

No. 22-TX-820

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

LHL REALTY COMPANY DC, LLC, *et al.*,
Appellants,

v.

DISTRICT OF COLUMBIA,
Appellee,

ON APPEAL FROM A JUDGMENT OF THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

**BRIEF OF AMICUS CURIAE THE CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA IN SUPPORT OF NEITHER PARTY**

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RULE 26.1 DISCLOSURE STATEMENT

Pursuant to D.C. Court of Appeals Rule 26.1, the Chamber of Commerce of the United States of America (“Chamber”) states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. Counsel for amicus certifies that the Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTEREST OF AMICUS CURIAE	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT	3
I. <i>Loper Bright</i> , standing alone, does not preclude an amendment to the D.C. APA mandating judicial deference to agency interpretations of statutes. ...	3
II. If this Court applies deference under the D.C. APA as amended, it should nevertheless continue to recognize the numerous existing guardrails on such deference.	7
A. Prior to <i>Loper Bright</i> , judicial deference to agency interpretations of law was restrained in a number of important ways.	7
B. The separation-of-powers principles expressed in <i>Loper Bright</i> support continued application of these guardrails.	13
C. The D.C. Council codified the pre- <i>Loper Bright</i> deference framework.	17
CONCLUSION	19

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Adams Fruit Co. v. Barrett</i> , 494 U.S. 638 (1990).....	8
<i>Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs.</i> , 141 S. Ct. 2485 (2021).....	13
<i>Biden v. Nebraska</i> , 600 U.S. 477 (2023).....	12
<i>Blagden Alley Ass'n v. D.C. Zoning Comm’n</i> , 590 A.2d 139 (D.C. 1991)	8
<i>Bowen v. Georgetown Univ. Hosp.</i> , 488 U.S. 204 (1988).....	9
<i>Chevron v. Natural Resources Defense Council</i> , 467 U.S. 837 (1984).....	<i>passim</i>
<i>Coumaris v. District of Columbia Alcoholic Beverage Control Bd.</i> , 660 A.2d 896 (D.C. 1995)	9
<i>Cuozzo Speed Technologies v. Commerce for Intellectual Property</i> , 579 U.S. 261 (2016).....	11
<i>D.C. Dep’t of Consumer & Regul. Affs. v. A & A Rest. Grp., Inc.</i> , 232 A.3d 149 (D.C. 2020)	8
<i>Epic Sys. Corp. v. Lewis</i> , 584 U.S. 497 (2018).....	10
<i>Euclid St., LLC v. D.C. Water & Sewer Auth.</i> , 41 A.3d 453 (D.C. 2012)	9
<i>Expedia, Inc. v. D.C.</i> , 120 A.3d 623 (D.C. 2015)	10
<i>Fraternal Ord. of Police Metro. Police Dep't Lab. Comm. v. D.C.</i> , 290 A.3d 29 (D.C. 2023)	6, 15

<i>Gonzales v. Oregon</i> , 546 U.S. 243 (2006).....	8
<i>Jackson v. D.C. Bd. of Elections & Ethics</i> , 999 A.2d 89 (D.C. 2010)	15
<i>Johnson v. Guzman Chavez</i> , 594 U.S. 523 (2021).....	9
<i>Judulang v. Holder</i> , 565 U.S. 42 (2011).....	11
<i>King v. Burwell</i> , 576 U.S. 473 (2015).....	8
<i>Kisor v. Wilkie</i> , 588 U.S. 558 (2019).....	10, 11
<i>Loper Bright Enterprises v. Raimondo</i> , 603 U.S. 369 (2024).....	<i>passim</i>
<i>Mills v. D.C. Dep’t of Emp. Servs.</i> , 838 A.2d 325 (D.C. 2003)	7
<i>Nat’l Cable & Telecomm. Ass’n v. Brand X Internet Servs.</i> , 545 U.S. 967 (2005).....	17
<i>Nat’l Fed’n of Indep. Bus. v. OSHA</i> , 142 S. Ct. 661 (2022).....	13
<i>Oshinaike v. Oshinaike</i> , 140 A.3d 1206 (D.C. 2016)	9
<i>Pauley v. BethEnergy Mines, Inc.</i> , 501 U.S. 680 (1991) (Scalia, J., dissenting)	10
<i>Providence Hosp. v. D.C. Dep’t of Emp. Servs.</i> , 855 A.2d 1108 (D.C. 2004)	10
<i>Sackett v. EPA</i> , 598 U.S. 651 (2023).....	17

