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SEPTEMBER 15, 2025

Administrative Law in the 2024-25 Roberts Court

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SHOOK
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Administrative Law after Loper Bright Enterprises

Loper Bright Enterprises v. Raimondo, 603 U. S. 369 (2024)

- Courts are not obligated to accept administrative guidance that conflicts with the statutory language it purports to implement, even if an agency's interpretation of an ambiguous federal statute is reasonable or permissible.
- Overruled "Chevron deference," a two-part test for deciding whether a court should defer to an agency's interpretation of a statute.
  1) **Is the statute ambiguous (or silent) on the question;**
  2) **Is the agency's interpretation reasonable? If so, courts deferred.**

Administrative Law after Loper Bright Enterprises

NOAA FISHERIES

***Loper Bright Enterprises v. Raimondo*, 603 U. S. 369 (2024)**

- **Agency:** National Marine Fisheries Service.
- **Statute at Issue:** Magnuson-Stevens Act, 16 U.S.C. §1801 et seq. (intended to prevent overfishing esp. by foreign vessels).
- **Regulation:** Agency created an industry-funded monitoring program for fishing vessels.
- **Question:** Statute didn't authorize the fisheries service to require industry finding. So, who pays the cost of onboard gov. inspectors for US trawlers?

Administrative Law after Loper Bright Enterprises

Loper Bright Enterprises v. Raimondo, 603 U. S. 369 (2024)

- **Administrative Procedure Act requires courts to exercise independent judgment** in deciding whether an agency has acted within its statutory authority
- Courts may give "weight" or "respect" to agency interpretation but **may not defer** to an agency interpretation of the law simply because the statute is ambiguous.

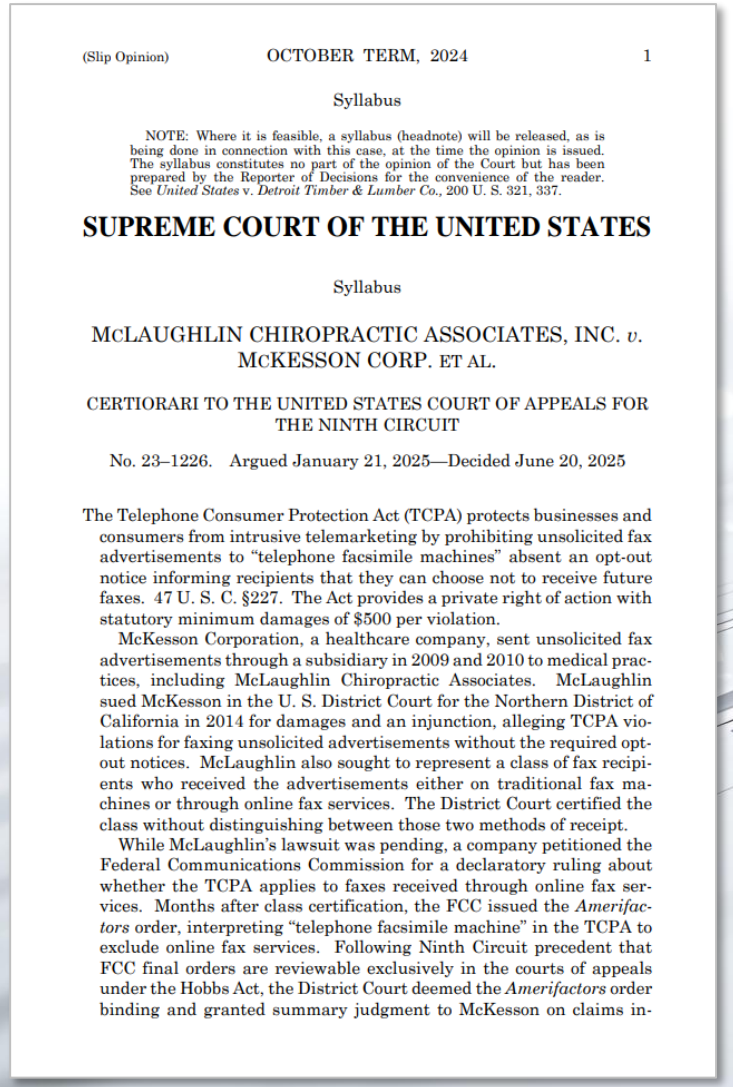
Administrative Law after Loper Bright Enterprises

- ***Loper Bright*** only affects rules or agency action based on a statutory ambiguity or silence. Clear grants of power by Congress remain in place, because these never needed the protections of *Chevron* deference.
- ***Loper Bright*** affects only agency conclusions of law. Deferential standard of review remains in place with respect to agency factfinding. Under the APA, findings of fact in formal agency proceedings can be set aside only if they are "unsupported by substantial evidence."
- ***Loper Bright*** does not permit courts to reject discretionary determinations made when Congress has conferred upon the agency the power to make that determination.
- Court stated that the mere fact that a prior case relied on *Chevron* is not a sufficient basis for overturning it now.

