question 2: Is the federal agency's interpretation of the ambiguous law **persuasive**?

Yes
Defer to the agency's interpretation

No
The agency's interpretation is not permissible, and the judge will determine the appropriate legal result of the challenges.

Example: Under Skidmore, the EPA would have been required to convince the Supreme Court that its interpretation of "stationary source" was based on more persuasive reasoning than the argument presented by the NRDC, which favored a stronger regulatory stance, a tougher argument to make.

> " The tsunami of lawsuits against agencies that the Court's holdings in this case and *Loper Bright* have authorized has the potential to devastate the functioning of the Federal Government. "
>
> U.S. Supreme Court Justice Ketanji Brown Jackson

Legal experts had expected the Supreme Court to use *Loper Bright v. Raimondo* to narrow *Chevron* deference, as has been done previously without much commotion.[13,14] Instead, the court chose to throw out *Chevron* entirely. This report is not intended to call that decision into question, but rather to examine the future of the U.S. regulatory process, especially in the context of crafting rules governing artificial intelligence. In the wake of the ruling, the question on the minds of countless agencies is: What now?

Impacts of Overruling *Chevron*

Until now, agencies have operated under the assumption of *Chevron* deference providing legal cover from lengthy litigation, but now they face a new reality in which their interpretations of ambiguous law will face much stricter scrutiny from the courts. These agencies have relied on the precedent set by *Chevron* for 40 years, and it forms the backbone of much of the administrative function of the United States. Eliminating *Chevron* deference poses an immediate and serious threat to agencies' regulatory enforcement capabilities. This decision will be felt in every sector across the country and every branch of government. The need to adapt to this new regulatory landscape is immediate. Questions remain: How will agencies defend current and future interpretations of imprecise laws without *Chevron* deference? Although overturning *Chevron* does not reverse prior settled cases,[15] will this trigger a mass influx of legal challenges to existing and future regulations?

With an already overburdened court system causing significant delays in resolution of outstanding cases, it's unlikely the judiciary in its current state would be able to promptly accommodate countless legal challenges being brought forward that are only now

possible because of this ruling.[16] Justice Ketanji Brown Jackson's dissent in a related case also recently decided by the Supreme Court highlights this difficulty:[17] "The tsunami of lawsuits against agencies that the Court's holdings in this case and *Loper Bright* have authorized has the potential to devastate the functioning of the Federal Government."

Courts now must rely on prior precedent and apply a different form of deference than the one established with *Chevron*, called *Skidmore* deference, originating from the 1944 U.S. Supreme Court decision in *Skidmore v. Swift and Co.*[18] The difference between *Chevron* and *Skidmore* deference may appear subtle but is actually profound. Under *Chevron*, courts would defer to the appropriate agency so long as their interpretation is "reasonable" or "rational."[19] Although those terms are not wholly defined, a narrowing of the scope of *Chevron* over the years through specific rulings has aided judges in making that determination.

Upon the overruling of *Chevron*, judges must now return to *Skidmore* deference, where the courts will defer to an agency's interpretation of a law only if the agency can provide "persuasive reasoning." This is not a mere change in wording; it's a fundamental shift in the way agencies and courts interact. The question has changed from, "Is the interpretation reasonable?" to, "Is the interpretation compelling?"

On its face, this change may seem like a positive one. Agencies should be required to present persuasive and compelling arguments for their case, just as individuals do. However, the issue lies in the fact that the judge is now solely responsible for determining if an agency's arguments for its actions, grounded in technical expertise, are compelling. An example from Justice Elena Kagan's dissent in *Loper Bright v. Raimondo* expresses this:[20]

"When does an alpha amino acid polymer qualify as a 'protein'? ... I don't know many judges who would feel confident resolving that issue. (First question: What even is an alpha amino acid polymer?) But the FDA likely has scores of scientists on staff who can think intelligently about it, maybe collaborate with each other on its finer points, and arrive at a sensible answer."

None of this is to say that judges are incapable of comprehending complex technical and scientific terms and regulations. In order to determine if a regulation was "reasonable" under *Chevron* deference, judges had to have, at minimum, a level of familiarity with the subject matter at the center of the case. Nonetheless, the issue remains that these deeply complex technical concepts must appear not just reasonable but compelling to an individual who is unfamiliar with the field.

It is obvious that a technical argument will feel less compelling than a simple explanation rooted in "common sense."[21] Take, for example, drug development. Say a company develops a novel compound that it finds is more effective in treating cystic fibrosis than current medications, and it gets the appropriate approval for this drug. Approval of a specific compound is one step out of many required to get a drug to market. Specific compounds must be combined with certain solvents or other compounds, some safe and some not, to allow for proper delivery and activity of that compound. If Congress did not explicitly give broad power to agencies to make this specific choice, it will now be up to the determination of a judge whether the argument for including these additional components found in all drugs across the market today is compelling.

Consider another example where a technical field, such as biochemistry, intersects with artificial intelligence. AlphaFold2 is an AI-powered protein structure prediction system that can revolutionize biology and medicine – both for altruistic and malicious actors.[22] An individual must be deeply knowledgeable about both artificial intelligence and biochemistry to properly determine how to regulate AlphaFold2 and related technologies. This is an extraordinarily high barrier for entry that judges must now reach to appropriately rule on the validity and persuasiveness of regulations on technologies that cut across multiple sectors.

These two hypothetical examples illustrate what courts across the country and across all sectors and industries soon could contend with.

As a result of the *Loper Bright* decision, legal challenges to current and future regulations will now be much more likely to succeed, handicapping regulatory efforts. Recently, the Supreme Court had to issue a correction to another ruling in which Justice Neil Gorsuch incorrectly referred to nitrogen oxide, a dangerous pollutant, as nitrous oxide, commonly known as laughing gas, five separate times.[23] Although this could be a simple mistake, it is indicative of genuine outcomes of leaving important regulatory and technical questions in the hands of non-expert judges, even within the highest court in the country. For those who hold the belief judges will continue to respect the opinions of experts without *Chevron* deference being the standard, Gorsuch's errors should cause trepidation.