<i>United States v. Mead Corp.</i> , 533 U.S. 218 (2001).....	9
<i>Washington Metro. Area Transit Auth. v. D.C. Dep’t of Emp. Servs.</i> , 825 A.2d 292 (D.C. 2003)	11
<i>Wayman v. Southard</i> , 23 U.S. (10 Wheat.) 1 (1825).....	13
<i>West Virginia v. EPA</i> , 597 U.S. 697 (2022).....	12, 17
<i>Wisconsin Cent. Ltd. v. United States</i> , 138 S. Ct. 2067 (2018).....	11
Constitution	
U.S. Constitution Article I	16
U.S. Constitution Article III.....	6, 14, 15
Statutes	
5 U.S.C. § 706.....	2, 4, 5, 18
D.C. Code § 2-510(a)(1)	5, 18
D.C. Code § 2-510(c).....	5, 18
D.C. Code § 404(a)	16
D.C. Code § 431(a)	15
Other Authorities	
Cass R. Sunstein, <i>Chevron Step Zero</i> , 92 Va. L. Rev. 187 (2006).....	8
<i>The Federalist No. 75</i> , at 449.....	16

INTEREST OF AMICUS CURIAE

The Chamber of Commerce of the United States of America (“Chamber”) is the world’s largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the business community.

In its May 9, 2025, order, this Court invited the Chamber to file an amicus brief on whether *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) precludes the D.C. Council from legislatively mandating judicial deference to agency interpretations of statutes. Given the breadth of its membership and its long history of challenging and defending regulations, the Chamber is uniquely positioned to speak to the effects of *Loper Bright*. Indeed, the Chamber has filed numerous *amicus* briefs about the impact of *Loper Bright* in courts across the country. *See, e.g.*, U.S. Chamber Supp. *Amicus Br.*, *3M Co. v. Comm’r*, No. 23–3772 (8th Cir., filed Oct. 2, 2024); U.S. Chamber *Amicus Br.*, *Coca-Cola Co. v. Comm’r*, No. 24–13470 (11th Cir., filed Mar. 18, 2025); U.S. Chamber *Amicus Br.*, *Florida E. Coast Railway v. FRA*, No. 24–11076 (11th Cir., filed Aug. 2, 2025); U.S.

Chamber *Amicus* Br., *Lesko v. United States*, No. 23–1823 (Fed. Cir., filed May 29, 2025).

INTRODUCTION AND SUMMARY OF ARGUMENT

Loper Bright, standing alone, does not foreclose the D.C. Council from amending the District of Columbia Administrative Procedure Act (“D.C. APA”) to codify deference to administrative interpretations of law. In overturning *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984), *Loper Bright* held only that *Chevron* deference is incompatible with the federal Administrative Procedure Act (“APA”). Put simply, “*Chevron* defies the command of the APA that ‘the reviewing court’—not the agency whose action it reviews—is to ‘decide all relevant questions of law’ and ‘interpret . . . statutory provisions.’” *Loper Bright*, 603 U.S. at 398 (quoting 5 U.S.C. § 706). Where, as here, the federal APA does not apply, *Loper Bright*’s holding rejecting agency deference does not directly apply either.

Nevertheless, if this Court applies some form of deference, it should continue to enforce existing limits on deference. Even before *Loper Bright*, this Court and the Supreme Court had developed numerous guardrails on judicial deference to agency interpretations of statutes. These limitations include, for example, that courts will defer only to formal agency interpretations and only when the agency has been delegated authority to administer the statute and has expertise in the area it seeks to

regulate. Further, courts should defer only if a statute is genuinely ambiguous after applying all of the traditional tools of statutory construction.

For several reasons, these guardrails should remain in place for any deference required by the amendments in question. First, though its rejection of deference does not control changes to the D.C. APA, *Loper Bright* also reflects separation-of-powers principles that support maintaining limitations on judicial deference to agency interpretations of law. Continued application of the existing guardrails will help ensure that each branch is exercising its proper role, and also best maintain predictability, stability, and fairness in the regulatory system. Second, and in any event, the D.C. Council's amendments are best understood as seeking to restore the pre-*Loper Bright* status quo, which includes these existing constraints on deference.

