SKIDMORE IN THE POST-*LOPER BRIGHT* ERA OF ENVIRONMENTAL LAW

BY

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The Supreme Court's 2024 decision in Loper Bright Enterprises v. Raimondo *marked the end of the deference afforded to agencies' statutory interpretations for forty years under* Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc. *This Article asserts that the framework in the Supreme Court's 1944 decision in* Skidmore v. Swift & Co.*, long treated as a secondary consideration by litigants and courts, now occupies a central role in judicial review of agencies' statutory interpretations. After surveying* Skidmore*'s historical evolution and its interplay with* Chevron *and* United States v. Mead Corp.*, the Article demonstrates how lower courts have applied* Skidmore *in the immediate seven months after* Loper Bright*, including initial data demonstrating considerable favor for agency interpretations. Because litigants must engage with* Skidmore *more robustly now than at any point in the last forty years, the Article also considers a practical approach for the post-*Loper Bright *landscape. By analyzing courts' pre- and post-*Loper Bright *considerations of thoroughness, validity, consistency, agency expertise, and statutory purpose, the Article provides strategic guidance for advocates seeking to influence judicial determinations of statutory meaning under* Skidmore.

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I. INTRODUCTION

Recent Supreme Court jurisprudence has fundamentally altered the relationship between agencies and courts, and environmental cases have often served as vehicles for the Court's remaking of administrative law jurisprudence.[1] In *West Virginia v. EPA*,[2] the Court rejected the Environmental Protection Agency (EPA)'s Clean Power Plan, which sought to regulate greenhouse gas emissions under the Clean Air Act through generation-shifting, by invoking the Major Questions Doctrine,[3] "an arbitrary doctrine that injects uncertainty into a wide range of administrative law cases."[4] In *Sackett v. EPA*,[5] the Court narrowed decades of understanding of the Clean Water Act's reach, insisting on a "clear statement" from Congress regarding the Federal Government's role in the regulation of private property.[6] In *Ohio v. EPA*,[7] the Court stayed enforcement of the Good Neighbor Rule, which was promulgated under the Clean Air Act to protect "downwind" states' air quality from "upwind"

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[1] *See generally* VICKIE PATTON ET AL., ENV'T DEF. FUND, UNPRECEDENTED: THE SUPREME COURT'S 6-3 SUPERMAJORITY HAS SYSTEMATICALLY UNDERMINED VITAL PROTECTIONS FOR CLEAN AIR, CLEAN WATER, AND A SAFE CLIMATE (2024), https://library.edf.org/AssetLink/n2te05ra62dn00ot8ugf3be736x615tb.pdf [https://perma.cc/Y5QS-XMS4]; JAY AUSTIN ET AL., ENV'T L. INST., THE SUPREME COURT, ENVIRONMENTAL REGULATION, AND THE REGULATORY ENVIRONMENT (2024), https://www.eli.org/sites/default/files/files-pdf/SCOTUS%202024%20Report.pdf [https://perma.cc/HH3G-CGEH]. Non-environmental cases evidencing this trend include *SEC v. Jarkesy*, 603 U.S. 109 (2024), which held that the Seventh Amendment prohibited the Securities and Exchange Commission from using internal adjudicatory processes to levy securities fraud penalties, and *Corner Post, Inc. v. Bd. of Governors of the Fed. Reserve Sys.*, 603 U.S. 799 (2024), which effectively extended the statute of limitations for facial challenges to regulations under the Administrative Procedure Act (APA) based on the date that a challenging entity came into existence.

[2] West Virginia v. U.S. Env't Prot. Agency, 597 U.S. 697 (2022).

[3] *Id.* at 724.

[4] Patrick Jacobi & Jonas Monast, *Major Floodgates: The Indeterminate Major Questions Doctrine Inundates Lower Courts*, HARV. J. ON LEGIS. 1 (June 24, 2024), https://journals.law.harvard.edu/jol/2024/06/24/major-floodgates-the-indeterminate-major-questions-doctrine-inundates-lower-courts/ [https://perma.cc/NNA5-JDPL].

[5] Sackett v. U.S. Env't Prot. Agency, 598 U.S. 651 (2023).

[6] *Id.* at 679.

[7] Ohio v. U.S. Env't Prot. Agency, 603 U.S. 279 (2024).

states' air pollution, employing an unprecedented version of arbitrary-and-capricious review.[8]

The 2024 Supreme Court decision in *Loper Bright Enterprises v. Raimondo* and *Relentless Inc. v. Dep't of Commerce* (collectively, *Loper Bright*)[9] continued the Court's constraint of agency authority.[10] Beyond the National Marine Fisheries Service's policy at issue, the decision will affect nearly every challenge to agency action, regardless of subject matter.[11] Yet, as explained below, the Court's rejection of *required deference* to agency views in that case also permits *discretionary weighing* of agencies' statutory interpretations.[12] This Article examines how *Loper Bright* revives the *Skidmore v. Swift & Co*.[13] framework for evaluating the weight that courts may afford agency interpretations, a shift likely to shape environmental and administrative law for years to come.

Before *Loper Bright*, reviewing courts often applied the *Chevron* doctrine when reviewing agency actions, which required deference to federal agencies' permissible interpretations of ambiguous statutory language.[14] Where *Chevron* did not apply, reviewing courts could still afford agency interpretations some amount of "weight" under *Skidmore*.[15] The six-Justice *Loper Bright* majority eliminated *Chevron* deference and now requires courts to determine a single, "best" reading of statutory provisions—ambiguous or not—using every tool of interpretation at their disposal.[16] *Loper Bright* clarified that courts—in exercising "independent judgment" when determining statutory meaning—may still seek "aid from the interpretations" of federal agencies under *Skidmore*.[17]

Loper Bright thus eliminated *Chevron* deference *and* promoted *Skidmore* from a backup option to the primary mechanism to aid litigants seeking consideration of agencies' interpretations in judicial determinations of a statute's best reading. In other words, "with *Chevron*

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[8] *Id.* at 283–84.

[9] Loper Bright Enters. v. Raimondo and Relentless Inc. v. Dep't of Com. (*Loper Bright*), 603 U.S. 369 (2024).

[10] The authors' August 2024 white paper discusses the Court's decision and implications. CTR. FOR APPLIED ENV'T L. & POL'Y, ADMINISTRATIVE LAW AFTER *LOPER BRIGHT ENTERPRISES V. RAIMONDO* 2 (2024), https://static1.squarespace.com/static/5a1aca61ccc5c5ef7b931da7/t/66c3767cf5f8e07c791d589b/1724085885197/CAELP+-+Administrative+Law+After+Loper+Bright+Enterprises+v.+Raimondo+-+August+2024.pdf [https://perma.cc/TAX8-56GD].

[11] *E.g.*, *Loper Bright*, 603 U.S. at 371 (discussing the APA's review procedures for agency actions generally and holding that the deference afforded to agency interpretations under Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc. (*Chevron*), 467 U.S. 837 (1984), cannot be squared with the APA, without regard to *Loper Bright*'s factual context).

[12] *Id.*

[13] Skidmore v. Swift & Co., 323 U.S. 134 (1944).

[14] *Chevron*, 467 U.S. at 842–43.

[15] United States v. Mead Corp. (*Mead*), 533 U.S. 218, 221, 226–27 (2001) (citing *Skidmore*, 323 U.S. 134 (1944)). For a discussion of the reasons that *Chevron* deference would not be available, see *infra* Part II.

[16] *Loper Bright*, 603 U.S. at 371.

[17] *Id.* at 388, 394 (citing *Skidmore*, 323 U.S. at 139–40).

now scuttled, *Skidmore* has taken on new life."[18] As lower courts struggle to apply *Loper Bright* in discerning a single, best reading of often ambiguous statutory language, they must also decide whether—and how much—to apply *Skidmore*. Litigants now have an opportunity, perhaps even a duty, to better engage with *Skidmore* precedent than in the past four decades.

This Article provides a framework and resources to address *Skidmore* going forward. Part II sets the stage for understanding *Skidmore*'s renewed relevance after *Loper Bright* by tracing *Skidmore*'s historical role in judicial review (where it served as the primary vehicle for considering an agency's views) and its evolution through key milestones, including the introduction of *Chevron* deference and the Supreme Court's subsequent refinement in *United States v. Mead Corp*.[19] Part III examines how *Chevron*'s elimination affects *Skidmore*'s role, including emerging uncertainties. Part III also presents an empirical evaluation of seven months of post-*Loper Bright* cases, showing that *Skidmore* remains a significant tool for courts and litigants. Part IV considers each *Skidmore* factor, including remaining uncertainties, to provide guidance on leveraging the *Skidmore* framework based on pre- and post- *Loper Bright* case law.

II. *SKIDMORE*'S HISTORICAL ROLE

Since 1944, the Supreme Court's *Skidmore* decision has allowed courts to "weigh" agency interpretations of statutory language when reviewing agency actions and authority.[20] As the *Loper Bright* majority explained, *Skidmore* holds that "'interpretations and opinions' of the relevant agency, 'made in pursuance of official duty' and 'based upon . . . specialized experience,' 'constitute[d] a body of experience and informed judgment to which courts and litigants [could] properly resort for guidance,' even on legal questions."[21] Though not controlling, the "weight of such a judgment in a particular case" depends on the consideration of four factors:

(1) the "thoroughness evident in [the agency's] consideration";
(2) the "validity of its reasoning";
(3) "its consistency with earlier and later pronouncements"; and

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[18] Dayton Power & Light Co. v. Fed. Energy Regul. Comm'n, 126 F.4th 1107, 1136 (6th Cir. 2025) (Nalbandian, J., concurring).