Significant 2024-25 Administrative Law decisions

- ***McLaughlin Chiropractic Associates v. McKesson Corporation***
  - District courts may independently assess agency interpretations of authorizing statute.
- ***City and County of San Francisco v. EPA***
  - EPA is not authorized to impose NPDES permit requirements that condition permitholders compliance on whether receiving waters meet applicable water quality standards.
- ***Seven County Infrastructure Coalition v. Eagle County, Colorado***
  - An Agency considering Environmental Impact Statements Under NEPA (as amended) should afford substantial deference to the Agency.
- ***Federal Communications Commission et al. v. Consumers' Research et al.***
  - Non-Delegation Doctrine – limits discretion given to executive agencies.

McLaughlin Chiropractic Associates v. McKesson Corporation



(Slip Opinion) OCTOBER TERM, 2024 1

Syllabus

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SUPREME COURT OF THE UNITED STATES

Syllabus

MCLAUGHLIN CHIROPRACTIC ASSOCIATES, INC. *v.* MCKESSON CORP. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 23–1226. Argued January 21, 2025—Decided June 20, 2025

The Telephone Consumer Protection Act (TCPA) protects businesses and consumers from intrusive telemarketing by prohibiting unsolicited fax advertisements to "telephone facsimile machines" absent an opt-out notice informing recipients that they can choose not to receive future faxes. 47 U. S. C. §227. The Act provides a private right of action with statutory minimum damages of $500 per violation.

McKesson Corporation, a healthcare company, sent unsolicited fax advertisements through a subsidiary in 2009 and 2010 to medical practices, including McLaughlin Chiropractic Associates. McLaughlin sued McKesson in the U. S. District Court for the Northern District of California in 2014 for damages and an injunction, alleging TCPA violations for faxing unsolicited advertisements without the required opt-out notices. McLaughlin also sought to represent a class of fax recipients who received the advertisements either on traditional fax machines or through online fax services. The District Court certified the class without distinguishing between those two methods of receipt.

While McLaughlin's lawsuit was pending, a company petitioned the Federal Communications Commission for a declaratory ruling about whether the TCPA applies to faxes received through online fax services. Months after class certification, the FCC issued the *Amerifactors* order, interpreting "telephone facsimile machine" in the TCPA to exclude online fax services. Following Ninth Circuit precedent that FCC final orders are reviewable exclusively in the courts of appeals under the Hobbs Act, the District Court deemed the *Amerifactors* order binding and granted summary judgment to McKesson on claims in-

- **In civil enforcement proceedings under the Telephone Consumer Protection Act, are district courts bound by the Federal Communications Commission's interpretation of the Act?**
- **Case involved the Telephone Consumer Protection Act of 1991 (TCPA)**
  - TCPA "protects businesses and consumers from intrusive telemarketing communications. Among other restrictions, the TCPA prohibits a business from sending an 'unsolicited advertisement" by fax to a 'telephone facsimile machine' absent an opt-out notice informing recipients that they can choose not to receive future faxes." 47 U. S. C. §§227(b)(1)(C), (2)(D).
- **Under the TCPA private parties "may sue the sender of an unlawful fax—an unsolicited fax that lacks an opt-out notice—for damages or injunctive relief in federal or state court."**

McLaughlin Chiropractic Associates v. McKesson Corporation

- McLaughlin Chiropractic Associates filed a class action lawsuit against McKesson Corporation under the TCPA for sending unsolicited fax advertisements without an opt-out notice.
  - Included in the definition of the class are recipients of spam sent from on-line fax machine.
- While the case was pending in the district court, the FCC issued a declaratory ruling that interpreted “telephone facsimile machine” to exclude “online” fax services.
- District Court, following, Ninth Circuit precedent that FCC final orders are reviewable exclusively in in courts of appeal under the Administrative Orders Review Act (the "Hobbs Act”), granted summary judgment on the claims involving on-line fax services.

McLaughlin Chiropractic Associates v. McKesson Corporation

- The Hobbs Act provides for pre-enforcement judicial review of FCC orders. To obtain declaratory or injunctive relief, a party must file a petition in a federal court of appeals within 60 days of the FCC order.
  - **Note: Some statutes expressly preclude review in enforcement actions. E.g., Clean Water Act, Clean Air Act, CERCLA.**
- Hobbs Act neither expressly precludes or authorizes judicial review in subsequent enforcement proceedings.
- In the enforcement-proceeding context, the Administrative Procedure Act, 5 U. S. C. §703, provides: "Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement."