ARGUMENT

I. *Loper Bright*, standing alone, does not preclude an amendment to the D.C. APA mandating judicial deference to agency interpretations of statutes.

In *Loper Bright*, the Supreme Court overruled *Chevron* deference. 603 U.S. at 395. *Chevron* required courts to use a two-step framework for interpreting statutes administered by federal agencies. *Id.* at 379. Under *Chevron*, if Congress had spoken clearly to the precise question at issue, the plain meaning of the text would control. *Id.* But if the court found the statute ambiguous, the court was required to defer to the agency's interpretation so long as that interpretation was reasonable. *Id.*

Loper Bright rejected *Chevron* deference as “the antithesis of the time honored approach the APA prescribes.” *Id.* at 399. The Court began by explaining the traditional view of the judicial function as understood by the Framers. Specifically, because the laws applied in resolving disputes “would not always be clear,” their meaning would need to be “settled ‘by a series of particular discussions and adjudications.’” *Id.* at 385 (quoting *The Federalist* No. 37, p. 236 (J. Cooke ed. 1961) (J. Madison)). And most important, “the final ‘interpretation of the laws’ would be ‘the proper and peculiar province of the courts.’” *Id.* (quoting *The Federalist* No. 78, at 525).

The Court then explained that the text of the APA makes clear that Congress codified for agency cases this “unremarkable, yet elemental proposition reflected by judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment.” *Id.* at 391. The APA expressly states that “courts, not agencies, will ‘decide *all* relevant questions of law’” and set aside any action inconsistent with the law as they read it. *Id.* at 392 (quoting 5 U.S.C. § 706). Furthermore, it provides no standard of review for courts to apply in answering such legal questions, suggesting that the standard is *de novo*, as compared to the specific standards the APA prescribes for agency policymaking (arbitrary and capricious) and agency factfinding (substantial evidence). *Id.* at 392. “The APA, in short, incorporates the traditional understanding of the judicial function, under which

courts must exercise independent judgment in determining the meaning of statutory provisions.” *Id.* at 394.

The problem with *Chevron*, the Supreme Court concluded, is that it was “unmoored from the APA’s demand that courts exercise independent judgment in construing statutes administered by agencies.” *Id.* at 406. “*Chevron* defies the command of the APA that ‘the reviewing court’—not the agency whose action it reviews—is to ‘decide all relevant questions of law’ and ‘interpret . . . statutory provisions.’” *Id.* at 398 (quoting 5 U.S.C. § 706). In the Supreme Court’s view, *Chevron* requires courts “to ignore, not follow, ‘the reading the court would have reached’ had it exercised its independent judgment as required by the APA.” *Id.* at 398–99.

Because that was the basis for the ruling, *Loper Bright* does not control the specific issue in this case. *Loper Bright* vindicated certain language in the federal APA that the Supreme Court concluded had previously been disregarded by the federal judiciary. The issue here, in contrast, is whether the D.C. Council may legislatively override similar language in the D.C. APA (*e.g.*, “to decide all relevant questions of law . . .” D.C. Code § 2-510(a)(1)) by requiring that courts should nevertheless “defer to the Mayor’s or agency’s reasonable interpretation of a statute.” D.C. Code § 2-510(c). That is simply not a question answered by *Loper Bright*. The Supreme Court did not address whether a legislature generally, much

less the D.C. Council specifically, could alter statutory language to mandate judicial deference to agency interpretations.

Of course, there may be other legal barriers preventing the Council from codifying deference. These barriers may include separation-of-powers limitations. Indeed, Justice Thomas wrote separately in *Loper Bright* to explain his view that *Chevron* deference violates not only the federal APA, but also the federal Constitution by transferring legislative and judicial authority to the Executive. *Id.* at 413 (Thomas, J., concurring) (“*Chevron* deference compromises th[e] separation of powers in two ways. It curbs the judicial power afforded to courts, and simultaneously expands agencies’ executive power beyond constitutional limits.”). Justice Gorsuch also wrote separately, similarly noting the unconstitutional dimensions of *Chevron* deference. *See id.* at 427, 433 (Gorsuch, J., concurring) (arguing that “*Chevron* deference runs against mainstream currents in our law regarding the separation of powers [and] due process” because “[i]t precludes courts from exercising the judicial power vested in them by Article III to say what the law is,” “forces judges to abandon the best reading of the law,” and “requires judges to change, and change again, their interpretations of the law.”). And this Court has noted that the same “separation-of-powers principles” that apply at the federal level also apply to the District Charter. *Fraternal Ord. of Police Metro. Police Dep't Lab. Comm. v. D.C.*, 290 A.3d 29, 41 (D.C. 2023). There may also, for example, be

limitations under the D.C. Home Rule Act. But these questions are beyond the scope of this invited brief, and the Chamber takes no position on them here. Similarly, the Chamber takes no position on the wisdom of the D.C. Council's legislation.