[19] *Mead*, 533 U.S. at 237–38.

[20] *Skidmore* arose from firemen employed at the Swift & Co. packing plant seeking overtime compensation for emergency, on-call hours beyond their regular shifts as compensable "work" under the Fair Labor Standards Act. *Skidmore*, 323 U.S. at 135–36. In reviewing the statute, the Supreme Court considered whether wait time qualified as "work," as catalogued by the Department of Labor in letter rulings and an interpretive bulletin. *Id.* at 137–39.

[21] *Loper Bright*, 603 U.S. at 388 (quoting *Skidmore*, 323 U.S. at 139–40) (alterations in *Loper Bright*).

(4) "all those factors which give [the interpretation] power to persuade, if lacking power to control."[22]

The Court has recognized other *Skidmore* factors, including procedural and other formality in rendering an interpretation,[23] the longevity and contemporaneity of the agency's interpretation with enactment,[24] an agency's specialized experience and expertise,[25] and alignment between the agency interpretation and statutory purpose.[26]

Historically speaking, *Skidmore* reflected notions for considering agency interpretations in review of agency actions that predated 1944,[27] which the Court maintained for decades. Between 1944 and APA enactment in 1946, *Skidmore*'s application often resulted in courts upholding agencies' interpretations.[28] "[W]hen the APA codified the traditional understanding of the judicial function, nothing displaced—or expanded—*Skidmore*'s instructions."[29] From 1947 until the Court's 1984 *Chevron* decision, *Skidmore* therefore served as the primary vehicle for

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[22] *Id.* at 370 (citing *Skidmore*, 323 U.S. at 140).

[23] *See, e.g.*, *Mead*, 533 U.S. at 228 ("The fair measure of deference to an agency administering its own statute has been understood to vary with circumstances, and courts have looked to the degree of the agency's care, its consistency, formality, and relative expertness, and to the persuasiveness of the agency's position." (footnotes omitted)).

[24] *See, e.g.*, Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 120 (1980) (declining to award *Skidmore* deference in part because the agency's interpretation was neither longstanding nor contemporaneous with enactment of the statute).

[25] *See, e.g.*, *Mead*, 533 U.S. at 235 ("There is room at least to raise a *Skidmore* claim here, where the regulatory scheme is highly detailed, and [the government] can bring the benefit of specialized experience to bear on the subtle questions in this case[] . . . ."); Batterton v. Francis, 432 U.S. 416, 425 n.9 (1977) ("Varying degrees of deference are accorded to administrative interpretations, based on such factors as . . . the nature of its expertise.").

[26] *See, e.g.*, Morton v. Ruiz, 415 U.S. 199, 237 (1974) ("In order for an agency interpretation to be granted [*Skidmore*] deference, it must be consistent with the congressional purpose.").

[27] This is borne out chronologically. *See, e.g.*, United States v. Moore, 95 U.S. 760, 763 (1877) ("[C]onstruction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons."); Nat'l Lead Co. v. United States, 252 U.S. 140, 145–46 (1920) (recognizing "great weight" for "contemporaneous construction" by officials "called upon" to carry "provisions into effect"); Norwegian Nitrogen Prods. Co. v. United States, 288 U.S. 294, 315 (1933) (reasoning that "administrative practice, consistent and generally unchallenged, will not be overturned except for very cogent reasons if the scope of the command is indefinite and doubtful"); United States v. Am. Trucking Ass'ns, Inc., 310 U.S. 534, 549 (1940) (highlighting the persuasion of agency interpretation based on such "contemporaneous construction" (quoting *Norwegian Nitrogen Prods. Co.*, 288 U.S. at 315)).

[28] *See, e.g.*, Mabee v. White Plains Pub. Co., 327 U.S. 178, 182 (1946) (recognizing *Skidmore* as allowing for consideration of agency interpretations); Porter v. Crawford & Doherty Foundry Co., 154 F.2d 431, 433 (9th Cir. 1946) ("Since such administrative construction is not irrational, its interpretations are binding upon the courts."); Walling v. Comet Carriers, Inc., 151 F.2d 107, 111 (2d Cir. 1945) ("While that interpretation of its power is not binding upon us, it is to be accorded great weight and we feel constrained to give it effect.").

[29] *Dayton Power & Light Co.*, 126 F.4th 1107, 1136 (6th Cir. 2025) (Nalbandian, J., concurring).

litigants to seek consideration of any weight or deference for agencies' interpretations.[30]

The Court's introduction of *Chevron* deference in 1984 expressly changed the methodology for judicial review of agency interpretations. Post-*Chevron*, reviewing courts first determined whether a statute "directly spoke[]" to the precise statutory question at issue.[31] If so, that single, clear meaning bound courts and ended the interpretive inquiry.[32] If the court concluded that the statute was ambiguous or silent, *Chevron* instructed courts to defer to permissible agency interpretations.[33] *Chevron*'s all-or-nothing approach, requiring full deference at step two,[34] departed from the *Skidmore* sliding-scale approach to deference, which allowed—but did not require—a reviewing court to assign significant,

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[30] During this period, the Court considered *Skidmore* in over a dozen cases, applying weight in nearly half. *Compare* Fed. Election Comm'n v. Democratic Senatorial Campaign Comm., 454 U.S. 27, 36–37 (1981) (rejecting an appellate court's decision not to afford *Skidmore* weight to an agency interpretation), Steadman v. Sec. & Exch. Comm'n, 450 U.S. 91, 104 (1981) (awarding *Skidmore* weight to an agency interpretation), Whirlpool Corp. v. Marshall, 445 U.S. 1, 11 (1980) (upholding a regulation and citing *Skidmore*), City of L.A. Dep't of Water & Power v. Manhart, 435 U.S. 702, 714 n.26 (1978) (comparing two interpretations and concluding one had more power to persuade under *Skidmore* than the other), Nashville Gas Co. v. Satty, 434 U.S. 136, 142 n.4 (1977) (applying *Skidmore* weight to an interpretation in an agency guideline), *and* United States v. Stapf, 375 U.S. 118, 127 n.11 (1963) (applying *Skidmore*), *with* Bureau of Alcohol, Tobacco & Firearms v. Fed. Lab. Rel. Auth., 464 U.S. 89, 98 n.8 (1983) (declining to afford *Skidmore* weight because the agency's interpretation was inconsistent with policies underlying the operative statute), St. Martin Evangelical Lutheran Church v. South Dakota, 451 U.S. 772, 783 n.13 (1981) (declining to award *Skidmore* weight despite the longstanding nature of the agency's interpretation), Sec. & Exch. Comm'n v. Sloan, 436 U.S. 103, 118–19 (1978) (declining to award *Skidmore* weight to an interpretation that, according to the Court, lacked reasoning and frustrated the underlying congressional policy), Adamo Wrecking Co. v. United States, 434 U.S. 275, 287 n.5 (1978) (declining to award *Skidmore* weight), *Ruiz*, 415 U.S. 199, 237 (1974) (declining to award weight because the interpretation was inconsistent with the congressional purpose), *and* Fed. Mar. Bd. v. Isbrandtsen Co., 356 U.S. 481, 499–500 (1958) (rejecting *Skidmore* weight because Congress had made the interpretation illegal). *See also, e.g.*, Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 120 (1980) (declining to award enough *Skidmore* weight for the agency's litigation-inspired interpretation to be upheld); Gen. Elec. Co. v. Gilbert, 429 U.S. 125, 141–43 (1976) ("[W]hile we do not wholly discount the weight to be given the 1972 guideline, it does not receive high marks when judged by the standards enunciated in *Skidmore*[.]"); Thomas W. Merrill, *Judicial Deference to Executive Precedent*, 101 YALE L.J. 969, 982 tbl.2 (1992) (documenting a 75 percent agency-win rate in a review of the 45 Supreme Court deference cases from 1981 to 1983 with 66 percent of those cases citing *Skidmore* factors).

[31] *Chevron U.S.A. Inc.*, 467 U.S. 837, 842 (1984).

[32] *Id.*

[33] *Id.* at 843.

[34] Thomas W. Merrill, *The Story of* Chevron: *The Making of an Accidental Landmark*, 66 ADMIN. L. REV. 253, 256 (2014) ("If the court decided the matter at step one, the agency would get no deference (although a court might uphold the agency if it agreed that its interpretation was one intended by Congress); if the court decided the matter at step two, the agency would get maximal deference.").

minimal, or no additional weight to an agency's interpretation based on the court's assessment of *Skidmore* factors.[35]

Where justifications for *Skidmore* typically rested on agency expertise,[36] *Chevron* relied on an expansive theory of implied delegation.[37] Many questions arose once *Chevron* broadened the potential scope of authority congressionally delegated to agencies. For example, before the Court's 2001 *Mead* decision, lower courts lacked clarity on when to apply *Chevron* and whether it eliminated other preexisting deference standards, including *Skidmore*.[38] Notably, even after *Chevron* in 1984 and before the *Mead* decision addressing *Skidmore*'s applicability,[39] *Skidmore* continued to play a role in the Court's review of agencies' statutory interpretations.[40]

Mead clarified *Chevron*'s domain, identifying formality as a key consideration, and reaffirmed *Skidmore*'s role in the review of agency interpretations.[41] Specifically, after *Mead*, *Skidmore* could apply when an

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[35] Colin S. Diver, *Statutory Interpretation in the Administrative State*, 133 U. PA. L. REV. 549, 562–63 (1985); Kristin Hickman & Matthew D. Krueger, *In Search of the Modern* Skidmore *Standard*, 107 COLUM. L. REV. 1235, 1259 (2007).