Certainly, there were flaws in how *Chevron* deference functioned and how our courts handled legal challenges that needed to be addressed. However, the Supreme Court appears to have thrown out the baby with the bathwater, and each industry and agency must revisit its regulatory systems and approaches anew and find a way to adapt to a post-*Chevron* world.

Implications for AI Development and Policy

While the loss of *Chevron* deference is notable for all regulatory agencies and sectors, regulatory frameworks currently in development or yet to be established are especially affected by this ruling. Importantly, the high court's opinion specifically stated that decisions previously made based on *Chevron* deference will not be revisited and will stand.[24] However, all cases going forward are subject to these new standards. This is particularly impactful when considering the nascent and poorly understood realm of AI policy and regulation.

First, Congress repeatedly has shown that it is currently ill-equipped to have basic discussions on emerging technology and AI, let alone establish sensible policies for regulating its development and ensuring safety.[25] One needs only review the

Increasing Difficulty in Regulating AI

In addition to facing political realities within Congress, regulations developed with the intent to protect the public face a combination of barriers. The nexus of AI integration into technical fields further complicates this process.

Goal:
Protecting the public good

Barriers

Artificial Intelligence integration:
AI complexity, fast-paced innovation, breadth of potential applications

Barriers to specific fields:
Complexity of fast-evolving industries, developments in science and technology

Congressional Barriers:
Gridlock, funding constraints, slow pace of progress

Solution:
Implementing regulations

Source: Kelsey Quinn

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congressional hearings with executives from Facebook, X (formerly Twitter), and TikTok to see the significant gap in knowledge and understanding of basic technology present in many members of Congress. Certainly, some improvements have been made in terms of overall congressional understanding of technology since Sen. Ted Stevens described the internet as a "series of tubes" in 2006, but that progress is not sufficient to keep up with the rapid pace of development when it comes to AI.[26] Second, no federal agency yet established has the power to determine how any laws passed regulating AI are to be best implemented. Additionally, the ability of judges to fundamentally understand the technology behind artificial intelligence has yet to be proven. Few experienced software engineers knowledgeable in AI appear to be interested in pursuing law, likely due to financial and cultural differences between the fields.

So, the current process facing the appropriate regulation of AI is thus: Uninformed legislators will pass ambiguous laws regulating AI to nonexistent AI agencies or existing agencies that lack sufficient technical expertise, and those specific implementations will be deemed as compelling or not by a federal judiciary primarily populated by a demographic less familiar with artificial intelligence.[27,28] This is a recipe for disaster if clear and informed actions are not taken immediately.

AI Innovation

As there are only a few state laws enacted that currently regulate AI, and no federal agency specifically charged with establishing regulations on the broad field of AI, the potential for innovation and advancement within the AI sector is considerably stronger than in other fields where established regulations are more likely to stand.[29] AI policy and regulation is unchartered territory, and with the elimination of *Chevron*, the boat is now taking on water.

This is likely a massive boon to the freedom that technology companies will have to explore, develop, integrate, and market novel AI technologies. There were no rules before the court overturned *Chevron*, and now it will be much more difficult to create rules that pass Congress and are upheld by the courts. The coming years likely will see more fervent action to expand AI and few meaningful roadblocks placed in the way.

For some technology companies and stakeholders, this may be viewed as a positive development. Innovation in AI is critical to maintaining a strategic advantage for modern states and can provide benefits to society, making menial tasks easier and streamlining individuals' lives. This publication recognizes the benefits that can be provided by the expansion and proliferation of AI technology and hopes

these developments come to fruition. The critical component here is that these important innovations are enabled while maintaining the protection and well-being of Americans and the nation.

However, even the most ardent supporters of a regulation-free AI world and small government may find the impact of overruling *Chevron* to not be entirely as utopian as predicted. In reality, regulations will be put in place eventually, and those determining what regulations are within the bounds of the law will not be experts in the field. They will be judges who will not fundamentally or concretely understand the minutiae of complex AI systems and may incorrectly interpret specific statutes and regulations to apply to broader developments than an expert would deem appropriate.

Reverting to *Skidmore* deference will undermine important safety regulations that must be put in place for future developments and add roadblocks when courts are incapable of identifying minor technical changes that confer no substantial modifications from what was previously upheld. Some courts likely will incorrectly interpret statutes to apply to technologies that an expert would have determined to be outside of the bounds of a specific regulatory statute. Paradoxically, losing the ability to automatically defer to an agency's interpretation of AI systems may narrow some regulations while broadening others. Which way a specific case will proceed will now be almost solely dependent on how well a single judge can interpret an argument presented by experts and find it persuasive.

AI Regulation

The potential dangers of improperly regulated – or worse, unregulated – artificial intelligence are significant and far-reaching. Congress, the executive branch, and the people have all recognized these dangers. AI can be used to spread misinformation, create believable deepfakes, exacerbate biases, present ethical concerns, endanger human rights, damage the environment, and infringe on privacy rights, among many other issues.[30] AI can even present tangible safety risks if irresponsibly integrated into health care, transportation, and finance.[31]

Artificial intelligence is truly a paradigm shift in that it will fundamentally alter every aspect of society and cut

across nearly all current and future issues facing the world. Countless legislators and activists have raised the alarm that competent and fair regulations must be placed on AI development and deployment as soon as possible, especially given the rapid expansion inherent to the technology.[32] Even tech companies themselves have approached governments asking for regulations to be put in place.[33], [34] However, governments are already late to the game and increasingly are falling behind.