II. If this Court applies deference under the D.C. APA as amended, it should nevertheless continue to recognize the numerous existing guardrails on such deference.

Even before *Loper Bright* and the D.C. Council's amendments, this Court and the Supreme Court had developed numerous limitations on judicial deference to agency interpretations of statutes. For at least two reasons, this Court should reiterate that these guardrails remain in place. First, though its complete rejection of *Chevron* deference does not control here, *Loper Bright* reflects legitimate concerns about the threats of unrestrained deference—threats which have been and should continue to be mitigated by the existing guardrails. Second, and in any event, these constraints on deference were incorporated into the D.C. APA by the D.C. Council's amendments codifying deference.

A. Prior to *Loper Bright*, judicial deference to agency interpretations of law was restrained in a number of important ways.

Before *Loper Bright*, this Court and the Supreme Court had developed numerous constraints on judicial deference to agency interpretations of law.

First, before granting deference, a reviewing court must conclude that the legislature in fact delegated to the agency authority to administer the statute at issue. *Mills v. D.C. Dep't of Emp. Servs.*, 838 A.2d 325, 329 (D.C. 2003). Or as the

Supreme Court has put it, a “precondition to deference under *Chevron* is a congressional delegation of administrative authority.” *Adams Fruit Co. v. Barrett*, 494 U.S. 638, 649 (1990). In recent years, this threshold guardrail has come to be known as “*Chevron* step zero.” *Loper Bright*, 603 U.S. at 405; *see also* Cass R. Sunstein, *Chevron Step Zero*, 92 Va. L. Rev. 187 (2006).

Second, recognizing that one of the justifications offered for deference is that the agency has expertise that Congress intended be brought to bear in administering a statute, *Loper Bright*, 603 U.S. at 401, courts have declined deference when an agency seeks to regulate matters beyond its expertise. *See Gonzales v. Oregon*, 546 U.S. 243, 267 (2006) (rejecting the Attorney General’s authority to make “quintessentially medical judgments”); *cf. King v. Burwell*, 576 U.S. 473, 486 (2015) (Congress was unlikely to have delegated health insurance policy to the IRS). For example, this Court refused to defer to the interpretation of a business licensing statute by the Office of Administrative Hearings because “OAH is vested with the responsibility for deciding administrative appeals involving a substantial number of different agencies’ and thus lacks the subject-matter expertise justifying the deference to agency interpretations of statutes or regulations.” *D.C. Dep’t of Consumer & Regul. Affs. v. A & A Rest. Grp., Inc.*, 232 A.3d 149, 153 (D.C. 2020) (citation omitted); *see also Blagden Alley Ass’n v. D.C. Zoning Comm’n*, 590 A.2d

139, 142 (D.C. 1991) (refusing to give deference where the agency was acting on matters “largely unrelated to the agency’s expertise”).

Third, an agency also cannot receive deference where it has not taken a formal position on the question at issue. As this Court has recognized, “[t]he canon requiring courts to accord weight to the administrative construction of a statute has no logical application where the agency has engaged in a practice without having made any discernable attempt to construe the purportedly ambiguous terms of the legislation.” *Coumaris v. District of Columbia Alcoholic Beverage Control Bd.*, 660 A.2d 896, 899 (D.C. 1995). Nor is an agency counsel’s interpretation of a statute made only in pleadings and briefs entitled to controlling deference. *Euclid St., LLC v. D.C. Water & Sewer Auth.*, 41 A.3d 453, 460 (D.C. 2012) (citing *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 212 (1988)). Such informal agency interpretations receive only that deference “proportional to [their] power to persuade.” *Oshinaike v. Oshinaike*, 140 A.3d 1206, 1209–10 (D.C. 2016) (quoting *United States v. Mead Corp.*, 533 U.S. 218, 231–32 (2001)).