[36] *See generally, e.g.*, Ronald J. Krotoszynski, Jr., *Why Deference?: Implied Delegations, Agency Expertise, and the Misplaced Legacy of* Skidmore, 54 ADMIN. L. REV. 735, 737 (2002) (exploring "the tension between the implied delegation theory set forth in *Chevron* and competing expertise-based rationales for judicial deference to agency work product").

[37] *Chevron U.S.A. Inc.*, 467 U.S. at 844 ("Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.").

[38] Kristin E. Hickman, *The Three Phases of* Mead, 83 FORDHAM L. REV. 527, 528 (2014).

[39] Hickman & Krueger, *supra* note 35, at 1284–85 (discussing the types of agency interpretations that the *Skidmore* framework has applied to over time).

[40] *Compare, e.g.*, Olmstead v. L.C. by Zimring, 527 U.S. 581, 597–98 (1999) (invoking *Skidmore* to "respect" an agency interpretation), Metro. Stevedore Co. v. Rambo, 521 U.S. 121, 136 (1997) (concluding that the agency's "reasonable interpretation of the Act brings at least some added persuasive force to [the Court's] conclusion" under *Skidmore*), *with*, *e.g.*, Christensen v. Harris Cnty., 529 U.S. 576, 587 (2000) (declining to apply *Skidmore* weight); U.S. Equal Emp. Opportunity Comm'n v. Arabian Am. Oil Co., 499 U.S. 244, 258 (1991) (declining to award enough *Skidmore* weight for the agency's interpretation to prevail), Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, 69 n.6 (1986) (rejecting *Skidmore*'s application because "we find the guideline simply inconsistent with the plain meaning of the statute").

[41] Hickman, *supra* note 38, at 528–30. In *United States v. Mead Corp.*, the Court was tasked with determining the proper tariff classification and duty rate for day planners under the Harmonized Tariff Schedule of the United States. *Mead*, 533 U.S. 218, 224–26 (2001). The Mead Corporation challenged a Customs Service ruling that removed day planners from a tariff-free category. *Id.* The Court examined the nature of the ruling letters issued by the Customs Service, which are often quite informal and typically issued by any of the 46 port-of-entry Customs offices or the Customs Headquarters Office. *Id.* at 223–24. The Court noted that it granted certiorari in *Mead* specifically to address the scope of *Chevron* and held that "administrative implementation of a particular statutory provision qualifies for *Chevron* deference when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority." *Id.* at 226–27. The Court went on to note that "[d]elegation of such authority may be shown in a variety of ways,

agency interpretation lacked the "force of law," an inquiry largely based on indicia of procedural formality; where those indicia were met, *Chevron* governed.[42] *Chevron* thus often applied to interpretations promulgated as part of notice-and-comment rulemaking after *Mead*, while *Skidmore* was available when courts reviewed agency actions with fewer indicia of procedural formality, "like 'policy statements, agency manuals, and enforcement guidelines.'"[43] With its role clarified, *Skidmore* remained relevant—and effective—in many agency cases after 2001.[44]

III. *SKIDMORE*'S RENEWED RELEVANCE IN STATUTORY INTERPRETATION

Loper Bright's elimination of *Chevron* in June 2024 likely signals *Skidmore*'s return to something akin to its pre-1984 domain in judicial review of agency authority. The *Loper Bright* majority required courts to determine the best reading of agency-administered statutes, ambiguous or not, using all available tools of interpretation.[45] The decision left room to give non-binding "respect" or "weight"[46] to agency interpretations under *Skidmore* as one of the tools.[47] The majority invoked the original

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as by an agency's power to engage in adjudication or notice-and-comment rulemaking, or by some other indication of a comparable congressional intent." *Id.* The Court concluded that the ruling letter did not merit *Chevron* deference and remanded for consideration of whether the letter merited "some deference under *Skidmore*." *Id.*

[42] *Mead*, 533 U.S. at 226–27 (concluding that *Chevron* deference applies "when it appears [a] that Congress delegated authority to the agency generally to make rules carrying the force of law, . . . [b] that the agency interpretation claiming deference was promulgated in the exercise of that authority[,]" and that "[d]elegation of such authority" is evident from "an agency's power to engage in [a] adjudication or [b] notice-and-comment rulemaking, or by [c] some other indication of a comparable congressional intent").

[43] *Id.* at 234 (quoting *Christensen*, 529 U.S. at 587). *See generally* Hickman, *supra* note 38, at 547–53 (discussing the use of *Skidmore* post-*Mead*).

[44] *See, e.g.*, Kent Barnett & Christopher J. Walker, Chevron *in the Circuit Courts*, 116 MICH. L. REV. 1, 30 (2017) (documenting a 56 percent agency-win rate under *Skidmore* from 2003 to 2013 in a study of 1,330 circuit court opinions); Hickman & Krueger, *supra* note 35, at 1235 (documenting a 60 percent agency-win rate in federal courts of appeals under *Skidmore* from 2001 to 2006).

[45] The majority views efforts to determine whether language is ambiguous as a fool's errand. *See, e.g.*, *Loper Bright*, 603 U.S. 369, 409 (2024) (concluding that "four decades of judicial experience attempting to identify ambiguity under *Chevron*" only "reveals the futility of the exercise").

[46] *Id.* at 385–86 (discussing the role of "respect" as part of its observations that: (a) the Court "recognized from the outset . . . that exercising independent judgment often included according due respect to Executive Branch interpretations of federal statutes" and (b) "[t]he views of the Executive Branch could inform the judgment of the Judiciary, but did not supersede it" and were not binding on reviewing courts); *id.* at 388 (observing that, historically, "the informed judgment of the Executive Branch . . . could be entitled to 'great weight'" (citation omitted)).

[47] *Id.* This approach also applies to the *Loper Bright* majority's recognition that Congress "often" lawfully delegates considerable discretion to agencies (within constitutional limits) and that the role of the Court is to "police the outer statutory boundaries of those delegations." *Id.* at 404; *see also* CTR. FOR APPLIED ENV'T L. & POL'Y, *supra* note 10, at 1–2 (discussing the Court's three example-categories of delegations of discretionary authority in more detail).

four *Skidmore* factors, signaling their ongoing relevance without providing further clarity.[48] *Loper Bright* also emphasized two specific considerations in weighing agency interpretations: (1) consistency with earlier agency interpretations, especially those issued contemporaneously with the statute itself, which echoes the third *Skidmore* factor to some degree;[49] and (2) factual premises within the agency's expertise, likely reflecting *Skidmore*'s emphasis on agencies' "specialized experience" and "informed judgment."[50]

The Court offered little else, reflecting the broad judicial discretion that *Skidmore* allows and demonstrating the opportunity for advocates to shape its direction. Just as the Court's recent decisions invoking the Major Questions Doctrine in only the most general terms has confused lower courts,[51] those courts are now also struggling through the post-*Loper Bright* role of *Skidmore* in statutory interpretation.[52] For example, lower courts have treated statutory ambiguity as a threshold requirement for *Skidmore*'s application,[53] which *Loper Bright* does not require. Legal scholars have debated whether the Court now requires de novo review of agencies' statutory interpretations as part of *Loper Bright*'s "independent judgment" requirement, or something less exacting based on the invocation of *Skidmore*.[54] Although the *Loper Bright* majority opinion

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[48] *Loper Bright*, 603 U.S. at 370.

[49] *Id.* at 394 ("[I]nterpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning." (citing *Skidmore*, 323 U.S. 134, 140 (1944) and *American Trucking Assns.*, 310 U.S. 534, 549 (1940))); *see also Loper Bright*, 603 U.S. at 386 ("Such respect was thought especially warranted when an Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained consistent over time. That is because 'the longstanding "practice of the government"'—like any other interpretive aid—'can inform [a court's] determination of "what the law is."'" (citations omitted) (alteration in original)); *id.* at 399 (criticizing *Chevron* for demanding "deference to agency interpretations, including those that have been inconsistent over time").

[50] *Id.* at 402 (concluding that "[a]n agency's interpretation of a statute . . . may be especially informative 'to the extent it rests on factual premises within [the agency's] expertise[,]'" because "[s]uch expertise has always been one of the factors which may give an Executive Branch interpretation particular 'power to persuade, if lacking power to control.'" (quoting *Skidmore*, 323 U.S. at 140) (further citations omitted) (second alteration in *Loper Bright*)).

[51] *See generally* Jacobi & Monast, *supra* note 4.

[52] *E.g.*, *Loper Bright*, 603 U.S. at 370.

[53] *See, e.g.*, In re Yellow Corp., No. 23-11069 (CTG), 2024 Bankr. LEXIS 2696, at *57 (Bankr. D. Del. Nov. 5, 2024) ("*Loper Bright* reaffirmed that in resolving statutory ambiguities, courts should give 'due respect' to the Executive Branch."), *aff'd*, 2025 U.S. App. LEXIS 23864 (3d Cir. 2025); Scalia v. Sarene Servs., Inc., 740 F. Supp. 3d 251, 286 (E.D.N.Y. 2024) (deeming statutory text ambiguous before evaluating the agency's interpretation under *Skidmore*).