There is no federal agency specifically empowered to regulate AI across the board, and no official congressional committee has yet been created to draft laws and regulations intended to ensure safety is prioritized within AI development. Most recently, in February, the U.S. House launched a bipartisan Task Force on Artificial Intelligence to begin developing the necessary congressional infrastructure to address regulations and laws that should be placed on AI.[35] While not a congressional committee, which tends to be more structured and long-standing, the task force is a starting point.

The Supreme Court's decision in *Loper Bright* should be at the forefront of the mind of every member involved in this task force. Without a clear and specific federal agency to implement any laws involving AI, the task force would have already faced legal challenges and difficulties in a world where *Chevron* remained. In the post-*Chevron* reality, however, those challenges just expanded exponentially. This task force must be extraordinarily and unequivocally clear in all steps going forward.
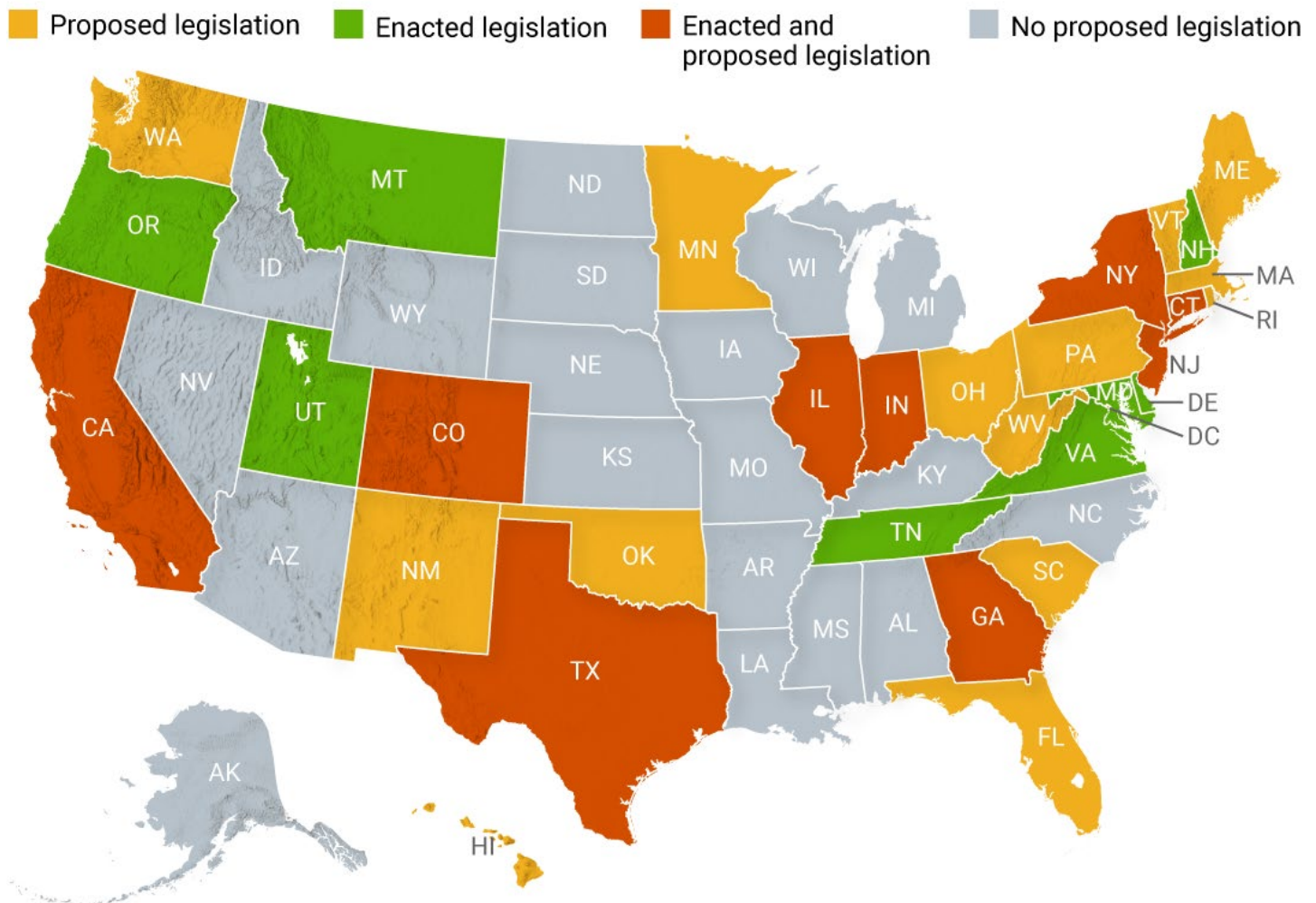
Until a federal agency regulating AI is established, extremely detailed, comprehensive, and specific definitions of technical terms must be provided within the language of the laws. The task force must go above and beyond in terms of specificity on what and how these laws will be applicable and implemented. It must also clearly and incontrovertibly delegate authorities to the appropriate existing agencies that will be responsible for enacting these laws. Ironically, the decision to overrule *Chevron* may result in vastly more red tape and inappropriate regulations imposed on AI companies and developers, but this time enshrined in law.

Artificial Intelligence Legislation

The current state of AI-related legislation across the nation.

