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The Supreme Court's Assault on Government Could Make the Far-Right's Dreams Come True

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Restoring Social Trust in Democracy, Consumer Protections, Democracy, +1 More

The Supreme Court could strip power away from Congress and the president in several cases this term in ways that will make life worse for everyday Americans.

Stone steps lead up to the front of the U.S. Supreme Court building, February 2024. (Getty/J. David Ake/)

After two terms in which a radical majority on the Supreme Court has clawed back long-cherished rights, precedents, and laws, the court has now set its sights

on grabbing power from voters and gutting the ability of the government to serve American families. It is hearing a series of cases that, individually, would undermine core functions and operations of the federal government and, together, would incapacitate governance. Ultimately, this would thwart the will of voters by grabbing power away from the elected branches of government and instead resting them with unelected judges with lifetime tenure. The outcome of these cases could potentially allow judges to substitute their own political and policy preferences for those of Congress; disempower career civil servants, who are experts in their fields; and hamper the president's ability to implement their agenda. Effective governance has delivered bedrock promises—air free of smog; water free of contamination; a safe and reliable banking system; and even a 40-hour workweek. All could be at risk.

This report paints a picture of how the cases would interact to undermine basic benefits and protections for Americans:

Securities Exchange Commission (SEC) v. Jarkesy could make it harder to enforce laws and to allow administrative law judges (ALJs) to hear cases in which monetary penalties can be imposed. ALJs perform a critical function as civil courts can take years to penalize lawbreakers. The court is also considering eliminating their independence from political removal.

Consumer Financial Protection Bureau (CFPB) v. Community Financial Services Association (CFSA) challenges the funding structure for the CFPB establish by Congress, which mirrors that used for many decades by other banking regulators. A bad ruling in this case would imperil the entire system designed to prevent a financial crisis and predation on consumers by banks and financial institutions, irrevocably harming regulators that ensure banks are safe and sound.

Loper Bright v. Raimondo and *Relentless v. Department of Commerce (Loper/Relentless)* could overturn a 40-year-old precedent by which Congress has enacted laws and agencies have functioned. It will allow unelected, life-tenured judges to impose their policy preferences over the career civil servants who act at the directive of Congress and the president.

Corner Post v. Board of Governors of the Federal Reserve (Federal Reserve) could allow for unceasing litigation and infinite attempts for monied interests to challenge regulations, no matter when they were created, that lower costs for consumers, protect them from bad actors, and provide steadfast guidance that keep corporations in line.

These cases are the culmination of a decadeslong effort by billionaires and right-wing interests to roll back bedrock worker protections; consumer safeguards against financial predators; public health and environmental protections; and much more.[1] In full, these cases could pave the way for advancing the far-right agenda set forth in the Heritage Foundation's "Project 2025 Mandate for Leadership" that will also decimate the federal workforce that acts a bulwark against bad actors.[2] In combination, these cases and "Project 2025" set the stage for entrenching a corrupt corporatocracy that will drive government decision-making with no interest in protecting or serving American workers and families.

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Case-by-case considerations and concerns

This Supreme Court term serves as a critical backdrop to the anti-democratic forces attempting to advance their agenda across American society. The four cases, set forth below, exemplify the culmination of a decadeslong right-wing effort to end federal agencies' ability to serve American families. These billionaire-backed cases advance an agenda that will aggregate vast government power away from elected officials in Congress and the presidency into the hands of unelected judges with lifetime appointments.[3] If the Supreme Court finds against the government to overturn decades-old precedent, it will reshape the way government has functioned for the last century and continue the trend of the court rolling back the rights of everyday Americans.

SEC v. Jarkesy: The three-part threat to agency function

The outcome of *SEC v. Jarkesy,* argued on November 29, 2023, could undermine the ability of federal entities, such as the SEC, to protect the American people for corporate predation. During oral arguments, the Supreme Court considered whether to affirm a U.S. 5th Circuit Court of Appeals ruling that struck down the ability of the SEC to enforce securities fraud violations on three grounds: 1) The SEC could not enforce its rules through administrative channels but must bring suit in federal court; 2) Congress cannot grant the SEC administrative enforcement authority under the (arguably nonexistent) nondelegation doctrine; and 3) that independent agency ALJs are themselves unconstitutional.[4]