Fourth, even where deference *could* be given, courts must give effect to the plain meaning of the statute where Congress’s intent can be discerned from the text. “*Chevron* deference d[id] not apply where the statute is clear.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 547 (2021). Or as this Court has similarly said, even in agency cases, the “‘first step’ is to determine whether the statute’s language is clear and

unambiguous.” *Providence Hosp. v. D.C. Dep’t of Emp. Servs.*, 855 A.2d 1108, 1112 (D.C. 2004). If so, courts are required “to give effect to a statute’s plain meaning if the words are clear and unambiguous.” *Id.* at 1111.

And in determining whether the language is clear at this first step, courts must apply all the traditional canons of statutory construction. *Chevron* itself made clear that “deference is not due unless a ‘court, employing traditional tools of statutory construction,’ is left with an unresolved ambiguity.” *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 521 (2018) (citing *Chevron*, 467 U.S. at 843 n.9); *see also id.* (“Where . . . the canons supply an answer, ‘*Chevron* leaves the stage.’”). Likewise, this Court has instructed that the relevant question is whether “the statute remains ambiguous after resorting to all of the normal tools of statutory construction.” *Expedia, Inc. v. D.C.*, 120 A.3d 623, 631 (D.C. 2015). The mere fact that disputed statutory language is complex or difficult to parse does not make the language ambiguous and require deference. As Justice Kagan explained for the Supreme Court, “a court cannot wave the ambiguity flag just because it found the regulation impenetrable on first read.” *Kisor v. Wilkie*, 588 U.S. 558, 575 (2019); *see also Pauley v. BethEnergy Mines, Inc.*, 501 U.S. 680, 706–07 (1991) (Scalia, J., dissenting) (that regulations “are complex, perhaps even ‘Byzantine,’” is “insufficient to invoke *Chevron* deference”).

Courts, in other words, should not reflexively defer whenever the meaning of a statute is not immediately obvious but rather must rigorously analyze the language.

To quote Justice Kagan’s *Kisor* opinion again: “[I]f the law gives an answer—if there is only one reasonable construction of a regulation—then a court has no business deferring to any other reading, no matter how much the agency insists it would make more sense.” *Kisor*, 588 U.S. at 575. Likewise, Justice Gorsuch has written for the Court that if the statute is “clear enough,” then the agency gets no deference at step one. *Wisconsin Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018).

Fifth, an agency’s interpretation at step two must be reasonable and not inconsistent with the statute. *Washington Metro. Area Transit Auth. v. D.C. Dep’t of Emp. Servs.*, 825 A.2d 292, 294 (D.C. 2003) (agency interpretation must be “reasonable in light of the language of the statute . . . , the legislative history, and judicial precedent”). In Justice Breyer’s words for the Supreme Court, the agency’s interpretation must be “reasonable in light of the text, nature, and purpose of the statute.” *Cuozzo Speed Technologies v. Commerce for Intellectual Property*, 579 U.S. 261, 277 (2016). Put another way, an agency’s interpretation “must come within the zone of ambiguity the court has identified after employing all its interpretive tools.” *Kisor*, 588 U.S. at 576. “And let there be no mistake,” Justice Kagan continued, “[t]hat is a requirement an agency can fail.” *Id.* Elsewhere, in another opinion for the Court, Justice Kagan compared this step-two analysis to APA arbitrary-and-capricious review. *See Judulang v. Holder*, 565 U.S. 42, 52 n.7 (2011)

(“Were we to [use *Chevron* step two], our analysis would be the same, because under *Chevron* step two, we ask whether an agency interpretation is arbitrary or capricious in substance.” (internal quotation marks omitted)).

Sixth, the Supreme Court has required Congress to speak clearly if it wishes to delegate to an agency the power to regulate questions of great “economic and political significance.” Deference rests on the premise that the legislature delegated interpretive authority to the agency at issue. But in some “extraordinary cases[,]” the “history and the breadth of the authority that [the agency] has asserted,” as well as the “economic and political significance” of that assertion, caution against applying such presumption. *West Virginia v. EPA*, 597 U.S. 697, 716, 721 (2022). This limitation on deference ensures that the legislative branch—the one elected by the people and tasked with the power to make law—is deciding major policy questions and that unelected agencies are merely filling gaps that Congress intended such agencies to fill as part of their duty to implement the law.