Legend: Proposed legislation | Enacted legislation | Enacted and proposed legislation | No proposed legislation

The ruling will have immediate and direct implications on the few efforts recently made to impose regulations on artificial intelligence. One example demonstrates the increasing difficulty that will result in hamstringing regulatory agencies' authorities to regulate AI: In February 2024, the Federal Communications Commission (FCC) declared authority over the regulation of AI-generated calls, citing authorities delegated by Congress under the Telephone Consumer Protection Act (TCPA).[36] The FCC expanded its authority to impose regulations on calls made using artificial or prerecorded voices to include AI technologies capable of generating human voices.[37]

While the regulations imposed under the TCPA are reasonable and well-intentioned, some researchers have expressed concerns over the potential impact of other FCC regulations on legitimate survey research conducted through phone calls.[38] Based on certain analytics, namely duration of calls and number of calls per day, certain originating phone numbers are required, under regulations imposed by the FCC, to be labeled as "potential spam" to the receiving individual. Given the FCC's moves to expand its authority to include AI technologies relevant to its work, it is not unreasonable to presume the FCC may add the use of AI-generated voices as one of the analytics

contributing to the labeling of certain calls as "potential spam." This could have direct negative consequences for the success of legal survey research as calls labeled potential spam likely will be denied by the recipient solely based on the label.[39]

The FCC may not be the ideal agency to enforce regulation in this hypothetical case, but it has a better shot at making an informed decision than a judge. Exacerbating the problem could even be service providers using AI to identify potential spam and relaying that information to consumers based on their own metrics. These models may be trained on flawed datasets and subject to bias, resulting in inconsistent impacts on various legitimate survey researchers.[40]

Examining this niche application of AI in communications, a system that most people would support being at least partially regulated, exposes the layers of complexity that will arise when legal challenges are brought to the courts. As mentioned, overruling *Chevron* will impact all federal agencies, so the potential challenges that have been complicated by the ruling in *Loper Bright* will impact the entire executive branch's constitutional responsibility to enforce laws passed by Congress.

Export Control on Dual-Use AI Systems That Threaten National Security

The decision also will affect export control mechanisms on AI and related technologies. The priorities of the United States have clearly shifted in favor of great-power competition, and it has been noted that the entity that has the advantage in the AI sector is most likely to prevail over all others.[41] The AI arms race between China and the United States is a hotly debated topic, with China recently implementing a three-year plan to match the AI capabilities of the U.S.[42]

Implementing appropriate export control mechanisms for AI systems and technology that protect sensitive American AI advancements without hindering innovation capacity should be a top priority across both aisles of Congress. The U.S. can hardly afford missteps in this area: Too-strict regulations will slow innovation, and too-loose regulations risk China

benefiting from American technology without investing the resources required to develop it independently.

The Bureau of Industry and Security (BIS)[43] has been generally given the authority to impose regulations and restrictions on exports, both tangible and intangible, such as software, that could be used by U.S. adversaries and may pose a national security threat.[44] The House Foreign Affairs Committee in May introduced the ENFORCE Act to empower the BIS to regulate the export of AI systems themselves.[45] Currently, the BIS is limited to regulating the export of AI-related technologies like advanced semiconductors and their component parts; this bill, if passed, would expand the BIS's regulatory authority to cover artificial intelligence systems that could be exploited by adversaries of the U.S.

However, the ENFORCE Act is a mere seven pages long and contains many ambiguities. This is not the fault of the drafters of the bill, as they are neither experts on AI nor on the intersection of AI and national security. The drafters likely conferred with numerous experts, but the bill was created under the expectation that the BIS would be able to utilize *Chevron* deference and enumerate specific export control mechanisms once granted the authority to regulate the export of AI systems. The bill's text is rife with definitional ambiguity, and without the protection of *Chevron* deference, it will now be left to the courts to clarify should a legal challenge to BIS's regulations or authority arise.

Is it truly reasonable to expect that judges, who are legal experts, can adequately determine if a drone with sensitive sensors and expansive algorithms is an "artificial intelligence system"? What if that drone uses a large language model to relay information to the operator but does not use AI in any other capacity? What about a drone where the code clearly demonstrates it is powered by a non-AI-based algorithm but is so comprehensive that it functionally mimics AI-powered drones? And is it rational to expect Congress to draft another bill or make an amendment if a novel but similar AI system is developed tomorrow, or else leave these determinations up to the courts? An improper decision made by a less technically knowledgeable but otherwise intelligent judge could

Judicial Deference to Federal Agencies Over the Years

December 1944: In *Skidmore v. Swift and Co.*, the U.S. Supreme Court determines that federal courts should defer to a federal agency's interpretation of a statute based upon the agency's ability to demonstrate persuasive reasoning.

June 1984: The Supreme Court rules in favor of the EPA's interpretation of "stationary source" in *Chevron v. NRDC*, establishing *Chevron* deference and the two-step test, only disregarding agency interpretations when they are found to be unreasonable. Over the next 40 years, *Chevron* is cited in more than 19,000 federal court cases, making it the third-most-cited civil case.

August 1977: Congress approves amendments to the Clean Air Act establishing more rigorous regulations to be implemented by the Environmental Protection Agency.

June 2024: U.S. Supreme Court overrules *Chevron v. NRDC* in *Loper Bright v. Raimondo*, removing Chevron deference and reverting to deference based on persuasive reasoning established in *Skidmore*.

1940   1950   1960   1970   1980   1990   2000   2010   2020   2030

Sources: U.S. Supreme Court, Justia, Center for American Progress

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result in the sale of AI systems to China or Russia without even so much as a licensing requirement.

These questions and many others have direct and consequential national security implications, and the process of arriving at answers to them will take significant time to process through an already overburdened court system. Thomson Reuters' 2023 State of the Courts Report found that nearly one in five cases are delayed, face backlogs, and struggle with resource complaints.[46] Time is of the essence when it comes to the national security implications of AI systems, and having regulations on these technologies in limbo while awaiting a court's decisions could have direct detrimental impacts on the ability of the United States to maintain a strategic advantage over China.

Policy Recommendations

The call for clear policies and regulations on artificial intelligence was sounded years ago, and only recently has modest movement been made in the right direction. With the Supreme Court overruling *Chevron*, the difficulty level of creating appropriate and adequate laws and regulations surrounding all ranges of artificial intelligence systems has escalated drastically. However, it is not a lost cause, and if Congress, the

executive branch, and the judiciary can rapidly respond to the issue at hand, there is a chance that reasonable minds can prevail, and AI can be developed in a safe manner without hindering critical innovation.