[54] *See, e.g.*, Cary Coglianese & Daniel E. Walters, *The Great Unsettling: Administrative Governance After* Loper Bright, 77 ADMIN. L. REV. 1, 12 (2025) ("Has the Court embraced 'de novo' review of all statutory questions involving agency authority? Or has it instead preserved a place for a different brand of deference, most closely associated with the *Skidmore* deference that already applied to agencies' less formal interpretations?" (footnote omitted)); Christopher J. Walker, *What Loper Bright Enterprises v. Raimondo Means for the*

clearly *allows* reviewing courts to weigh agency interpretations in determining a best reading,[55] recent judicial opinions reflect disagreement on whether courts *must* consider *Skidmore*.[56] Even the unresolved question of, e.g., how much weight to give an agency interpretation, or any individual factor in a given case, invites (and perhaps demands) advocacy and the exercise of informed judicial discretion for *Skidmore*.[57]

Initial research bolsters *Skidmore*'s renewed role in statutory interpretation and the need for enhanced engagement. One scholar catalogued over thirty post-*Loper Bright* decisions that recognized or applied *Skidmore*.[58] Our own review of thirty federal cases decided between June 28, 2024, and January 21, 2025, that substantively cite *Skidmore* evidenced twenty-two cases where a reviewing court applied *Skidmore* weight to uphold an agency interpretation of statutory language,[59] against eight where a court declined to do so—an over

Future of Chevron Deference, YALE J. ON REGUL.: NOTICE & COMMENT (June 28, 2024), https://www.yalejreg.com/nc/what-loper-bright-enterprises-v-raimondo-means-for-the-future-of-chevron-deference/ [https://perma.cc/WD86-DVBT] (arguing that *Loper Bright* "embraces *de novo* review—in particular, what the Court repeatedly calls 'independent judgment'" and that "the majority's bottom line doesn't feel much like *Skidmore* deference or weight").

[55] *Loper Bright*, 603 U.S. at 371.

[56] *See* Moctezuma-Reyes v. Garland, 124 F.4th 416, 423 (6th Cir. 2024) (recognizing *Loper Bright*'s instruction that "an agency's longstanding interpretation of a statute 'may be especially informative' to us as we interpret that same statute," but concluding that the Court's language "is not a mandate to look to or defer to the agency's interpretation[]" and that the Sixth Circuit's reaching its "conclusion through our own 'independent statutory interpretation' is not 'impermissibl[e]'" (citation omitted) (second alteration in *Moctezuma-Reyes*).

[57] *See* Nicoletti v. Bayless, No. 24-6012, 2025 U.S. App. LEXIS 661, at *3–5 (4th Cir. Jan. 13, 2025) (per curiam) (remanding a case because the district court relied on *Chevron* but failed to "examine the persuasiveness of the [Federal Bureau of Prisons'] BOP's interpretation of its rule under *Skidmore* or the extent to which that persuasiveness requires deference").

[58] Robin Kundis Craig, *The Impact of* Loper Bright v. Raimondo*: An Empirical Evaluation of the First Six Months*, 109 MINN. L. REV. 2671, 2709 n.144 (2025) (concluding that "most of the lower federal courts that have considered the issue have concluded that *Skidmore* deference remains a viable form of deference that courts can accord federal agencies' statutory constructions" and listing these decisions in a footnote); *id.* at 2713, tbl.3, n.163 (identifying eight courts of appeals decisions and 23 district court decisions that "recognized and/or applied" *Skidmore* and listing them in a footnote).

[59] Lissack v. Comm'r, 125 F.4th 245, 259–60 (D.C. Cir. 2025); Seldon v. Garland, 120 F.4th 527, 534 (6th Cir. 2024); Mayfield v. U.S. Dep't of Labor, 117 F.4th 611, 620 (5th Cir. 2024); Lopez v. Garland, 116 F.4th 1032, 1039–41 (9th Cir. 2024); Perez v. Owl, Inc., 110 F.4th 1296, 1308 (11th Cir. 2024); Gonzales & Gonzales Bonds & Ins. Agency, Inc. v. Dep't of Homeland Sec., 107 F.4th 1064, 1085–86 (9th Cir. 2024); United States v. Multistar Indus., No. 23-3765, 2024 U.S. App. LEXIS 31236, at *3–4 (9th Cir. Dec. 10, 2024); Friends of Animals v. U.S. Fish & Wildlife Serv., No. 4:18-CV-00053-DN-PK, 2024 U.S. Dist. LEXIS 232262, at *34–35 (D. Utah Dec. 20, 2024); Barton v. U.S. Dep't of Labor, No. 5: 24-249-DCR, 2024 U.S. Dist. LEXIS 213947, at *21–22 (E.D. Ky. Nov. 25, 2024); Fed. Trade Comm'n v. Tapestry, Inc., No. 1:24-cv-03109 (JLR), 2024 U.S. Dist. LEXIS 194671, at *22 n.3 (S.D.N.Y. Oct. 24, 2024); Clinkenbeard v. King, No. 23-3151 (JRT/LIB), 2024 U.S. Dist.

seventy-three percent success rate.[60] Dozens of other recent cases have cited *Skidmore* in various ways, typically as part of a discussion of the relevant approach for statutory interpretation after *Loper Bright*.[61] To be sure, a few recent decisions have declined to apply *Skidmore* based on purported textualist or best readings of statutes,[62] or questioned *Skidmore*'s utility even as they applied it.[63] Some courts will likely take a similar approach when they conclude that a best reading leaves no room for an agency's views. These outliers do not reflect the post-*Loper Bright* data: in most cases citing *Skidmore*, courts grappling with a statute's best

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LEXIS 176317, at *8–10 (D. Minn. Sep. 30, 2024); Houtz v. Paxos Rests., No. 5:23-cv-00844-JMG, 2024 U.S. Dist. LEXIS 175279, at *7–8 (E.D. Pa. Sep. 27, 2024); United States v. Pappas, No. 22-12042, 2024 U.S. Dist. LEXIS 167473, at *15 n.2 (E.D. Mich. Sep. 17, 2024); Wirth v. Salesforce, Inc., No. 23-CV-11718-AK, 2024 U.S. Dist. LEXIS 165163, at *10–12 (D. Mass. Sep. 13, 2024); Hicks v. Comm'r of Soc. Sec. Admin., No. 7:23-CV-70-REW, 2024 U.S. Dist. LEXIS 152958, at *6 & n.3 (E.D. Ky. Aug. 19, 2024); Harding v. Steak N Shake, Inc., No. 1:21-cv-1212, 2024 U.S. Dist. LEXIS 145232, at *21 (N.D. Ohio Aug. 15, 2024); Novartis Pharms. Corp. v. Becerra, No. 24-cv-02234 (DLF), 2024 U.S. Dist. LEXIS 144262, at *18–19 (D.D.C. Aug. 13, 2024); Su v. WiCare Home Care Agency, LLC, No. 1:22-cv-00224, 2024 U.S. Dist. LEXIS 135200, at *39–42 (M.D. Pa. July 31, 2024); *Sarene Servs., Inc.*, 740 F. Supp. 3d 251, 288–89 (E.D.N.Y. 2024); Kumho Tire (Vietnam) Co. v. United States, 741 F. Supp. 3d 1277, 1289 & n.47 (Ct. Int'l Trade 2024); *In re Yellow Corp.*, 2024 Bankr. LEXIS 2696, at *68–69.

[60] Art & Antique Dealers League of Am., Inc. v. Seggos, 121 F.4th 423, 434–35 (2d Cir. 2024); Rest. L. Ctr. v. Dep't of Lab., 120 F.4th 163, 174 (5th Cir. 2024); Shamrock Bldg. Materials, Inc. v. United States, 119 F.4th 1346, 1355 (Fed. Cir. 2024); Total Terminals Int'l, LLC v. Dir., Off. of Workers' Comp. Programs, 118 F.4th 1235, 1242 (9th Cir. 2024); Anderson v. Diamondback Inv. Grp., LLC, 117 F.4th 165, 188 n.14 (4th Cir. 2024); Kennedy v. Las Vegas Sands Corp., 110 F.4th 1136, 1143 (9th Cir. 2024); Ventura Coastal, LLC v. United States, 736 F. Supp. 3d 1342, 1357–58 (Ct. Int'l Trade 2024); Varian Med. Sys. v. Comm'r, No. 8435-23, 2024 U.S. Tax Ct. LEXIS 2106, at *42–43 (T.C. Aug. 26, 2024).

[61] These citations fall into three categories: (1) recognizing but not reaching *Skidmore*, *e.g.*, Pratum Farm, LLC v. U.S. Dep't of Agric., No. 6:23-cv-01525-AA, 2024 U.S. Dist. LEXIS 177069, at *14 (D. Or. Sep. 30, 2024); (2) applying or discussing *Skidmore* in the context of agencies interpreting their own regulations, *e.g.*, Ard v. O'Malley, 110 F.4th 613, 618–19 (4th Cir. 2024); and (3) treating pre-*Loper Bright* deference cases as good law based in part on *Skidmore*'s continuing applicability without expressly applying *Skidmore*, *e.g.*, Andrews v. 1788 Chicken, LLC, No. 3:22-CV-00276-HTW-LGI, 2024 U.S. Dist. LEXIS 174706, at *19 n.11 (S.D. Miss. Sep. 25, 2024). While these and other cases may not shed much light on whether or how reviewing courts will apply *Skidmore* to agency interpretations in specific settings, they nevertheless bolster *Skidmore*'s post-*Loper Bright* relevance.