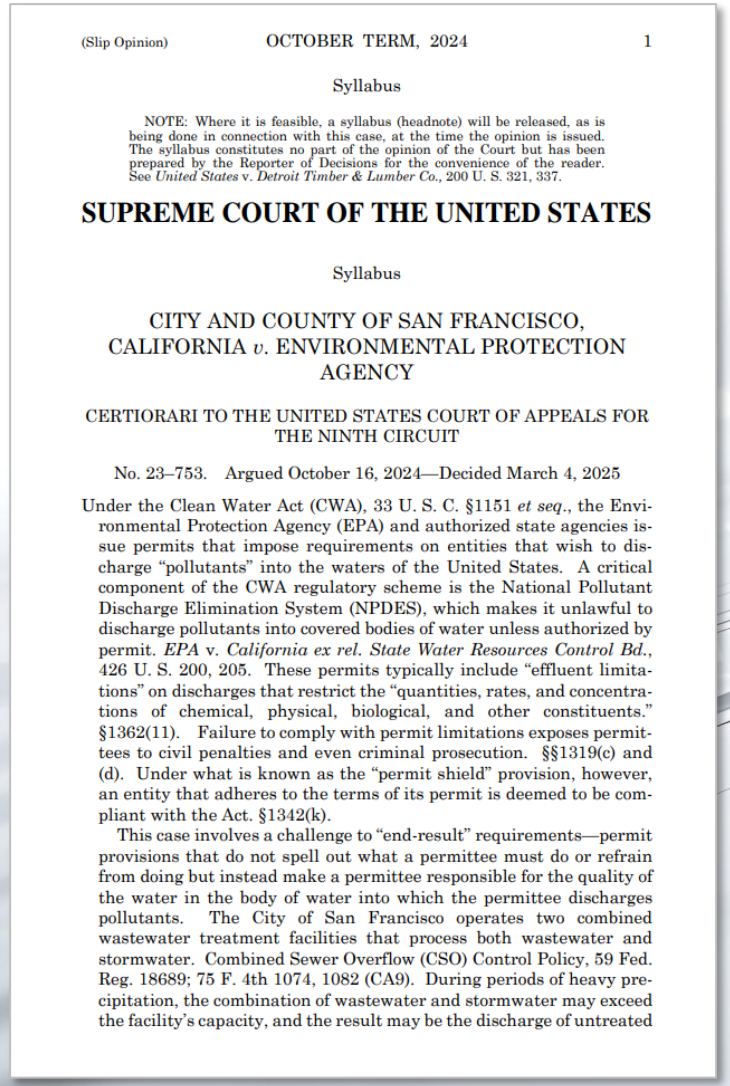
McLaughlin Chiropractic Associates v. McKesson Corporation

- "We do not presume that Congress silently intended to preclude judicial review in enforcement proceedings. Rather, the default rule is that district courts in enforcement proceedings may conclude that an agency's interpretation of a statute is incorrect." Slip Op. at 11-12.
- The Hobbs Act does not preclude district courts in a private suit for damages under the TCPA from independently assessing the FCC's interpretation of the TCPA (that an online fax transmission is not a fax to a "telephone facsimile machine").
  - "In short, the Hobbs Act does not bar McLaughlin from arguing in the district court enforcement proceeding that the FCC's interpretation of the TCPA is incorrect. The Hobbs Act dictates how, when, and in what court a party can challenge a new agency order before enforcement. The Act does not purport to address, much less preclude, district court review in enforcement proceedings. So the District Court in this enforcement proceeding can decide what the statute means under ordinary principles of statutory interpretation, affording appropriate respect to the FCC's interpretation." Slip Op. at 14.

McLaughlin Chiropractic Associates v. McKesson Corporation

"Fundamental principles of administrative law establish the proper default rule: **In an enforcement proceeding**, a district court must independently determine for itself whether the agency's interpretation of a statute is correct. **District courts are not bound by the agency's interpretation, but instead must determine the meaning of the law under ordinary principles of statutory interpretation**, affording appropriate respect to the agency's interpretation. See *Loper Bright Enterprises v. Raimondo*, 603 U. S. 369, 402 (2024)." Slip Op. at 7-8.

City and County of San Francisco
v.
EPA



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SUPREME COURT OF THE UNITED STATES

Syllabus

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA *v.* ENVIRONMENTAL PROTECTION AGENCY

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 23–753. Argued October 16, 2024—Decided March 4, 2025