1. **Clear definitions of artificial intelligence terms must be established in coordination with relevant stakeholders**

Congress, the executive branch, academia, and industry must immediately come together to establish standard definitions of basic terms within the field of artificial intelligence across the board. Currently, there is no agreed-upon definition of what is and is not artificial intelligence, which can have significant and tangible impacts on the industry. Definitional questions are not unique to the technology sector as highly technical terms can be inaccessible to a general audience, and properly scoping definitions is a nearly perennial hurdle researchers and practitioners face. This is especially true when defining AI, an ever-evolving and novel field whose development even experts can't accurately predict.

Definitions of essential terms cannot be left up to the judgment of a court. They must be agreed upon by all parties and incorporate the perspectives of legislators,

agencies, academics, and businesses. It is not realistic to expect all terms within the realm of AI to be agreed upon in any sort of timely fashion, but the most basic terms, such as artificial intelligence, machine learning, deep learning, natural language processing, and even algorithms, need to have an established legal meaning.

The United States can look to the United Kingdom's June 2023 debate on artificial intelligence, where defining artificial intelligence and its various forms was at the center of the discussion.[47] Although the U.K. Parliament, too, struggled to clearly define artificial intelligence in all its forms, it has made some progress that can guide these discussions in the U.S. Allowing experts across the technology sector to directly discuss these definitions with members of Congress who are guided by the discussions in the U.K. Parliament will alleviate some concerns regarding Congress' difficulty in adequately conceptualizing and understanding AI technology.

This is even more important when considering that the meanings for technology-adjacent terms have begun diverging in common parlance from their original academic and technical definitions. This only further obfuscates the meanings of these terms and will likely result in frustrating legal challenges and little progression on needed regulations. Without this, it will be left up to members of Congress to determine the appropriate language for these definitions and judges to understand how these potentially flawed definitions apply to a host of unpredictable cases. Establishing standard definitions is also a critical first step to beginning a productive interdisciplinary discussion about how best to regulate AI.

2. Congress Must At Least Partially Codify *Chevron*

The precise reasoning that Congress had not, over the last 40 years since the *Chevron* decision, codified its ruling into law will not be dissected here. In form with a preference for leaving certain things to the experts, that determination should reside with the courts, as was made in the ruling overturning *Chevron*. However, that does not mean Congress is unable to pass legislation that clarifies its intention in failing to make *Chevron* the law of the land. Perhaps members of Congress felt the actions taken by the courts in respecting the precedent

and two-step process *Chevron* provided were perfectly in line with their intentions, and thus, there was no need to pass a law explicitly enshrining this. Or Congress intentionally did not codify *Chevron* because it, in fact, wanted the courts to rule on the legality of highly technical regulations. It is quite suspect to assume that Congress intended the extreme of either end of this spectrum.

A functioning Congress is unlikely to give unilateral, broad, and unlimited power to either the executive or judiciary. As such, it is paramount that Congress passes a law clarifying its intention and explicitly defining, as best as possible, when a regulation's merits and the agency's authority to impose those regulations should be determined by the courts or left up to the agency itself. A failure by Congress to address this question and clearly state its intentions should be viewed as a failure of Congress to perform its responsibility to respect the system of checks and balances.

It would be unwise to attempt to codify *Chevron* in its entirety. The Supreme Court's decision in *Loper Bright* was a result of years of work by conservatives to strike down *Chevron* and reduce agencies' regulatory authorities.[48] An attempt to codify *Chevron* in its current state is almost guaranteed to be unsuccessful. However, it may be possible to enact a law that requires courts to defer to agencies on a select number of subjects that instill a sense of bewilderment in the general public. Artificial intelligence is at the very top of that list. Few average Americans have a good understanding of AI, and given the concern the public has with the misuse of AI as promulgated through the news, deferring to a well-staffed AI regulatory agency on matters concerning artificial intelligence may have popular support. Other well-known agencies that regulate less obviously complex issues, such as environmental degradation and food safety, address more approachable topics for the general public to feel qualified to weigh in on than questions relating to AI. This presents an opportunity for lawmakers interested in seeing effective and informed regulation implemented within the field of AI that is not present for other issues. Capitalizing on this would greatly benefit the establishment of a strong AI regulatory scheme that protects citizens' safety and enhances innovation.

> " A dedicated federal agency tasked with the responsibility of assisting the many other agencies across the federal government with responsible handling of artificial intelligence and its impact on their activities is a must. "

3. Congress Should Establish a Federal Agency to Regulate and Oversee AI

Currently, there is no federal agency specifically established to regulate or oversee AI. The current approach has been to adopt AI capacities and responsibilities within existing agencies. The Cybersecurity and Infrastructure Security Agency, National Institute of Standards and Technology, FCC, and Federal Trade Commission have taken the lead in integrating AI into their regulations and attempting to use existing authorities granted to them by Congress to regulate and address the proliferation of AI. However no industry is safe from the coming tide of artificial intelligence, nor should they pretend as if it will not affect them.

The current approach of utilizing existing authorities granted to various agencies is a fair one, given no other options. Agencies likely felt they must address artificial intelligence, had no other specific agency to look to for guidance, and established approaches as best they could. However, this piecemeal approach is destined to result in incongruent and potentially directly contradictory regulations and implementations.

A dedicated federal agency tasked with the responsibility of assisting the many other agencies across the federal government with responsible handling of artificial intelligence and its impact on their activities is a must. The entity currently best positioned to begin establishing this agency is the House Task Force on AI, which is currently developing plans to enhance the positive benefits artificial intelligence can provide while safeguarding the public from potential harms. The requirement of expertise to make even reasonable regulations is two-fold when it comes to AI being applied in technical fields. As a result, this federal agency must have close working relationships with all other agencies to handle the multifaceted nature of AI integration across sectors.