[62] The Fifth Circuit recognized *Loper Bright*'s instruction that "courts are well-advised to consider agency 'interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time,'" and that "the [challenged] standard . . . is indeed of some vintage, having been applied with brief interregna since at least 1988" but declined to "permit agency practice to 'defeat a statute's text by "adverse possession"'" and was "not persuaded that the [challenged] standard, however longstanding, can defeat the [statute]'s plain text." *Rest. L. Ctr.*, 120 F.4th at 174 (citations omitted); *see also Varian Med. Sys.*, 2024 T.C. LEXIS 2106, at *41–42 (concluding that the best reading of the statute controlled, and that the Commissioner's interpretation contradicted the best reading).

[63] After questioning whether *Skidmore* had any role to play in determining the best reading of a statutory provision under *Loper Bright*, the Fifth Circuit conceded that, "if *Skidmore* deference does any work, it applies here." *Mayfield*, 117 F.4th at 620.

reading have employed the Supreme Court's positioning of *Skidmore* to better inform their review of agency-administered statutes.[64]

Eight decades of still-valid *Skidmore* precedent, pre-*Loper Bright* empirical evaluations of agency win-rates under *Skidmore*, and post-*Loper Bright* application data demonstrate the potential power of the doctrine going forward. Therefore, in challenges to agency actions involving statutory interpretation, courts and advocates must engage with *Skidmore*.

IV. ARGUING THE *SKIDMORE* FACTORS POST-*LOPER BRIGHT*

As before *Loper Bright*, discerning the best strategies for arguing the *Skidmore* factors still raises many questions because the majority did "not appear to impact the framework established in *Skidmore*."[65] The following discussion mines pre- and post-*Loper Bright* decisions to identify established aspects of the *Skidmore* factors and provides a framework for issues that will likely arise going forward.

As an initial matter, advocates should consider more robust discussions of all applicable *Skidmore* factors than they previously may have been able to justify against word or page limits and other briefing priorities. Failing to address at least some *Skidmore* factors with specificity could be construed as a waiver of any argument for (or against) assigning weight to an agency's interpretation.[66] This may strike seasoned administrative-law practitioners as strange after decades of *Skidmore* serving as a secondary issue when agencies attempted to convince reviewing courts to apply *Chevron* deference. Whether defending or challenging agency actions, litigants addressing the best meaning of statutory language should acknowledge *Skidmore*'s enhanced role and draw on pre- and post-*Loper Bright* cases addressing the factors.

Applying the *Skidmore* factors remains complicated. The Supreme Court has not offered "a comprehensive list of relevant factors" or even "guidance for how to weigh them[,]"[67] and the factors often overlap.[68] Even

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[64] *E.g.*, *Lopez*, 116 F.4th at 1039 ("[O]ur task is to evaluate a statute independently under *Skidmore*, giving 'due respect,' but not binding deference, to the agency's interpretation." (citing *Loper Bright*, 603 U.S. at 370)).

[65] *Nicoletti*, No. 24-6012, 2025 U.S. App. LEXIS 661, at *4 (4th Cir. Jan. 13, 2025).

[66] *See, e.g.*, Lanfear v. Home Depot, Inc., 679 F.3d 1267, 1279 n.15 (11th Cir. 2012) ("The plaintiffs make no argument as to why any of those [*Skidmore*] factors should lead us to defer, and we are not persuaded that we should."); KalshiEX LLC v. CFTC, No. 23-3257 (JMC), 2024 U.S. Dist. LEXIS 163925, at *19 n.9 (D.D.C. Sep. 12, 2024) ("Because the CFTC did not argue [*Skidmore*], the Court neither considers nor addresses the scope of deference owed to the CFTC in the wake of *Loper Bright*."). *But see Multistar Indus.*, No. 23-3765, 2024 U.S. App. LEXIS 31236, at *4 (9th Cir. Dec. 10, 2024) (applying *Skidmore* respect without a request from the government).

[67] Kristin E. Hickman, *Anticipating a New Modern* Skidmore *Standard*, 74 DUKE L.J. ONLINE 111, 120 (2025).

[68] For example, courts have used "thoroughness" to describe how well an agency supported its interpretation as well as the relative rigor of the procedures an agency

the recognized notion of a *Skidmore* "sliding scale" approach is difficult to parse.[69] *Loper Bright* likely further complicated the analysis because some factors, such as legislative purpose, appear to overlap with traditional tools of statutory construction.[70]

Notwithstanding these complexities, pre- and post-*Loper Bright* applications of *Skidmore* typically consider at least one factor in some detail.[71] Accordingly, effective *Skidmore* strategies will devote considerable discussion to the most relevant factors. The following sections examine the original *Skidmore* factors—thoroughness, validity, and consistency—in the order that the Court initially enumerated them, though factors identified in subsequent *Skidmore*-citing Supreme Court decisions are integrated into discussions of each related original factor based on recognized overlap. The original factor of thoroughness includes notions of formality, and the original factor of consistency incorporates comparative notions of longevity and contemporaneity with enactment of the relevant statute. Agency expertise and alignment with congressional purpose are each discussed independently due to less overlap with the original factors, reflecting that they fall within the unenumerated-but-persuasive fourth *Skidmore* factor.

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undertook in rendering its interpretation, which is akin to formality. Hickman & Krueger, *supra* note 35, at 1281–83.

[69] Hickman & Krueger, *supra* note 35, at 1257 ("Even if one assumes that the sliding-scale model of Skidmore is the correct one, it is not altogether clear exactly how the sliding scale operates."). A pre-*Loper Bright* study of five years of federal appellate court decisions found that, in applying *Skidmore*, courts often used a sliding-scale "deference" model, which allowed a reviewing court to assign significant, minimal, or no additional weight to an agency's interpretation based on the court's assessment of the individual factors and other considerations. *See generally id.*. In contrast, the "independent judgment" model envisions *Skidmore* as a tool to give weight to an agency's interpretation *only if* the reviewing court finds the agency's arguments particularly persuasive, in which case the court considers the agency's interpretation on equal footing with other arguments presented. Hickman, *supra* note 67, at 118. Whether *Loper Bright* adopts the independent-judgment approach appears to be an open question. *Compare Loper Bright*, 603 U.S. 369, 370 (2024) (citing academic debates on the role of "independent judgment"), *with Nicoletti*, 2025 U.S. App. LEXIS 661, at *5 (applying what appears to be a sliding-scale approach that culminated in remand because "the district court did not examine the persuasiveness of the BOP's interpretation of its rule under *Skidmore* or *the extent to which that persuasiveness requires deference*") (emphasis added)).

[70] *Compare, e.g.*, Cnty. of Maui v. Haw. Wildlife Fund, 590 U.S. 165, 180 (2020) (concluding that "to follow EPA's reading would open a loophole allowing easy evasion of the statutory provision's basic purposes" without considering *Skidmore*), *with, e.g.*, *Ruiz*, 415 U.S. 199, 237 (1974) ("In order for an agency interpretation to be granted [*Skidmore*] deference, it must be consistent with the congressional purpose.").

[71] *See, e.g.*, Hickman & Krueger, *supra* note 35, at 1271 (finding that, in a period before *Loper Bright*, roughly 75 percent of federal courts of appeals cases applying *Skidmore* considered at least one of the factors). We have identified six post-*Loper Bright* federal appellate decisions that considered at least one *Skidmore* factor as of January 21, 2025. *E.g.*, *Shamrock Bldg. Materials*, 119 F.4th 1346, 1355 (Fed. Cir. 2024); *Mayfield*, 117 F.4th 611, 620 (5th Cir. 2024); *Lopez*, 116 F.4th 1032, 1039–40 (9th Cir. 2024); *Rest. L. Ctr.*, 120 F.4th 163, 174 (5th Cir. 2024); *Perez*, 110 F.4th 1296, 1307–08 (11th Cir. 2024); *Kennedy*, 110 F.4th 1136, 1143 (9th Cir. 2024).

A. Thoroughness, Including Formality

The *Loper Bright* majority reiterated the original *Skidmore* factor of "thoroughness evident in [the agency's] consideration" without emphasis or elaboration.[72] Pre- and post-*Loper Bright* decisions addressing this factor have highlighted the importance of complete and detailed analysis, non-conclusory reasoning, and citation to sources.[73] An interpretation's length, while relevant, is likely not determinative for this factor.[74] At bottom, thoroughness allows advocates to argue creatively for or against the relative completeness and amount of detail in an agency's explanation of its statutory interpretation.

Pre- and post-*Loper Bright* decisions have also linked thoroughness with indicia of procedural and hierarchical formality, such as the use of notice-and-comment proceedings and the relative rank of the agency personnel offering an interpretation,[75] reflecting the considerations in *Mead*.[76] Before *Loper Bright*, scholars and courts viewed these indicia of

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[72] *Loper Bright*, 603 U.S. at 388 (citing *Skidmore*, 323 U.S. 134, 140 (1944)).