At oral argument, the court appeared willing to prohibit the SEC from enforcing securities fraud violations through ALJs, requiring them instead to proceed through the courts.[5] This would eliminate a key tool that allows agencies to swiftly and efficiently prevent bad actors from committing harms in the first place, rather than going through protracted, yearslong civil litigation. Furthermore, a hampered regulatory regime will likely incentivize bad actors and monied interests to act in ways that currently violate the law under the premise that agencies will no longer be able to enforce regulations. The Department of Justice (DOJ)—which many agencies rely on to enforce violations in courts—simply does not have the capacity to take on the entire enforcement activity of every federal agency that is no longer permitted to pursue wrongdoers through administrative procedures. The DOJ would only have the capacity to pursue the most egregious cases against alleged fraudsters, polluters, corporate profiteers, and the like, allowing "low-level" scammers and lawbreakers who target or injure everyday Americans to go unenforced. That means bad actors who take their victims for thousands of dollars instead of hundreds of thousands or millions of dollars likely will not be pursued by government regulators because they do not have the capacity to do so if forced into the courts. For instance, the SEC may not have pursued the defendants in

Jarkesy absent administrative enforcement because they were required to return only $685,000 in ill-gotten gains to their allegedly defrauded investors.[6]

Indeed, this ruling could extend to multiple agencies that protect U.S. citizens from bad actors. Tech giant Meta has already filed a lawsuit to declare the entire Federal Trade Commission unconstitutional under the reasoning espoused by the far-right justices during the *Jarkesy* oral argument.[7] Likewise, Elon Musk and Tesla have filed a suit using the same arguments to have the National Labor Relations Board, which governs labor law violations and union activities, declared unconstitutional.[8] As Professor Catherine Fisk of the University of California, Berkeley School of Law notes, "This is an effort by a group of lawyers who are foes of the administrative state and the New Deal-era legislation that created the NLRB and the SEC to essentially end enforcement of those statutes."[9] In effect, the Supreme Court, with the stroke of a pen, could end the enforcement of statutes that have protected the American people from corporate and financial wrongdoers for the last century.

The *Jarkesy* oral argument touched little on the second and third provisions of the 5th Circuit's ruling—that nondelegation prevented SEC administrative enforcement of regulations and that ALJs themselves are unconstitutional. Historically, the nondelegation doctrine has only been used twice in the nation's history, both occurring in 1935 and not since. Rather, the court has refused to use the nondelegation doctrine to overrule congressional delegation of authority to agencies, noting in 1825 that Congress "may commit something to the discretion of the other departments, and the precise boundary of this power is a subject of delicate and difficult inquiry, into which a court will not enter unnecessarily."[10]

As to ALJs, their status has been entrenched in the function of American government since enactment of the Administrative Procedures Act (APA) in 1946 "to ensure fairness and due process in executive agency actions or proceedings involving rulemaking and adjudications."[11] This is the first time in their 80-year existence that ALJs have been accused of being unconstitutional in this manner.[12]

If the 5th Circuit decision is upheld, it would strip power from Congress to direct agencies to act, upending the way government has functioned throughout our history. Furthermore, it could result in the hundreds of thousands of cases adjudicated by the more than 2,000 ALJs across 32 federal agencies each year being pushed onto just 673 already overburdened U.S. district court judges.[13] The district court judges are simply not equipped to handle the increased case load. They also do not possess the expertise in the highly technical matters that come before ALJs, such as benefits-related issues, including Social Security, Medicare, and Medicaid; immigration matters; equal employment concerns; government contracts; and security clearances. This could result in wildly disparate rulings across districts and delay the cause of justice for years.

CFSA v. CFPB: Incapacitating banking and financial regulatory enforcement

The Supreme Court heard oral argument in *CFSA v. CFPB* on October 3, 2023. The case dealt with an unprecedented decision from the U.S. 5th Circuit Court of Appeals holding that the CFPB's creation and enforcement of regulations is unconstitutional because its funding occurs outside the congressional appropriations process—a legal theory never before utilized or enforced.[14] Once again, an extreme judiciary took a narrow issue—whether the CFPB could prohibit payday lenders form continuously attempting to withdraw funds from a debtor's bank account that had insufficient funds, causing the bank to impose multiple financial penalties on the account holder—and used that to effectively

declare the agency itself unconstitutional.[15] The ruling could call into question nearly every regulation and enforcement activity that CFPB has engaged in over its 12 years of existence.[16] Furthermore, if the ruling were taken to its logical conclusion, it could result in several financial regulators that have stood for decades—including the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Federal Housing Finance Agency—being rendered nonfunctional and likely unconstitutional.[17]

This case is part of a longer trend of monied interests to eliminate the CFPB. For instance, in *Seila Law v. CFPB* in 2020, the Supreme Court ruled on a challenge to the constitutionality of CFPB's structure on separation of powers grounds, declaring that the director of CFPB could not be subject to "for cause" removal under the Constitution, but may be removed at the president's discretion.[18] In so doing, the Court did not eliminate the bureau, but struck a blow to its independence from political interference.