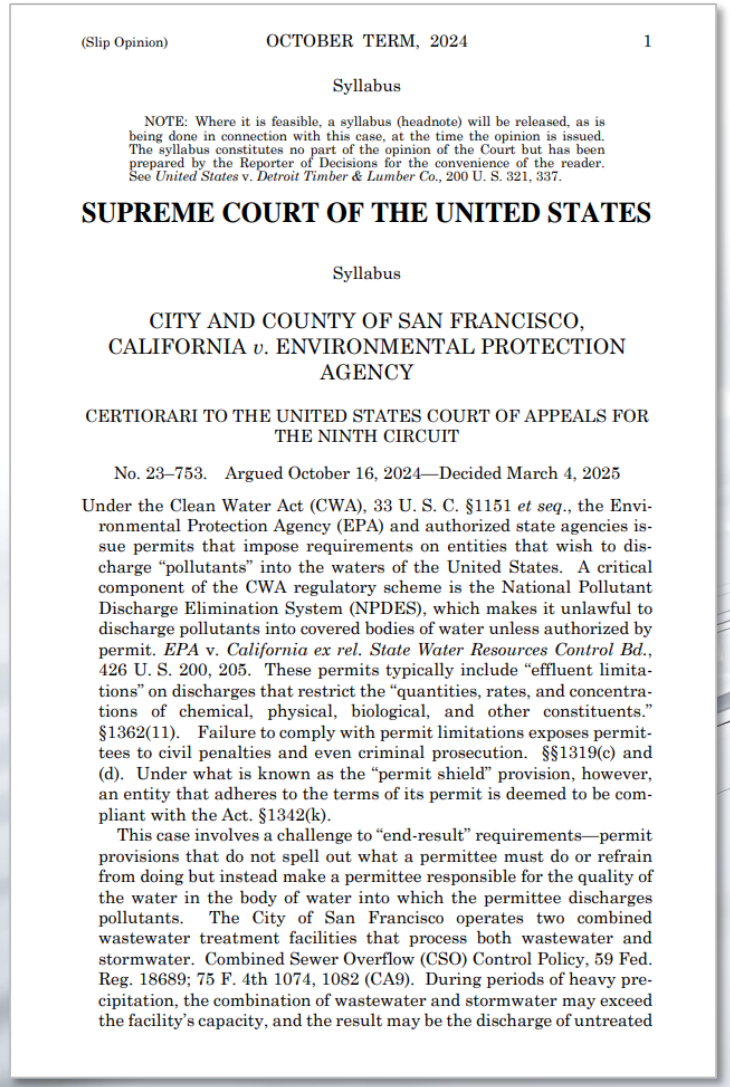
Under the Clean Water Act (CWA), 33 U. S. C. §1151 *et seq.*, the Environmental Protection Agency (EPA) and authorized state agencies issue permits that impose requirements on entities that wish to discharge "pollutants" into the waters of the United States. A critical component of the CWA regulatory scheme is the National Pollutant Discharge Elimination System (NPDES), which makes it unlawful to discharge pollutants into covered bodies of water unless authorized by permit. *EPA* v. *California ex rel. State Water Resources Control Bd.*, 426 U. S. 200, 205. These permits typically include "effluent limitations" on discharges that restrict the "quantities, rates, and concentrations of chemical, physical, biological, and other constituents." §1362(11). Failure to comply with permit limitations exposes permittees to civil penalties and even criminal prosecution. §§1319(c) and (d). Under what is known as the "permit shield" provision, however, an entity that adheres to the terms of its permit is deemed to be compliant with the Act. §1342(k).

This case involves a challenge to "end-result" requirements—permit provisions that do not spell out what a permittee must do or refrain from doing but instead make a permittee responsible for the quality of the water in the body of water into which the permittee discharges pollutants. The City of San Francisco operates two combined wastewater treatment facilities that process both wastewater and stormwater. Combined Sewer Overflow (CSO) Control Policy, 59 Fed. Reg. 18689; 75 F. 4th 1074, 1082 (CA9). During periods of heavy precipitation, the combination of wastewater and stormwater may exceed the facility's capacity, and the result may be the discharge of untreated

Are "end-result" provisions in National Pollutant Discharge Elimination System permits permissible?

- NPDES permits allow operators of sewer systems to discharge effluent to a navigable water subject to limitations established under the Clean Water Act.
- NPDES makes it unlawful to discharge pollutants into covered bodies of water unless authorized by permit.
  - NPDES permits typically include "effluent limitations" on discharges that restrict the "quantities, rates, and concentrations of chemical, physical, biological, and other constituents." §1362(11). May also set out other steps that a discharger must take, such as testing, record-keeping, and reporting requirements, as well as requirements obligating a permittee to follow specified practices designed to reduce pollution.

City and County of San Francisco v. EPA



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This case involves a challenge to "end-result" requirements—permit provisions that do not spell out what a permittee must do or refrain from doing but instead make a permittee responsible for the quality of the water in the body of water into which the permittee discharges pollutants. The City of San Francisco operates two combined wastewater treatment facilities that process both wastewater and stormwater. Combined Sewer Overflow (CSO) Control Policy, 59 Fed. Reg. 18689; 75 F. 4th 1074, 1082 (CA9). During periods of heavy precipitation, the combination of wastewater and stormwater may exceed the facility's capacity, and the result may be the discharge of untreated

Are "end-result" provisions in National Pollutant Discharge Elimination System permits permissible?

- City of San Francisco operates a combined sewer system and Oceanside sewer treatment plant that are subject to NPDES permits.
- In 2019, EPA included as part of City's NPDES permit the following prohibitions:
  - Oceanside may not make any discharge that "contribute[s] to a violation of any applicable water quality standard" for receiving waters; and
  - The City cannot perform any treatment or make any discharge that "create[s] pollution, contamination, or nuisance as defined by California Water Code section 13050."

City and County of San Francisco v. EPA

What are "end-result" provisions?

"[P]rovisions that **do not spell out what a permittee must do or refrain from doing; rather, they make a permittee responsible for the quality of the water in the body of water into which the permittee discharges pollutants**. When a permit contains such requirements, a permittee that punctiliously follows every specific requirement in its permit may nevertheless face crushing penalties if the quality of the water in its receiving waters falls below the applicable standards. For convenience, we will call such provisions "end-result" requirements.

