

After the Supreme Court’s 2024 *Loper Bright v. Raimondo* decision overturned the long-standing *Chevron* deference doctrine, courts will no longer defer to agencies’ interpretations of unclear laws. This means that if a statute is vague or open-ended, courts—not executive agencies—will decide what it means. Going forward, Congress must draft laws with less ambiguity to ensure they are carried out as intended, rather than left to judicial interpretation.

We suggest four categories of ambiguous terms that Congress could consider avoiding or defining when passing legislation that delegates regulatory authority to executive branch agencies. For each category, we provide a brief summary of the problem and offer several examples. This is by no means an exhaustive list, but is offered to stimulate constructive discussion for ensuring greater clarity from the first branch.

Poorly defined terms

Problem: Without guidance, they invite subjective interpretation, whether by agencies or courts, and can obscure how policy tradeoffs are being made. Some also blend scientific judgment with normative policy choices, making it unclear what kind of judgment is required.

Examples:

- Substantial, meaningful
- Significant
- Necessary
- Safe/unsafe
- Adequate
- Reasonable/unreasonable
- Justified

Precautionary terms

Problem: Precaution in one dimension may increase overall risks and reduce overall welfare. Such language is ambiguous because, while agencies must make tradeoffs, the precautionary language discourages them from being transparent about the factors they consider.

Examples:

- Unreasonable risk (e.g., [TSCA](#) requires EPA to regulate if a chemical substance “presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors.” Litigants are arguing that this language requires EPA to ban fluoride in drinking water without regard to the health benefits of fluoride to children.)
- Protect public health
- Ample/adequate margin of safety
- Best available/feasible technology

Unbounded terms - Excessive delegation

Problem: May violate the nondelegation doctrine by granting authority without providing an “[intelligible principle](#);” or, alternatively, does not cabin executive discretion because the directive is not “[canalized](#) within banks to keep it from overflowing.”

Examples:

- At the discretion of/as determined by the Secretary
- In the public interest (unless defined further)

Terms that explicit recognition of tradeoffs could clarify

Problem: Some vague terms could be clarified with congressional direction to weigh important factors, including benefit and cost tradeoffs. Such tradeoffs could provide the two banks necessary to “canalize” agency discretion.

Examples:

- Appropriate (e.g., the Supreme Court in [Michigan v EPA](#) 2015 found that a reasonable interpretation of “appropriate and necessary” includes considering all relevant factors, and that EPA was unreasonable to ignore economic costs.)
- In the public interest
- Practicable
- Feasible
- Necessary
- Adequate