[73] *See Lopez*, 116 F.4th at 1040–41 (awarding *Skidmore* respect to a "thorough and well-reasoned" agency interpretation); Shin v. Holder, 607 F.3d 1213, 1219 (9th Cir. 2010) (denying *Skidmore* deference to the agency because its interpretation "lack[ed] any meaningful analysis"); Fountain v. McDonald, 27 Vet. App. 258, 269 (2015) (declining to consider the agency's interpreting document for lack of sources); Rollins v. Dignity Health, 19 F. Supp. 3d 909, 913 n.3 (N.D. Cal. 2013) (declining to apply *Skidmore* because an agency's interpretation did "not analyze the statute closely or evaluate how its language applies" and was "conclusory").

[74] *Compare Novartis Pharms. Corp.*, No. 24-cv-02234 (DLF), 2024 U.S. Dist. LEXIS 144262, at *18–19 (D.D.C. Aug. 13, 2024) ("The Court finds the FDA's judgment on this point, which is set forth in 10-pages [sic] of highly technical analysis, thorough and well-reasoned."), *with* Hernandez v. Garland, 38 F.4th 785, 791–92 (9th Cir. 2022) (rejecting the argument that *Skidmore* was "precluded" merely because the agency's analysis was "not extensive").

[75] *See, e.g.*, De La Mota v. U.S. Dep't of Educ., 412 F.3d 71, 80 (2d Cir. 2005) ("[T]horoughness is impossible for an agency staff member to demonstrate when the staff member does not report to the Secretary, bears no lawmaking authority, and is unconstrained by political accountability. Thorough consideration requires a macro perspective that a staff member, acting alone, lacks."); *Harding*, No. 1:21-cv-1212, 2024 U.S. Dist. LEXIS 145232, at *21 (N.D. Ohio Aug. 15, 2024) ("[T]he Court finds that the 1967 dual jobs regulation is entitled to *Skidmore* deference and has the power to persuade. The history of the regulation shows that it was promulgated after months of thorough consideration through the notice and comment process."); *WiCare Home Care Agency, LLC*, No. 1:22-cv-00224, 2024 U.S. Dist. LEXIS 135200, at *34–42 (rejecting a defendant's statutory interpretation argument that was based on agency fact sheets because they "did not go through notice and comment rulemaking and thus do not have the force of law" and instead favoring the conflicting interpretation in the agency's regulation because, "unlike interpretive bulletins, regulations are given 'considerable and in some cases decisive weight'" (quoting Brooks v. Vill. of Ridgefield Park, 185 F.3d 130, 138 n.7 (3d Cir. 1999))).

[76] *Mead*, 533 U.S. 218, 228 (2001) ("The fair measure of deference to an agency administering its own statute has been understood to vary with circumstances, and courts have looked to the degree of the agency's care, its consistency, formality, and relative expertness, and to the persuasiveness of the agency's position." (citing *Skidmore*, 323 U.S. at 139–40) (footnotes omitted)). While *Mead*'s guidance on when *Chevron* should apply is likely as irrelevant as *Chevron* deference itself post-*Loper Bright*, *Mead*'s general

formality as evidence of an informed rationale.[77] While the *Loper Bright* majority did not directly address *Mead* or the role of formality as a separate *Skidmore* consideration, post-*Loper Bright* decisions confirm that formality remains a valid consideration, without addressing whether formality should be treated as an aspect of the thoroughness factor or a standalone consideration.[78] One scholar observed that the post-*Loper Bright* gap left by the nearly automatic application of *Chevron* to agency interpretations with the "force of law" under *Mead*—i.e., notice-and-comment rulemaking or formal adjudication—may have *enhanced* formality's role in considering *Skidmore* (or at least created space for arguing that formality has an enhanced role), as more procedure tends to yield more weight for an agency interpretation in *Skidmore* analysis.[79] Indeed, at least one post-*Loper Bright* decision has cited notice-and-comment procedure as a reason to conclude that the agency's interpretation has the power to persuade under *Skidmore*.[80] Accordingly, litigants should address the relative procedural and hierarchical formality that produced the agency action.

B. Validity of Reasoning

Loper Bright reaffirmed the *Skidmore* factor allowing courts to assess the validity of the reasoning behind the agency's statutory interpretation.[81] While this factor gives courts significant leeway to agree or disagree with an agency, it also signals that courts should meaningfully engage with the agency's interpretation under *Skidmore*

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proposition that agency formality should be considered when determining what weight to give an agency's interpretation may yet be relevant.

77 *See* Krotoszynski, *supra* note 36, at 752 (noting that, while a "reviewing court cannot demand that an agency utilize particular procedures to ensure that the agency's end product is not arbitrary or capricious, a reviewing court logically could indulge in a strong presumption that an agency interpretation that results from a notice-and-comment rulemaking or formal adjudication is not irrational"). The absence of procedural formality tended to work against the application of *Skidmore*. For example, in *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 159 (2012), the Supreme Court expressly incorporated the notion of procedural formality in assessing the thoroughness factor, declining to apply *Skidmore* in part because the agency's interpretation had not undergone public comment.

78 *E.g.*, *Nicoletti*, No. 24-6012, 2025 U.S. App. LEXIS 661, at *4–5 (4th Cir. Jan. 13, 2025).

79 Hickman, *supra* note 67, at 130–31; *see also id.* at 132:

> Applying *Skidmore* to agency interpretations adopted using notice-and-comment rulemaking and formal adjudication should result in courts giving agency interpretations respect or weight more often—or at least appearing so—than has been the case at least since *Mead*. In other words, it seems likely that agency win rates under *Skidmore* will increase with the expansion of *Skidmore*'s domain to notice-and-comment rulemaking and formal adjudication.

80 *Harding*, 2024 U.S. Dist. LEXIS 145232, at *21.

81 *Loper Bright*, 603 U.S. 369, 371–72 (2024) (citing *Skidmore*, 323 U.S. at 140).

analysis.[82] Validity is unique among the *Skidmore* factors because it allows consideration of the merits of the agency's interpretation, not just the individual, context-specific inquiries required by the other factors.[83]

Ultimately, the validity factor likely allows litigants to reiterate their most persuasive points about an agency's interpretation. The *Loper Bright* majority's instruction that courts use all tools of statutory interpretation to determine the best reading of a statute allows litigants to reiterate arguments on text, structure, purpose, and various canons of construction as part of the validity inquiry.[84] This factor also likely allows courts to evaluate contextual factors first "to gauge the level of deference [or weight] an interpretation deserves," and "[t]hen, having determined how much leeway the agency has earned, the court applies the validity factor to decide whether the interpretation falls within that interval."[85] This approach has led courts to emphasize thoroughness and consistency when discussing validity.[86] Strategic approaches for this factor will treat the validity inquiry as a framing device for best overall arguments while also highlighting major points for other *Skidmore* factors.

C. Consistent, Longstanding, and Contemporaneous

The *Loper Bright* majority not only reiterated the *Skidmore* factor of the consistency of the agency's proffered interpretation with previous agency interpretations but also placed special emphasis on longstanding interpretations issued contemporaneously with the enactment of the enabling statute, even instructing that such interpretations deserve

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[82] *See* Doe v. Leavitt, 552 F.3d 75, 81 (1st Cir. 2009) ("[*Skidmore*] must mean something more than that deference is due only when an inquiring court is itself persuaded that the agency got it right. Otherwise, *Skidmore* deference would not be deference at all."); Cathedral Candle Co. v. U.S. Int'l Trade Comm'n, 400 F.3d 1352, 1366 (Fed. Cir. 2005) ("We are confident that the Court did not mean for that standard to reduce to the proposition that 'we defer if we agree.' If that were the guiding principle, *Skidmore* deference would entail no deference at all."). Whether the Supreme Court's emphasis on *Skidmore* weight—instead of deference—in *Loper Bright* cuts against these conclusions in not clear, though cases discussed in Part IV.B, *infra*, suggest that lower courts have not changed their approach to validity.

[83] Hickman & Krueger, *supra* note 35, at 1285.

[84] *See, e.g.*, *Lissack*, 125 F.4th 245, 259–60 (D.C. Cir. 2025) (examining context, purpose, and textual canons to conclude that an agency's interpretation was persuasive under *Skidmore*).

[85] Hickman & Krueger, *supra* note 35, at 1285. This approach further demonstrates the potential overlap between *Skidmore* factors.

[86] *See, e.g.*, *De La Mota*, 412 F.3d 71, 80 (2d Cir. 2005) (assessing validity as "whether an agency pronouncement is well-reasoned, substantiated, and logical"); Baylor Cnty. Hosp. Dist. v. Burwell, 163 F. Supp. 3d 372, 380 (N.D. Tex. 2016) (concluding that the validity "inquiry focuses on 'whether the agency has consulted appropriate sources, employed sensible heuristic tools, and adequately substantiated its ultimate conclusion'" (quoting *Leavitt*, 552 F.3d at 82) (further citations omitted)); Smith v. Vazquez, 491 F. Supp. 2d 1165, 1171 (S.D. Ga. 2007) ("Though the BOP has presented arguably valid reasoning behind the 'twelve months preceding' rule, Respondent has not shown a consistent source for the rule or even a consistent definition of the rule.").

"great weight."[87] While notions of longevity and contemporaneity are sometimes considered distinctly from notions of consistency,[88] the Supreme Court has recognized this set of factors in its considerations of agency interpretations before and after *Skidmore*.[89] Whether the agency interpretation is consistent with interpretations made contemporaneously with the enabling statute and/or has been in place for considerable stretches of time is now likely central to any near-term *Skidmore* discussion, as post-*Loper Bright* decisions reflect renewed emphasis on these factors.[90]

Two broader considerations may inform advocacy and analysis of those factors. First, analogous past exercises of authority may support arguments that an agency's new interpretation is consistent with that agency's prior views of its authority, as one post-*Loper Bright* decision has recognized.[91] For new interpretations or specific interpretations not

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[87] *Loper Bright*, 603 U.S. 603 U.S. 369, 388, 394 (2024) (citing *Skidmore & Swift Co.*, 323 U.S. 134, 140 (1944)).