City and County of San Francisco v. EPA

City's first challenge to the permit:

- 1311(b)(1)(C) authorizes "effluent" limitations only, even if subsection C does not qualify the word "limitations."
  - Congress defines three ways the EPA Administrator to achieve the objectives of the Clean Water Act:
    1. §1311(b)(1)(A): "*effluent limitations* for point sources, other than publicly owned treatment works, require the application of the best practicable control technology currently available, and in the case of a discharge into a publicly owned treatment works, "pretreatment requirements" have to be satisfied.
    2. §1311(b)(1)(B): POTWs have to meet "*effluent limitations* based upon secondary treatment" as defined by EPA.
    3. §1311(b)(1)(C): not later than July 1, 1977, *any more stringent limitation*, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations . . . [known as water quality-based effluent limitations (WQBELs)].

City and County of San Francisco v. EPA

City's second challenge to the permit:

- Even if §1311(b)(1)(C) is not limited to effluent limitations, it does not authorize EPA to impose NPDES permit requirements that condition permitholders' compliance on whether receiving waters meet applicable water quality standards.
- Supreme Court agreed:
  - "We start with the term "limitation." As used in the relevant context, a limitation is a "restriction or restraint imposed from without (as by law[])." Webster's Third New International Dictionary 1312 (1976) (emphasis added). A provision that tells a permittee that it must do certain specific things plainly qualifies as a limitation. Such a provision imposes a restriction "from without."" Slip Op. at 10.

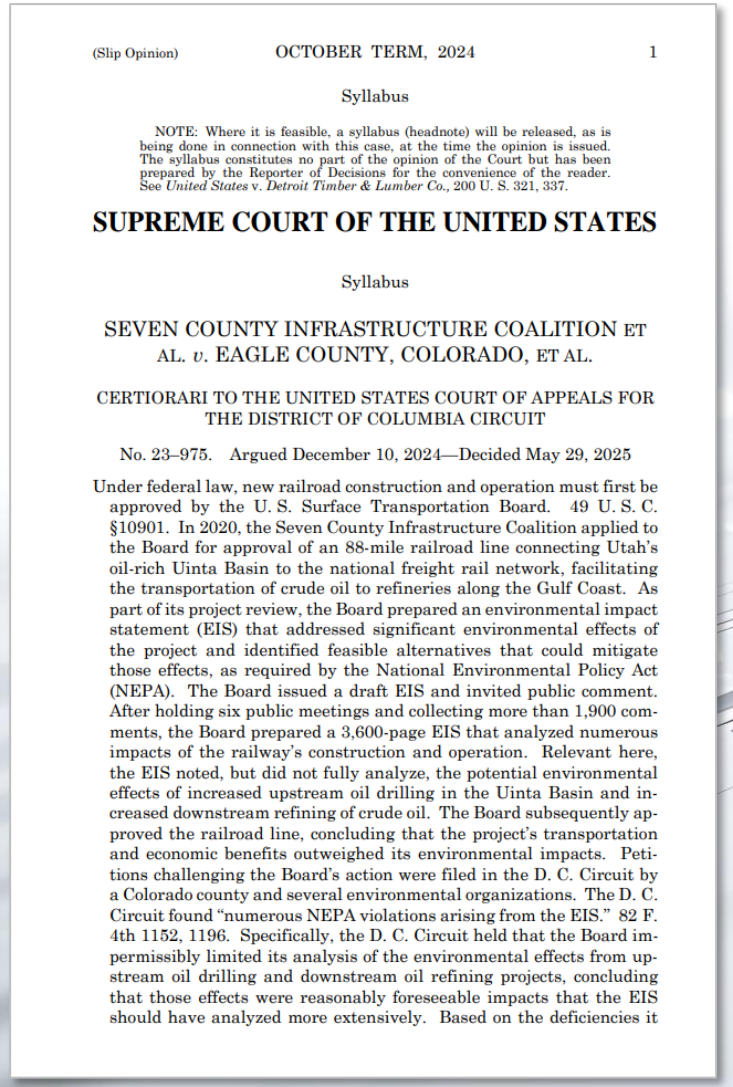
City and County of San Francisco v. EPA

- **Permit limitations must provide guidance, not aspiration.**
  - "In sum, we hold that §1311(b)(1)(C) does not authorize the EPA to include "end-result" provisions in NPDES permits. Determining what steps a permittee must take to ensure that water quality standards are met is the EPA's responsibility, and Congress has given it the tools needed to make that determination. If the EPA does what the CWA demands, water quality will not suffer." Slip Op. at 20.
  - "A provision that tells a permittee that it must do certain specific things plainly qualifies as a limitation. . . . But when a provision simply tells a permittee that a particular end result must be achieved and that it is up to the permittee to figure out what it should do, the direct source of restriction or restraint is the plan that the permittee imposes on itself for the purpose of avoiding future liability. Slip Op. at 10.
  - "Simply telling a permittee to ensure that the end result is reached is not a "concrete plan" for achieving the desired result. Such a directive simply states the desired result; it does not implement that result." Slip Op. at 11.