In short, in such “major questions” cases, “both separation of powers principles and a practical understanding of legislative intent” require Congress to authorize clearly any power claimed by the agency. *Id.* at 723. That means “something more than a merely plausible textual basis for the agency action is necessary. The agency instead must point to clear congressional authorization for the power it claims.” *Id.* (internal quotation marks omitted); accord *Biden v.*

Nebraska, 600 U.S. 477, 501 (2023); *Nat’l Fed’n of Indep. Bus. v. OSHA*, 142 S. Ct. 661, 665–66 (2022); *Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 141 S. Ct. 2485, 2489–90 (2021).

* * *

If reviewing courts faithfully adhere to these guardrails, courts would generally give agencies controlling deference only when the legislative body has delegated via genuine ambiguity policymaking discretion to “fill up the details” of a statutory scheme—as Chief Justice Marshall once put it, *see Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 43 (1825)—and only when the agency has formally taken a position prior to litigation. Furthermore, that policymaking authority must be in an area where the agency has substantive expertise and be exercised by the agency reasonably and consistent with the statute’s plain text.

B. The separation-of-powers principles expressed in *Loper Bright* support continued application of these guardrails.

Though not dispositive, separation-of-powers principles were a theme in *Loper Bright* and are one reason to continue applying these existing guardrails. As noted above, the Supreme Court explained that the APA merely codified the Framers’ vision “that the final ‘interpretation of the laws’ would be ‘the proper and peculiar province of the courts.’” 603 U.S. at 384–85. That vision includes a constitutional “structure[.]” designed to allow judges to exercise independent judgment on the meaning of the law free from the influence of the political branches.

Id. Similarly, the Supreme Court criticized *Chevron* for its presumption that agencies—not courts—have “special competence in resolving statutory ambiguities.” *Id.* at 400–01. “The Framers,” the Court stressed again, “anticipated that courts would often confront statutory ambiguities and expected that courts would resolve them by exercising independent legal judgment.” *Id.* at 401.

Further, some members of the Court wrote separately to explain that *Chevron* deference not only violated the text of the APA, but also presented serious constitutional concerns. As mentioned earlier, Justice Thomas sought specifically “to underscore [the] fundamental problem” that “*Chevron* deference also violates our Constitution’s separation of powers.” *Id.* at 413 (Thomas, J., concurring). In his view, the Framers’ understanding of the judicial power is constitutionally mandated. And *Chevron* deference violates that mandate, Justice Thomas continued, by requiring judges to abdicate the “judicial power” that Article III of the U.S. Constitution vested in the federal judiciary—namely, by supplanting their own independent judgment of the law with that of the Executive. *Id.* 414–15. Conversely, in Justice Thomas’s view, *Chevron* deference also gives the Executive branch powers not belonging to it. *Id.* at 415. That is, it transfers judicial power by allowing the Executive to definitively interpret laws, and legislative power by allowing the Executive to adopt rules governing primary conduct without Congress’s approval. *Id.* Justice Gorsuch made similar observations in his concurrence, arguing that

Chevron requires judges to abdicate their Article III judicial power to say what the law is and conflicts with principles of judicial independence built into the Constitution. *Id.* at 433 (Gorsuch, J., concurring).

These separation-of-powers concerns—expressed both in the *Loper Bright* Court’s opinion and the two concurrences—counsel in favor of continued application of the existing guardrails on deference that are described above. After all, “the separation-of-powers principles ‘as are applicable to the three branches of government at the federal level’ likewise ‘govern the exercise of [each branch’s powers] in the District Charter.’” *Fraternal Order of Police*, 290 A.3d at 41 (citation omitted). “The Charter created a tripartite form of government within the District.” *Jackson v. D.C. Bd. of Elections & Ethics*, 999 A.2d 89, 95 (D.C. 2010).

Without those guardrails, judicial deference risks completely undermining the core of the judicial power: “to say what the law is.” *Marbury*, 5 U.S. (1 Cranch) at 177; *cf.* D.C. Code § 431(a) (“The judicial power of the District is vested in the District of Columbia Court of Appeals and the Superior Court of the District of Columbia.”). The existing limitations at least ensure that courts defer to the Executive only where there is an argument that the legislature actually delegated implementation of a statute to an agency, the agency is acting within its area of expertise, the reviewing court has applied every tool of statutory interpretation, and the agency’s interpretation is reasonable and consistent with the statutory language.