[88] Hickman & Krueger, *supra* note 35, at 1286–91 (comparing cases that discuss longevity and contemporaneity independently from consistency with cases discussing those factors jointly).

[89] *See, e.g.*, Lowe v. Sec. & Exch. Comm'n, 472 U.S. 181, 216 (1985) ("An agency's construction of legislation that it is charged with enforcing is entitled to substantial weight, particularly when the construction is contemporaneous with the enactment of the statute." (citing *Skidmore*, 323 U.S. at 140); *Norwegian Nitrogen Prods. Co.*, 288 U.S. 294, 315 (1933) (reasoning that "administrative practice, consistent and generally unchallenged, will not be overturned except for very cogent reasons if the scope of the command is indefinite and doubtful"). The Court's emphasis on contemporaneous interpretations can overlap with notions of agencies' specialized experience in implementing statutes and alignment with congressional purpose, as discussed in Parts IV.D. & E, *infra*. *See* Zuber v. Allen, 396 U.S. 168, 192–93 (1969) (concluding that contemporaneous constructions carry the most weight when the relevant agency "participated in drafting and directly made known their views to Congress in Committee hearings" and that, "absent any indication that Congress differed with the responsible department, a court should resolve any ambiguity in favor of the administrative construction, if such construction enhances the general purposes and policies underlying the legislation").

[90] *See, e.g.*, *Perez*, 110 F.4th 1296, 1307 (11th Cir. 2024) ("The [Department of Labor's] position has been the same for 80 years, and we find it persuasive."); *Houtz*, No. 5:23-cv-00844-JMG, 2024 U.S. Dist. LEXIS 175279, at *8 (E.D. Pa. Sep. 27, 2024) (applying *Skidmore* in part because two relevant Department of Labor regulations have been in substantially the same form since 1967); *Sarene Servs., Inc.*, 740 F. Supp. 3d 251, 289–99 (E.D.N.Y. 2024) (invoking consistency in applying *Skidmore*).

[91] *In re Yellow Corp.* provided:

> *Loper Bright* emphasized that respect for an agency determination is "especially warranted" where its construction is "longstanding" and "consistent over time." Similarly, in the course of upholding a regulation that required federally funded healthcare facilities to ensure that their employees were vaccinated against COVID-19, the Supreme Court emphasized that the vaccination requirement was consistent with "the longstanding practice of Health and Human Services in implementing the relevant statutory authorities." The Supreme Court explained that although the agency had not previously imposed a vaccination requirement, federally funded healthcare facilities "have always been obligated to satisfy a host of conditions that address the safe and effective provision of healthcare."

contemporaneous with the enactment of older statutes, assessing analogous exercises of authority can help align the new interpretation with the historical arc of an agency's interpretations.

Second, historical notions of consistency did not require continuous adherence to the interpretation at issue, nor was a lack of consistency always considered dispositive in *Skidmore* analysis.[92] As a practical matter, there are strong reasons to allow agencies flexibility for evolving societal challenges, such as technological advancements, economic changes, and emergent public-health issues, especially as new data, science, and policy considerations arise.[93] While some courts have invoked, and will continue to invoke, *Loper Bright* to conclude that inconsistency in agency interpretations is now verboten,[94] multiple post-*Loper Bright* decisions continue the historical, flexible approach.[95] Seemingly inconsistent agency interpretations, therefore, may still receive *Skidmore* weight where other factors are met or the inconsistency is adequately explained.

> The No-Receivables Regulation, like the vaccine mandate, imposes a rule that is *similar to those that had long been applicable in analogous circumstances*. The No-Receivables Regulation is thus a valid exercise of the rulemaking authority that Congress has given to the [Pension Benefit Guaranty Corporation].

No. 23-11069 (CTG), 2024 Bankr. LEXIS 2696, at *68–69 (Bankr. D. Del. Nov. 5, 2024) (citations omitted) (emphasis added), *aff'd*, 2025 U.S. App. LEXIS 23864 (1st Cir. 2025).

[92] *See*, *e.g.*, Fed. Express Corp. v. Holowecki, 552 U.S. 389, 399–400 (2008) (applying *Skidmore* even though "the agency's implementation of this policy has been uneven" because "[t]hese undoubted deficiencies in the agency's administration of the statute and its regulatory scheme are not enough . . . to deprive the agency of all judicial deference"); Warner-Lambert Co. v. United States, 425 F.3d 1381, 1386 (Fed. Cir. 2005) ("Although one factor in determining *Skidmore* deference is the ruling's 'consistency with earlier and later pronouncements,' that factor cannot be read as precluding any deference to an agency ruling that has the power to persuade, solely because it is inconsistent with an earlier one." (quoting *Skidmore*, 323 U.S. at 140)); Hickman, *supra* note 67, at 121 (observing, based on *Skidmore* decisions in federal appellate courts from 2001 to 2006, that agencies prevailed in approximately 40 percent of "cases in which a court accused an agency of inconsistency" (citing Hickman & Krueger, *supra* note 35, at 1286)).

[93] *See generally* Jonas J. Monast, *Emerging Technology Governance in the Shadow of the Major Questions Doctrine*, 24 N.C. J.L. & TECH. 1 (2023).

[94] *See In re* MCP, 124 F.4th 993, 1000 (6th Cir. 2025) ("Applying *Loper Bright* means we can end the FCC's vacillations.") (citations omitted).

[95] *See, e.g.*, *Lopez*, 116 F.4th 1032, 1040 (9th Cir. 2024) ("Although [the Board of Immigration Appeals' (BIA) precedent decision] is inconsistent with 'earlier . . . pronouncements,' the BIA carefully explained why the revised interpretation is nonetheless consistent with the agency's longstanding distinction[] . . . ." (quoting *Skidmore*, 323 U.S. at 140)); *Wirth*, No. 23-CV-11718-AK, 2024 U.S. Dist. LEXIS 165163, at *9–12 (D. Mass. Sep. 13, 2024) (upholding an agency's current interpretation even after the agency "reversed course"); *Kumho Tire (Vietnam) Co.*, 741 F. Supp. 3d 1277, 1331 (Ct. Int'l Trade 2024) (relying on *Skidmore* to uphold an agency's interpretation because: "(1) the agency adequately explain[ed] the reasons for the change; and (2) the change in practice is in accordance with the statute") (citing Huvis Corp. v. United States, 570 F.3d 1347, 1353 (Fed. Cir. 2009)).

D. Agency Expertise

Loper Bright allows agency expertise to inform a reviewing court's statutory interpretation in specific circumstances. However, as part of its justification for eliminating *Chevron* deference, the majority took a narrow view of agency subject-matter expertise in statutory interpretation,[96] rejecting the notion that agency technical expertise *required* deference to agency interpretations.[97] The *Loper Bright* majority's reasoning could be limited to its disdain for automatic deference,[98] which *discretionary* application of *Skidmore* weight does not impugn, or it could be read more broadly to mean that courts should pay little heed to agencies' interpretations, absent congressionally delegated authority for an agency to play some role in interpreting a specific statute.

Regardless, *Loper Bright* confirms that an agency interpretation "may be especially informative 'to the extent it rests on factual premises within [the agency's] expertise,'"[99] because "[s]uch expertise has always been one of the factors which may give an Executive Branch interpretation the 'power to persuade.'"[100] Litigants and courts engaging with *Skidmore* must therefore consider whether statutory language is contingent upon, or at least related to, an agency's factual determination and whether that determination lies within the agency's area of expertise.

Little else about that issue is clear. The *Loper Bright* majority did not address whether the factual premise must fall within the area of the agency's expertise through a delegation of authority or some other

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[96] For example, the majority rejected the idea that "Congress must generally intend for agencies to resolve statutory ambiguities because agencies have subject matter expertise regarding the statutes they administer"; reiterated that "interpretive issues arising in connection with a regulatory scheme often 'may fall more naturally into a judge's bailiwick' than an agency's"; and warned that, "[w]hen the agency has no comparative expertise in resolving a regulatory ambiguity, Congress presumably would not grant it that authority." *Loper Bright*, 603 U.S. 369, 401–02 (2024) (citations omitted).

[97] "[E]ven when an ambiguity happens to implicate a technical matter, it does not follow that Congress has taken the power to authoritatively interpret the statute from the courts and given it to the agency. Congress expects courts to handle technical statutory questions." *Id.* at 402; *see also id.* ("[M]any statutory cases call upon 'courts [to] interpret the mass of technical detail that is the ordinary diet of the law,' and courts did so without issue in agency cases before *Chevron*." (citations omitted)). Notably, *Loper Bright* did not address deference to agencies' technical and scientific determinations on factual issues, as recognized in *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 376–77 (1989), and *Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 103 (1983).

[98] *Loper Bright*, 603 U.S. at 402–04.

[99] *Id.* at 374 (citing Bureau of Alcohol, Tobacco & Firearms v. Fed. Lab. Rels. Auth., 464 U.S. 89, 98 n.8 (1983)).