City and County of San Francisco v. EPA

- Permit interferes with CWA's "permit shield" provision.
  - 33 U. S. C. §1342(k), deems a permittee to be in compliance with the CWA if it follows all the terms in its permit.
- Penalizes discharger in multi-discharger situation "when there is nothing a permittee can do to bring about a prompt correction."
- "But the benefit of this ["permit shield"] provision would be eviscerated if the EPA could impose a permit provision making the permittee responsible for any drop in water quality below the accepted standard. A permittee could do everything required by all the other permit terms. It could devise a careful plan for protecting water quality, and it could diligently implement that plan. But if, in the end, the quality of the water in its receiving waters dropped below the applicable water quality levels, it would face dire potential consequences.

Seven County Infrastructure Coalition v. Eagle County, Colorado



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SUPREME COURT OF THE UNITED STATES

Syllabus

SEVEN COUNTY INFRASTRUCTURE COALITION ET AL. *v.* EAGLE COUNTY, COLORADO, ET AL.

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

No. 23–975. Argued December 10, 2024—Decided May 29, 2025

Under federal law, new railroad construction and operation must first be approved by the U. S. Surface Transportation Board. 49 U. S. C. §10901. In 2020, the Seven County Infrastructure Coalition applied to the Board for approval of an 88-mile railroad line connecting Utah's oil-rich Uinta Basin to the national freight rail network, facilitating the transportation of crude oil to refineries along the Gulf Coast. As part of its project review, the Board prepared an environmental impact statement (EIS) that addressed significant environmental effects of the project and identified feasible alternatives that could mitigate those effects, as required by the National Environmental Policy Act (NEPA). The Board issued a draft EIS and invited public comment. After holding six public meetings and collecting more than 1,900 comments, the Board prepared a 3,600-page EIS that analyzed numerous impacts of the railway's construction and operation. Relevant here, the EIS noted, but did not fully analyze, the potential environmental effects of increased upstream oil drilling in the Uinta Basin and increased downstream refining of crude oil. The Board subsequently approved the railroad line, concluding that the project's transportation and economic benefits outweighed its environmental impacts. Petitions challenging the Board's action were filed in the D. C. Circuit by a Colorado county and several environmental organizations. The D. C. Circuit found "numerous NEPA violations arising from the EIS." 82 F. 4th 1152, 1196. Specifically, the D. C. Circuit held that the Board impermissibly limited its analysis of the environmental effects from upstream oil drilling and downstream oil refining projects, concluding that those effects were reasonably foreseeable impacts that the EIS should have analyzed more extensively. Based on the deficiencies it

- Under the National Environmental Policy Act (NEPA), courts should review an agency's environmental impact statement (EIS) to ensure that it addresses the environmental effects of the project at hand.
- The EIS need not address the effects of separate projects.
- In conducting that review, courts should afford substantial deference to the agency as to the scope and contents of the EIS.

Seven County Infrastructure Coalition v. Eagle County, Colorado

What is NEPA?

- 1970 law that requires federal agencies to evaluate the environmental impacts of major federal action—for example, the building of a dam or other infrastructure—by preparation of an EIS.
- The EIS must address the significant environmental effects of a proposed project and identify feasible alternatives that could mitigate those effects.
- The federal agency involved will then consider the EIS in making any required determination or decision.

Seven County Infrastructure Coalition v. Eagle County, Colorado

Facts:

- The U. S. Surface Transportation Board considered a proposal by a group of seven Utah counties for the construction and operation of an approximately 88-mile railroad line in northeastern Utah
- The railroad line would connect Utah's oil-rich Uinta Basin—a rural territory roughly the size of the State of Maryland—to the national rail network.
- By doing so, the new railroad line would facilitate the transportation of crude oil from Utah to refineries in Louisiana, Texas, and elsewhere.
- Project would bring significant economic development and jobs to the isolated Uinta Basin by better connecting the Basin to the national economy.
- The Surface Transportation Board prepared an extraordinarily lengthy EIS, spanning more than 3,600 pages of environmental analysis.
- The Board's EIS addressed the environmental effects of the railroad line only.

Seven County Infrastructure Coalition v. Eagle County, Colorado

The U. S. Court of Appeals for the D. C. Circuit:

> The EIS failed to consider the environmental effects of projects *separate from the railroad line itself*—such as environmental effects that could ensue from (i) increased oil drilling upstream; and (ii) increased oil refining downstream along the Gulf Coast of Louisiana and Texas.

Seven County Infrastructure Coalition v. Eagle County, Colorado

Supreme Court reversed.

- "[W]hen the effects of an agency action arise from a separate project—for example, a possible future project or one that is geographically distinct from the project at hand—NEPA does not require the agency to evaluate the effects of that separate project." Slip Op. at 16.
- "[T]he environmental *effects* of the project at issue may fall within NEPA even if those *effects* might extend outside the geographical territory of the project or might materialize later in time—for example, run-off into a river that flows many miles from the project and affects fish populations elsewhere, or emissions that travel downwind and predictably pollute other areas." (Emphasis in the original.) "But if the project at issue might lead to the construction or increased use of a separate project—for example, a housing development that might someday be built near a highway—the agency need not consider the environmental effects of that separate project." Id.