Loper Bright, 603 U.S. at 397 (explaining that *Chevron* deference was originally justified on the grounds that administrative statutes require formulation of policy to fill statutory gaps that the legislature delegated to the agency to fill).

These guardrails also ensure that the Executive does not run roughshod over the legislature's powers. Under Article I of the U.S. Constitution, the legislature is vested exclusively with the authority "to enact laws, or, in other words, to prescribe rules for the regulation of the society." *The Federalist No. 75*, at 449 (Hamilton) (Clinton Rossiter ed., 2003). And in D.C., that power is vested in the Council. *See* D.C. Code § 404(a) ("Subject to the limitations specified in title VI of [the D.C. Home Rule] Act, the legislative power granted to the District by this Act is vested in and shall be exercised by the Council in accordance with this Act."). But when courts reflexively give deference to agency interpretations based on legislative silence or poor drafting, agencies effectively assert significant legislative authority without any legislative say-so. Worse still, unrestrained deference may actually incentivize the legislature to abdicate its responsibilities by adopting open-ended or vague statutes so that it can claim credit, or lay blame, for the Executive's use of those statutes without having to make the tough policy choices itself.

Continuing to enforce the existing limits on deference would also promote predictability, stability, and fairness in the regulatory system. Unrestrained deference undermines stability and predictability because regulatory obligations turn

on agency interpretations that can change far more easily than statutes—even without any notice when done by adjudication. *See Nat’l Cable & Telecomm. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 982 (2005) (allowing agencies to receive deference on interpretations even when a pre-existing judicial precedent holds that the statute means something else). And when regulatory matters are politically controversial, those obligations can flip-flop with every change in political leadership. *See, e.g., Sackett v. EPA*, 598 U.S. 651, 663–69 (2023) (discussing EPA’s and the Army Corps of Engineers’ changing interpretations of the phrase “waters of the United States” in the Clean Water Act); *West Virginia*, 597 U.S. at 711–17 (discussing EPA’s changing regulations on greenhouse gas emissions from power plants). This constant churn of agency lawmaking raises transaction costs for businesses and makes it hard for them to plan for the future. By continuing to enforce the existing guardrails on judicial deference to agencies’ statutory interpretation, this Court maintains the level of predictability and stability that currently exists in the regulatory environment.

C. The D.C. Council codified the pre-*Loper Bright* deference framework.

In all events, this Court should continue to apply the existing guardrails because the amendment is best understood as an effort by the D.C. Council to maintain the pre-*Loper Bright* status quo. As mentioned briefly above, prior to the amendment, the D.C. APA required a reviewing court “to decide all relevant

questions of law, to interpret constitutional and statutory provisions, and to determine the meaning or applicability of the terms of any action.” D.C. Code § 2-510(a)(1) (2023). This language is nearly identical to the language in the federal APA on which the Supreme Court based *Loper Bright*. See 5 U.S.C. § 706. But just months after that decision, the D.C. Council amended the D.C. APA to override that language. The D.C. Council did not remove the language, but rather amended the statute to make that language “subject to” the requirement that courts nevertheless “defer to the Mayor’s or agency’s reasonable interpretation of a statute.” D.C. Code § 2-510(c) (2024); D.C. Law 25-290 § 2, 71 DCR 16300 (expires Oct. 18, 2025); see also D.C. Bill 26-0048 (proposed permanent legislation adopting the same language).

The timing and nature, considered in light of this Court’s case law on judicial deference to administrative interpretations of law, strongly suggests that the D.C. Council decided not simply to require deference, but to restore the status quo ex ante. At a minimum, that includes the guardrails and limitations that this Court had previously recognized as necessary. But it should also include those guardrails identified, for similar reasons, by the Supreme Court. Even if this Court does not agree that the separation-of-powers concerns articulated in *Loper Bright* compel continuing to enforce the existing guardrails described above, it should nevertheless do so to fully implement the D.C. Council’s clear intent in amending the D.C. APA.

CONCLUSION

Loper Bright itself does not foreclose the D.C. Council from amending the D.C. APA to codify deference to agency interpretations of law. But to the extent that this Court does apply deference, it should recognize and apply the existing constraints on such deference.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 1st day of July, 2025, a copy of the foregoing was served on Counsel of Record via the D.C. Court of Appeals online filing service and First Class Mail at the following addresses:

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