4. Authorities Granted to the AI Agency Must Be Explicit While Affording Flexibility to Accommodate Industry Advancements

However, in light of the ruling in *Loper Bright v. Raimondo*, additional steps must be taken to avoid immediate challenges to this agency and its future regulations in the Supreme Court. To accommodate for the changes that result from the overturning of *Chevron*, Congress must be extremely diligent when establishing the federal agency that regulates AI.

Most importantly, the authorities granted to this agency should be almost unreasonably explicit. Congress can hardly afford to fail to give adequate authority to the agency it must create. The AI conversation is already one that boggles the minds of many observers, and creating an all-powerful AI agency with an unclear mandate, unclear authorities, and insufficient funding would further muddy the waters.

Additionally, within these authorities, there needs to be some level of flexibility to allow for the agency to pivot and respond to novel developments, discoveries, and AI technologies. Even creating a 10,000-page explicit listing of all potential authorities needed by this agency would neither be sufficient to cover everything, nor would be the ideal approach.

This level of specificity will be particularly difficult to pass through a deeply divided Congress. Doing so while also incorporating a level of flexibility, to some, may seem nigh impossible. Bipartisan support for such authorities will be difficult to garner. Regardless, given *Chevron's* elimination, this is what the situation requires. It is up to the members of Congress to find a path forward to address the lack of any regulatory agency in this critical sector.

5. Agency Establishment and Granted Authorities Must Require Coordination with Technology Industry and Academia

Any regulation or regulatory agency established to manage the rise of AI cannot ignore the impacts its actions will have on the technology industry, research and development, and innovation. As such, within the language granting authority to a new federal agency to oversee AI development and deployment across sectors, there must be a requirement that agencies consult and coordinate in good faith with the tech industry, both commercial and academic.

The agency must clearly acknowledge the potential detrimental impacts on innovation their activities may have and implement considerable and meaningful mitigation efforts against the potential chilling effect regulations may have on AI advancement. The main theme of this agency must be coordination, and the tech industry and innovative companies must be a central part of the regulations it develops and actions it takes. Although imposing regulations, especially export controls, is critical for U.S. superiority in AI, innovation is equally as critical.

Given that tech companies have already made global calls in favor of some level of AI regulation, they are likely to be willing to contribute to the effort of regulating AI. The precise division of power within this federal agency should be worked out and agreed upon by all stakeholders and proportionate to the various threats both regulation and lack of regulation pose to individuals, companies, and national security.

6. The Judicial System Should Incentivize Judges to Obtain Basic AI Competencies

It would be ignorant to assume these recommendations will come to fruition immediately. Although that would be ideal and perhaps necessary, the realities are such that contingencies must be baked into any plans to develop a regulatory system to address artificial intelligence. Pending the creation of a federal agency to regulate AI that perfectly balances innovation, citizens' constitutional rights, and national security, judges will now play a massive role in any regulations covering artificial intelligence. The worst-case scenario for AI regulation is one described above: uninformed legislators passing laws that, when challenged, will be reviewed and decided on by equally uninformed judges.

AI regulation over the next few years will be rough; the federal government must do what is feasible to mitigate the inevitable harm that will be born from a flawed system. Judges must rapidly increase their basic understanding of artificial intelligence systems and technologies. Until a federal agency overseeing AI regulations is established, all legal challenges to regulations will fall to these judges. Increasing core competencies of sitting judges on artificial intelligence will lessen the potential negative impact on needed regulations on AI until a more robust regulatory system is developed.

The National Judicial College offers "Artificial Intelligence for all Judges and Lawyers: A Comprehensive Course."[49] UNESCO has also assisted in developing training on artificial intelligence and the rule of law.[50] These two programs, while essential efforts, should be expanded significantly to provide more in-depth education to current judges and lawyers and provide accreditations to those who complete courses and demonstrate sufficient mastery of core competencies outlined within the course curriculum. To encourage the participation of judges, financial or other incentives should be provided to those who complete courses and meet standards of established core competencies.

Upon expansion of this educational program, all judges ruling on cases where artificial intelligence is a central component of the issue at hand must have completed the program and received proper accreditation. This recommendation could be rolled out more quickly than the expected timeline required to establish an entire functional and effective federal regulatory agency on AI. This approach not only could be useful as a stopgap until such an agency is established but also could become a requirement for judges eventually to be incorporated into law school curriculums at a later date.

It is a vast understatement to say the challenge facing all of government when it comes to the proper handling of AI seems insurmountable. Each recommendation here will require a concerted effort

by all stakeholders involved, and even then, one can expect gaps and missteps. However, the United States has faced other obstacles that seemed equally insurmountable before and found a way forward. This time is no different. The decision made by the Supreme Court to overrule *Chevron* is an impactful one that is likely to send many agencies spiraling, desperately figuring out how to adjust and carry out their essential functions. It is perhaps lucky that the system of regulation for AI has yet to be fully developed, as it presents an opportunity to truly and comprehensively address the AI question.

The loss of *Chevron* may light a fire under the three branches of government to make meaningful progress on AI regulation. Or it may burn down hopes of responding to future threats AI poses. Which path will come to fruition is squarely in the hands of our elected officials. ☐

Biography

Kelsey Quinn is the Open-Source Information Gathering (OSIG) Coordinator at the New Lines Institute. Quinn previously worked at the National Consortium for the Study of Terrorism and Responses to Terrorism (START) on the DARPA Sigma+ project, examining the decision and attack space for the use of CBRN weapons. She also worked as a research assistant at Michigan State University, investigating bacterial pathogenesis and physiology in *Vibrio cholerae*, a Category B bioterrorism agent, before beginning her master's studies and starting at the New Lines Institute. Quinn received her Bachelor of Science in Microbiology with a minor in Global Terrorism from the University of Maryland in 2019 and is pursuing a master's in Security and Terrorism Studies, also from UMD.