[100] *Id.* at 402 (citing *Skidmore*, 323 U.S. at 140) (further citations omitted).

express assignment,[101] as some post-*Loper Bright* decisions imply.[102] Nor did the majority address whether a factual determination that is part of an agency's broader administration of a statute also qualifies for *Skidmore* weight in determining a statute's best reading, let alone how or why that determination may be different from the general, APA-required deference to agencies' reasonable and supported policymaking and fact-finding.[103] The *Loper Bright* majority also left unclear how factual premises within an agency's expertise operate in reviewing mixed questions of fact and law, which are myriad.[104]

Complicating those uncertainties, *Loper Bright* arguably left room for litigants and courts to consider broader notions of agency expertise in *Skidmore* analysis. The *Loper Bright* majority reiterated key *Skidmore* language, allowing courts to consider agencies' "specialized experience" and "body of experience and informed judgment" as potentially persuasive without narrowing these considerations.[105] The Court's pre-*Loper Bright* decisions recognized that "we often pay particular attention to an agency's views in light of the agency's expertise in a given area, its knowledge gained through practical experience, and its familiarity with *the interpretive demands of administrative need*."[106] These principles reflect that Congress's intended reader of statutory language is often the expert agency, not the broader public, making agencies the most suitable institutional actor capable of establishing a common understanding for the ordinary meaning of a provision.[107] Past cases and empirical

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[101] Footnote 6 of *Loper Bright* may offer a clue. In discussing delegations of statutory authority based on terms that "'leaves agencies with flexibility,' . . . such as 'appropriate' or 'reasonable,'" the majority cited statutory examples where an agency is assigned with a threshold determination as to whether to take certain actions:

> *See, e.g.*, 33 U.S.C. §1312(a) (requiring establishment of effluent limitations "[w]henever, *in the judgment* of the [Environmental Protection Agency (EPA)] Administrator . . ., discharges of pollutants from a point source or group of point sources . . . *would interfere with the attainment or maintenance of that water quality . . . which shall assure*" various outcomes, such as the "protection of public health" and "public water supplies"); 42 U.S.C. §7412(n)(1)(A) (directing EPA to regulate power plants "*if the Administrator finds* such regulation is appropriate and necessary").

Id. at 395 & n.6 (emphasis added) (alterations in *Loper Bright*).

[102] *See* Lyman v. Quinstreet, Inc., No. 23-cv-05056-PCP, 2024 U.S. Dist. LEXIS 123132, at *11 (N.D. Cal. July 12, 2024) (applying *Loper Bright* to conclude that the FCC's interpretation was persuasive because it rested on factual premises within the agency's delegated discretion and expertise but noting that it would have reached the same conclusion in the absence of an agency interpretation); *see also* Lirones v. Leaf Home Water Sols., LLC, No. 5:23-cv-02087, 2024 U.S. Dist. LEXIS 165900, at *17–18 (N.D. Ohio Sep. 16, 2024) (similar) (citing *Lyman*, 2024 U.S. Dist. LEXIS 123132, at *4).

[103] *See Loper Bright*, 603 U.S. at 393 (citing 5 U.S.C. § 706(2) (2018)).

[104] *Id.* at 469 ("[T]he universe of mixed questions swamps that of pure legal ones.") (citation omitted) (Kagan, J., dissenting).

[105] *Id.* at 388 (majority opinion) (quoting *Skidmore*, 323 U.S. at 139–40).

[106] *Cnty. of Maui*, 590 U.S. 165, 180 (2020) (emphasis added).

[107] Tara Leigh Grove, *Testing Textualism's "Ordinary Meaning,"* 90 GEO. WASH. L. REV. 1053, 1075–77 (2022).

scholarship show that Congress typically involves federal agencies in the legislative drafting process.[108] Indeed, post-*Loper Bright* decisions have invoked these broader principles of agencies' statutory expertise in applying *Skidmore*.[109] Litigants and courts should accordingly explore broader notions of agency expertise in case-specific *Skidmore* analysis.

E. Alignment with Congressional Purpose

Loper Bright's reiteration of unenumerated-but-persuasive factors likely bolsters the relevance of alignment between an agency interpretation and statutory purpose in *Skidmore* analysis, which the Court has long recognized.[110] Accordingly, litigants should address that factor, either on a standalone basis or as an aspect of other *Skidmore* factors, including validity,[111] contemporaneity,[112] and longstanding interpretations as evidence of congressional acquiescence.[113] Agency's

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[108] *See* Cloverleaf Butter Co. v. Patterson, 315 U.S. 148, 177 (1942) (Frankfurter, J., concurring) ("From the very beginning of our government in 1789, federal legislation like that now under review has usually not only been sponsored but actually drafted by the appropriate executive agency."); Christopher J. Walker, *Legislating in the Shadows*, 165 U. PA. L. REV. 1377, 1382–87 (2017) (detailing the role of federal agencies in legislative drafting); Christopher J. Walker, *Inside Agency Statutory Interpretation*, 67 STAN. L. REV. 999, 1037 (2015) (reporting that 59 percent of surveyed agency rule drafters "reported that their agency always or often participates in a policy or substantive drafting role for the statutes the agency administers" and that another 27 percent reported that they were sometimes involved).

[109] *See Clinkenbeard*, No. 23-3151 (JRT/LIB), 2024 WL 4355063, at *4 (D. Minn. Sep. 30, 2024) ("Though the Court does not rely exclusively on the BOP's interpretation of the statute . . . , the Court nevertheless takes note of the BOP's *experience with implementing the First Step Act* and finds that its interpretation is a more accurate reading of Congress's intent." (emphasis added)); *see also Tapestry, Inc.*, No. 1:24-cv-03109 (JLR), 2024 U.S. Dist. LEXIS 194671, at *71 n.3 (S.D.N.Y. Oct. 24, 2024) (recognizing the value of agency "familiarity with the interpretive demands of administrative need" to conclude that agency guidelines were persuasive without identifying a factual determination (citing *Cnty. of Maui,* 590 U.S. at 180)).

[110] *E.g.*, *Holowecki*, 552 U.S. 389, 399–401 (2008); *Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 38–41 (1981); *Sloan*, 436 U.S. 103, 118 (1978); *Ruiz*, 415 U.S. 199, 237 (1974). Circuit courts have generally followed suit. *See, e.g.*, Sec'y U.S. Dep't of Lab. v. Am. Future Sys., 873 F.3d 420, 427 (3d Cir. 2017) (applying *Skidmore* because the agency's interpretation was "reasonable given the language and purposes of the statute").

[111] *See, e.g.*, *Leavitt*, 552 F.3d 75, 83 (1st Cir. 2009) (considering congressional purpose in the *Skidmore* validity analysis); *Baylor Cnty. Hosp. Dist.*, 163 F. Supp. 3d 372, 381–82 (N.D. Tex. 2016) (similar).

[112] *See* Hickman & Krueger, *supra* note 35, at 1288 ("A contemporaneous interpretation may trigger deference because the agency's proximity to the statute's enactment suggests that the interpretation benefited from special insight into Congress's wishes.").

[113] *See, e.g.*, Fox TV Stations, Inc. v. Aereokiller, LLC, 851 F.3d 1002, 1015 (9th Cir. 2017) ("The [interpretation] is longstanding, consistently held, and was arrived at after careful consideration; and it addresses a complex question important to the administration of the Copyright Act. Not only that, but Congress has effectively acquiesced in it. We are persuaded that all of this more than suffices under *Skidmore*."); Hickman & Krueger, *supra* note 35, at 1288 ("Similarly, longstanding interpretations may trigger deference because, in

record-based discussions of how an interpretation aligns with a statute's purpose may also bolster notions of thoroughness. Even where litigants and courts discuss purpose as a core tool of statutory interpretation in a case, there will likely be room to revisit that factor as part of any *Skidmore* analysis.

V. CONCLUSION

For four decades, *Chevron* governed judicial review of agencies' statutory interpretations and consequently informed agency interpretations. When a court found a statute clear, Congress allowed no room for agency interpretation. Where statutory language was ambiguous, *Chevron* required deference to agencies' permissible interpretations. *Loper Bright* jettisoned this framework but did little to address the underlying challenge for courts and agencies: statutes are often complex, and agencies must apply them, including any ambiguous statutory terms, to evolving circumstances, especially in environmental law.

Loper Bright returned *Skidmore* to its pre-*Chevron* role as the primary mechanism for persuading courts to consider an agency's statutory interpretation beyond the traditional tools of statutory interpretation, elevating *Skidmore*'s role even as the Supreme Court has otherwise reduced agency authority and discretion. Yet the Court did little to clarify when or how courts should apply the malleable *Skidmore* factors, and the statutes at issue remain as complex and ambiguous as before *Loper Bright*. Litigators must now engage with *Skidmore* more than in the past forty years, as the task of navigating weight for agency interpretations will fall to lower courts in the first instance.

Even with more robust advocacy, the application of *Skidmore* factors will likely remain complicated in environmental and administrative law. While recent lower court decisions provide some guidance, these decisions also demonstrate inconsistency and the considerable discretion afforded to lower courts in applying the factors. This leaves critical questions unresolved, even as *Skidmore* takes on newfound prominence. Without further clarity, *Skidmore* is likely to become a powerful—but unpredictable—tool of statutory interpretation, and agencies will lack certainty as to when and how a court will apply the 1944 case to today's disputes over agency actions.

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theory, Congress has acquiesced, especially where it has reenacted the statutory provision after the agency's interpretation was made public.").