Seven County Infrastructure Coalition v. Eagle County, Colorado

Agency deference remains alive.

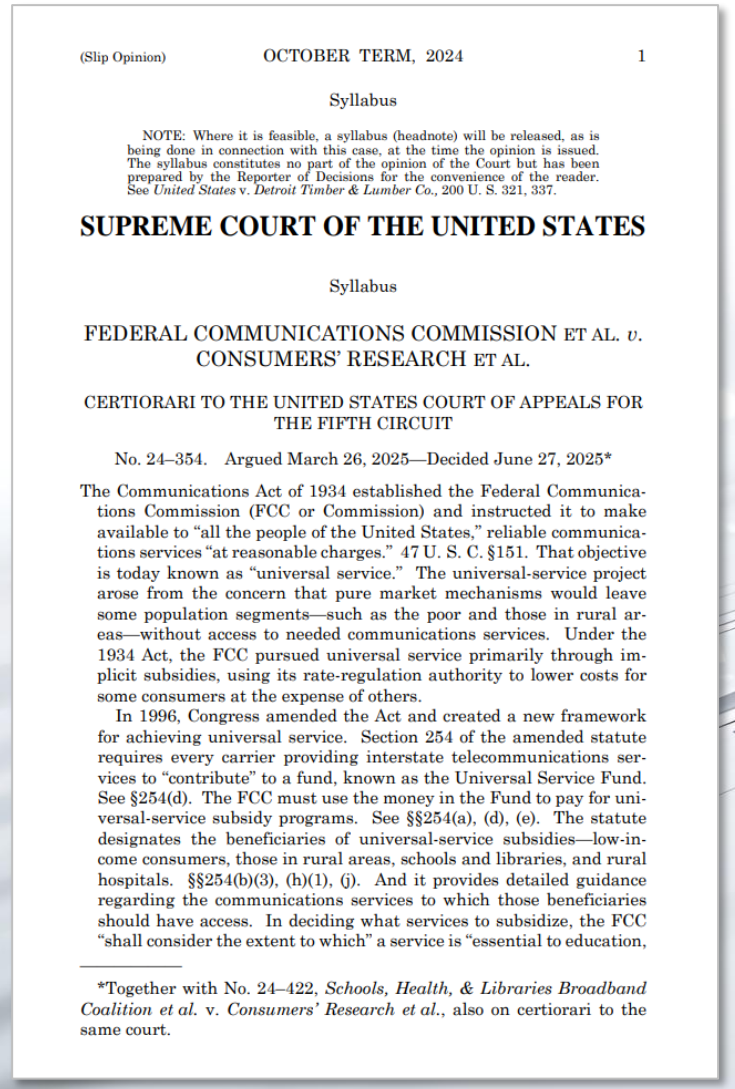
- So long as the EIS addresses environmental effects from the project at issue, courts should defer to agencies' decisions about where to draw the line, including:
  - how far to go in considering indirect environmental effects from the project at hand; and
  - whether to analyze environmental effects from other projects separate in time or place from the project at hand.
- Agencies possess discretion and must have broad latitude to draw a "manageable line." In considering indirect environmental effects.
- When assessing significant environmental effects and feasible alternatives, an agency will invariably make a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry—and also about the length, content, and level of detail of the resulting EIS.
- Courts should afford substantial deference and should not micromanage those agency choices so long as they fall within a broad zone of reasonableness.

Seven County Infrastructure Coalition v. Eagle County, Colorado

Loper Bright distinguished.

"As a general matter, when an agency interprets a statute, judicial review of the agency's interpretation is *de novo*. See *Loper Bright Enterprises* v. *Raimondo*, 603 U. S. 369, 391–392 (2024). But when an agency exercises discretion granted by a statute, judicial review is typically conducted under the Administrative Procedure Act's deferential arbitrary-and-capricious standard. Under that standard, a court asks not whether it agrees with the agency decision, but rather only whether the agency action was reasonable and reasonably explained. Slip Op. at 8-9.

Federal Communications Commission, et al.
v.
Consumers' Research, et al.



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SUPREME COURT OF THE UNITED STATES

Syllabus

FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* CONSUMERS' RESEARCH ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 24–354. Argued March 26, 2025—Decided June 27, 2025*

The Communications Act of 1934 established the Federal Communications Commission (FCC or Commission) and instructed it to make available to "all the people of the United States," reliable communications services "at reasonable charges." 47 U. S. C. §151. That objective is today known as "universal service." The universal-service project arose from the concern that pure market mechanisms would leave some population segments—such as the poor and those in rural areas—without access to needed communications services. Under the 1934 Act, the FCC pursued universal service primarily through implicit subsidies, using its rate-regulation authority to lower costs for some consumers at the expense of others.