Endnotes

1 Loper Bright Enterprises v. Raimondo, 603 U.S. ___ (2024). https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

2 Legal Information Institute. (2024, June). *Chevron deference*. https://www.law.cornell.edu/wex/chevron_deference

3 Farber, D. (2024, May 2). *Judicial Deference to Agencies: A Timeline*. Center for Progressive Reform. https://progressivereform.org/cpr-blog/judicial-deference-to-agencies-a-timeline/

4 National Conference of State Legislatures. (2024, June 3). *Artificial Intelligence 2024 Legislation*. https://www.ncsl.org/technology-and-communication/artificial-intelligence-2024-legislation

5 Kang, C., & Satariano, A. (2023, March 3). As A.I. Booms, Lawmakers Struggle to Understand the Technology. *The New York Times*. https://www.nytimes.com/2023/03/03/technology/artificial-intelligence-regulation-congress.html

6 Chevron v. NRDC, 467 U.S. 837 (1984). https://supreme.justia.com/cases/federal/us/467/837/

7 Legal Information Institute. (2024, June). *Chevron deference*. https://www.law.cornell.edu/wex/chevron_deference

8 Sheth, J., & Ombres, D. (2024, January 10). *Loper Bright and Relentless: Ending Judicial Deference To Cement Judicial Activism in the Courts*. Center for American Progress. https://www.americanprogress.org/article/loper-bright-and-relentless-ending-judicial-deference-to-cement-judicial-activism-in-the-courts/

9 The Washington Post. (2024, January 20). *Conservatives want to unleash the courts. They might regret asking*. https://www.washingtonpost.com/opinions/2024/01/20/supreme-court-chevron-doctrine-case/

10 Heddles, C. (2024, June 28). *Conservative Legal Activists Get Their Biggest SCOTUS Win Yet: Chevron Overruled*. NOTUS. https://www.notus.org/courts/supreme-court-chevron-decision

11 Manheim, F. (2024, April 17). The debate over 'Chevron deference' overlooks its history. *The Hill*. https://thehill.com/opinion/judiciary/4597366-the-debate-over-chevron-deference-overlooks-its-history/

12 Transcript of Oral Argument, Loper Bright Enterprises v. Raimondo (1-98). https://www.supremecourt.gov/oral_arguments/argument_transcripts/2023/22-451_o7jp.pdf

13 Hickman, K. E., & Nielson, A. L. (2021). Narrowing Chevron's Domain. *Duke Jaw Journal, 70*(5), 931-1013. https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4056&context=dlj

14 Orford, A. D. (2023, December 12). *Orford: Loper Bright Enterprises v. Raimondo to have wide-ranging impacts on federal bureaucracy*. University of Georgia School of Law. https://www.law.uga.edu/index.php/news/7876

15 Loper Bright explicitly says that the ruling in this case does not overrule prior, settled cases that depend on *Chevron* deference. However, future challenges to regulations are still vulnerable to challenges and will be subject to *Skidmore* deference now. Additionally, the Supreme Court's ruling in *Corner Post v. Federal Reserve* a week later clarified that the clock for the statute of limitations on regulatory laws to be challenged begins not when the regulation is imposed but upon the first point of harm to the plaintiff. The impact of *Corner Post* is that no standing federal regulation, no matter how long it has been on the books, can be challenged so long as the first harm to a party has occurred within six years of the challenge. See Bryant, S., & Ombres, D. (Feb. 12, 2024). *Corner Post v. Federal Reserve: The Supreme Court Could Open a Pandora's Box for Federal Regulation.* The Center for American Progress. https://www.americanprogress.org/article/corner-post-v-federal-reserve-the-supreme-court-could-open-a-pandoras-box-for-federal-regulation/

16 Thomson Reuters. (2023). *2023 State of the Courts Report*. Thomson Reuters Institute. https://legal.thomsonreuters.com/en/insights/reports/2023-state-of-the-courts-report

17 Corner Post v. Board of Governors, 603 U.S. ___ (2024). https://www.supremecourt.gov/opinions/23pdf/22-1008_1b82.pdf

18 Skidmore et al. v. Swift & Co., 323 U.S. 134 (1944). https://www.law.cornell.edu/supremecourt/text/323/134

19 Barnett K., & Walker. C. J. (2024). *Chevron and Stare Decisis. George Mason Law Review, 31*(2), 476-497. https://lawreview.gmu.edu/wp-content/uploads/2024/03/Barnett-Walker-31-Geo.-Mason-L.-Rev.-475-2024.pdf

20 Loper Bright Enterprises v. Raimondo, 603 U.S. ___ (2024). https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

21 Lindström, P. (1997). Persuas ion via facts in political discussion. *European Journal of Social Psychology, 27*(1), 145-163, https://doi.org/10.1002/(SICI)1099-0992(199703)27:2<145::AID-EJSP811>3.0.CO;2-C

22 Yang, Z., Zeng, X., Zhao, Y., & Chen, R. (2023). AlphaFold2 and its applications in the fields of biology and medicine. *Signal Transduction and Targeted Therapy, 8*(115). https://doi.org/10.1038/s41392-023-01381-z

23 Durkee, A. (2024, June 28). Supreme Court Corrects EPA Opinion After Gorsuch Confuses Laughing Gas With Air Pollutant. *Forbes.* https://www.forbes.com/sites/alisondurkee/2024/06/28/supreme-court-corrects-epa-opinion-after-gorsuch-confuses-laughing-gas-with-air-pollutant/

24 Loper Bright Enterprises v. Raimondo, 603 U.S. ___ (2024). https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

25 Kornberg, M. (2023, July 5). *Congress Is Woefully Unprepared to Regulate Tech*. Brennan Center for Justice. https://www.brennancenter.org/our-work/analysis-opinion/congress-woefully-unprepared-regulate-tech