In 1996, Congress amended the Act and created a new framework for achieving universal service. Section 254 of the amended statute requires every carrier providing interstate telecommunications services to "contribute" to a fund, known as the Universal Service Fund. See §254(d). The FCC must use the money in the Fund to pay for universal-service subsidy programs. See §§254(a), (d), (e). The statute designates the beneficiaries of universal-service subsidies—low-income consumers, those in rural areas, schools and libraries, and rural hospitals. §§254(b)(3), (h)(1), (j). And it provides detailed guidance regarding the communications services to which those beneficiaries should have access. In deciding what services to subsidize, the FCC "shall consider the extent to which" a service is "essential to education,

*Together with No. 24–422, *Schools, Health, & Libraries Broadband Coalition et al.* v. *Consumers' Research et al.*, also on certiorari to the same court.

Clarified scope of the non-delegation doctrine.

- Case involved "Universal Service" – Charges made by the FCC to provide communications services to all Americans at affordable prices.
  - The FCC requires "contributions" from telecommunications companies to subsidize basic communications services for consumers in certain underserved communities—particularly, rural and low-income areas.
  - 47 U.S.C. §254(d) requires every carrier providing interstate telecommunications services to "contribute," to a fund designed to "preserve and advance universal service."

Federal Communications Commission, et al. v. Consumers' Research

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Federal Communications Commission, et al. v. Consumers' Research

- **The FCC must use the money in that fund, now known as the Universal Service Fund, to pay for subsidy programs for designated populations and facilities needing improved access.**
  - FCC established discrete subsidy programs for consumers Congress identified.
  - Identified a contribution factor for each existing company.
  - Set up a special fund to receive and disburse the companies' payments.
  - Enlisted a private corporation, called the Universal Service Administrative Company, to help manage the fund's operations.

Federal Communications Commission, et al. v. Consumers' Research

- **Consumers' Research challenged the contribution scheme claiming it violated the non-delegation doctrine.**
  - Non-delegation doctrine: A constitutional principle that prevents Congress from delegating its legislative power to another branch of government, particularly the executive branch and its administrative agencies.
- "The question in this case is whether the universal-service scheme—more particularly, its contribution mechanism—violates the Constitution's nondelegation doctrine, either because Congress has given away its power to the FCC or because the FCC has given away its power to a private company."

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- **Fifth Circuit's decision below:**
  - The combination of Congress's sweeping delegation to FCC and FCC's unauthorized sub-delegation" to the FCC Administrator constituted impermissible "double-layered" delegation.
    - "[T]wo or more things that are not independently unconstitutional can combine to violate the Constitution's separation of powers." 109 F. 4th, at 77.
  - Such delegation "undermine[s] democratic accountability" by obscuring whether Congress, the FCC, or the Administrator bears responsibility for the amount of contributions. at 783–784.

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- **Supreme Court Reversed, holding the contribution scheme does not violate the nondelegation doctrine:**
  - Agency rulemaking does not violate the non-delegation doctrine if Congress provides sufficient guidance to the agency.

"Article I of the Constitution provides that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States." §1. Accompanying that assignment of power to Congress is a bar on its further delegation: Legislative power, we have held, belongs to the legislative branch, and to no other. At the same time, we have recognized that Congress may 'seek[] assistance' from its coordinate branches to secure the 'effect intended by its acts of legislation. And in particular, Congress may "vest discretion" in executive agencies to implement and apply the laws it has enacted—for example, by deciding on "the details of [their] execution." Slip Op. at 10-11.

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- **When is delegation proper?**
  - "To distinguish between the permissible and the impermissible in this sphere, we have long asked whether Congress has set out an "intelligible principle" to guide what it has given the agency to do."
  - "Under that test, "the degree of agency discretion that is acceptable varies according to the scope of the power congressionally conferred."
  - But in examining a statute for the requisite intelligible principle, we have generally assessed whether Congress has made clear both "the general policy" that the agency must pursue and "the boundaries of [its] delegated authority. And similarly, we have asked if Congress has provided sufficient standards to enable both "the courts and the public [to] ascertain whether the agency" has followed the law. If Congress has done so— as we have almost always found— then we will not disturb its grant of authority." Slip Op. at 11.

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- **Congressional guidance was sufficient:**
  - [T]he Act recognizes that those services, given the expected pace of technological change, are unlikely to stay static: Universal service, says the statute, is "an evolving level of telecommunications services that the Commission shall establish periodically" as it accounts for "advances in telecommunications and information technologies and services." §254(c)(1).
  - FCC "shall consider the extent to which" a service (1) is "essential to education, public health, or public safety;" (2) has, through market forces, "been subscribed to by a substantial majority of residential customers"; and (3) is in fact "being deployed in public telecommunications networks by telecommunications carriers." §§254(c)(1)(A)–(C).
  - The Commission must evaluate whether a service can be made available at an "affordable rate." §254(b)(1).
  - Congress afforded the FCC latitude to adapt to technological developments but insists that the FCC always look to whether services are essential, affordable, and widely used.
  - Congress delineated six principles on which the FCC "shall base" all its universal-service policies. §254(b) (e.g., what services to be provided; quality of services; contributions to be equitable and nondiscriminatory).

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