26 Belson, K. (2006, July 17). Senator's Slip of the Tongue Keeps on Truckin' Over the Web. *The New York Times*. https://www.nytimes.com/2006/07/17/business/media/17stevens.html

27 Common Sense Media. (2023, May 10). *New Poll Finds Parents Lag Behind Kids on AI and Want Rules and Reliable Information to Help Them. https://www.commonsensemedia.org/press-releases/new-poll-finds-parents-lag-behind-kids-on-ai*

28 Barna Group. (2024, January 24). *Hesitant & Hopeful: How Different Generations View Artificial Intelligence*. https://www.barna.com/research/generations-ai/

29 National Conference of State Legislatures. (2024, June 3). *Artificial Intelligence 2024 Legislation*. https://www.ncsl.org/technology-and-communication/artificial-intelligence-2024-legislation

30 Acemoglu, D. (2021, November 23). *Dangers of unregulated artificial intelligence*. Centre for Economic Policy Research. https://cepr.org/voxeu/columns/dangers-unregulated-artificial-intelligence

31 National Artificial Intelligence Advisory Committee. (2023). *FINDINGS: The Potential Future Risks of AI*. NAIAC. https://ai.gov/wp-content/uploads/2023/11/Findings_The-Potential-Future-Risks-of-AI.pdf

32 Park, B. (2023, October 24). The world wants to regulate AI, but does not quite know how. *The Economist*. https://www.economist.com/business/2023/10/24/the-world-wants-to-regulate-ai-but-does-not-quite-know-how

33 Rozen, C. (2023, July 27). AI Leaders Are Calling for More Regulation of the Tech. Here's What That May Mean in the US. *The Washington Post*. https://www.washingtonpost.com/business/2023/07/27/regulate-ai-here-s-what-that-might-mean-in-the-us/f91462c8-2caa-11ee-a948-a5b8a9b62d84_story.html

34 Gates, M. (2023, July 21). *Major Tech Companies Commit to Voluntarily Regulate Development of Artificial Intelligence*. ASIS International. https://www.asisonline.org/security-management-magazine/latest-news/today-in-security/2023/july/Major-Tech-Companies-Commit-to-Voluntarily-Regulate-Development-of-AI/

35 S. House of Representatives. (2024, February 20). *House Launches Bipartisan Task Force on Artificial Intelligence* [Press release]. https://democraticleader.house.gov/media/press-releases/house-launches-bipartisan-task-force-artificial-intelligence

36 Giancarlo, A. E., Zhang, J., & Luk, C. (2024, February 27). *FCC Declares Authority and Intent to Regulate AI-Generated Calls Under the TCPA.* Mayer Brown.

37 Federal Communications Commission. (2024, February 8). *FCC Confirms that TCPA Applies to AI Technologies that Generate Human Voices*. https://www.fcc.gov/document/fcc-confirms-tcpa-applies-ai-technologies-generate-human-voices

38 Fienberg, H. (2023, August 16). *The FC Should Not Require Legal Calls Be Blocked and Mislabeled in the Crusade Against Robocalls*. Insights Association. https://www.insightsassociation.org/News/Articles/ArticleID/999/The-FCC-Should-Not-Require-Legal-Calls-be-Blocked-and-Mislabeled-in-the-Crusade-Against-Robocalls

39 American Association for Public Opinion Research. (2022). *Spam Flagging and Call Blocking and Its Impact on Survey Research*. AAPOR. https://aapor.org/wp-content/uploads/2022/11/AAPOR-Spam-Report-021218.pdf

40 Halladay, K. (2022, October 6). *How Do Phones Identify Potential Spam Calls?*. Built In. https://builtin.com/machine-learning/spam-calls

41 Govini. (2023). *The National Security Scorecard: Critical Technologies Edition*. Govini. https://www.govini.com/insights/the-2022-national-security-scorecard-critical-technologies-edition

42 Zhuang, S. (2024, May 30). China plans leading role in global AI race on standards and computing power push. *South China Morning Post*. https://www.scmp.com/news/china/science/article/3264658/china-plans-leading-role-global-ai-race-standards-and-computing-power-push

43 Bureau of Industry and Security. (n.d.). *About BIS*. Retrieved July 3, 2024, from https://www.bis.gov/about-bis

44 Bureau of Industry and Security. (2020). *Export Administration Regulations Legal Authority*. United States Department of Commerce. https://www.bis.gov/sites/default/files/files/legal-authorities-2020-with-hyperlinks.pdf

45 H.R.8315 - 118th Congress (2023-2024): Enhancing National Frameworks for Overseas Restriction of Critical Exports Act. (2024, May 22). https://www.congress.gov/bill/118th-congress/house-bill/8315

46 Thomson Reuters. (2023). *2023 State of the Courts Report*. Thomson Reuters Institute. https://legal.thomsonreuters.com/en/insights/reports/2023-state-of-the-courts-report

47 House of Commons. (2023, June 28). *Debate on Artificial Intelligence*. House of Commons Library. https://researchbriefings.files.parliament.uk/documents/CDP-2023-0152/CDP-2023-0152.pdf

48 Goodwin, J. (2024, March 5). *The Ideological Warfare Behind the Attack on Chevron Deference: Part 3*. Center for Progressive Reform. https://progressivereform.org/cpr-blog/ideological-warfare-behind-attack-on-chevron-deference-part3/

49 The National Judicial College. (2024). *Artificial Intelligence (AI) for all Judges and Lawyers: A Comprehensive Course*. https://www.judges.org/courses/ai-2024/

50 UNESCO. (2022, September 12). *Training judges, lawyers and prosecutors in Artificial Intelligence and the Rule of Law*. https://www.unesco.org/en/articles/training-judges-lawyers-and-prosecutors-artificial-intelligence-and-rule-law

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