Regardless, the CFPB has been exceedingly effective in its mandate to protect consumers from hidden and predatory financial instruments, fees, and actors, especially regarding payday lenders who have brought the current constitutional challenge. To that extent, the CFPB has obtained $17.5 billion in benefits to Americans through monetary compensations, principal reductions, canceled debts, and other relief and has imposed more than $4 billion in civil penalties for violations of the law.[19]

At oral argument, even the conservative justices appeared disinclined to accept the argument put forth by CFSA and the 5th Circuit that the CFPB was unconstitutional. Even so, the impact and intent of cases such as this must be taken into consideration to provide a holistic view of the legal agenda being advanced by right-wing interests, i.e., diminishing federal agency capacity and functionality. If the court were to follow the 5th Circuit's lead, it would be "[breaking] new jurisprudential ground" and it would adopt "the first appellate —and perhaps the first court decision *ever*—to conclude that congressional action, as opposed to executive or judicial action, can violate the appropriations clause."[20] It could likely unravel 12 years of regulations and enforcement activities benefiting consumers in the amount of tens of billions of dollars.[21] It would also effectively defund the CFPB, resulting in the cessation of day-to-day activities necessary to fulfill its statutory mission and could result in hundreds of layoffs of federal employees. It would also prevent effective enforcement of the 18 federal statutes overseen by the CFPB, including The Equal Credit Opportunity Act, The Truth in Lending Act, The Fair Debt Collection Practices, and The Telemarking and Consumer Fraud and Abuse Prevention Act.[22]

> The Project 2025 "Mandate for Leadership" is a $22 million dollar project led by the Heritage Foundation, a conservative think tank. It was established for the purpose of utterly reshaping federal agencies and with the effect of hindering their ability to support and protect Americans from bad actors.[23] For instance, Project 2025 advocates for eliminating the ability of the Federal Election Commission to enforce its rules through litigation; breaking up the Department of Homeland Security; as well as dissolving the Federal Trade Commission, the Consumer Finance Protection Bureau, and the Office of Environmental Justice and External Civil Rights within the EPA.[24]
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> Project 2025 also proposes a plan to fire more than 50,000 federal jobs and replace upwards of 20,000 career civil servants with political apparatchiks who possess the goal of advancing an anti-regulation, privatization, and anti-diversity initiative agenda in the next conservative presidential administration.[25] This agenda to hinder federal agencies' ability to work for

and provide safeguards for the public ties directly to the anti-government cases presently being considered by the Supreme Court—*Jarkesy, Loper/Relentless,* and *Corner Post*.

Beyond eliminating agencies, Project 2025 intends to significantly weaken protections for Americans across nearly every facet of society, including in the following policy areas:

- Within the Department of Education, they intend to inhibit civil rights data collection, limit enforcement of sex- and gender-based discrimination, and reduce assistance to states via preschool grants for children with disabilities while enhancing grants to private religious schools.[26]
- Within the health care field, beyond the overarching goal of creating a nationwide abortion ban, they intend for the Department of Health and Human Services to deemphasize medication birth control and condoms in favor of the "fertility awareness," or the rhythm method; prohibit life-saving stem cell research; and eliminate drug price negotiation provisions of the Inflation Reduction Act.[27]
- Within labor protections, they recommend that agencies reduce or eliminate regulations protecting communities of color and LGBTQ+ individuals from race- or sex-based discrimination; permit policies or proposals that allow for religious discrimination; eliminate birth control, surrogacy, or abortion benefits from employee healthcare plans; reduce thresholds requiring overtime pay for workers; and inhibit union political activity.[28]
- Within environmental safeguards, they propose striking or narrowing regulations that control the National Ambient Air Quality Standards (NAAQS), hydrofluorocarbons (HFCs), vehicle emissions standards, climate change reporting mechanisms, and banning the use of cumulative impact analysis to determine the environmental effects of projects.[29]

If the court finds in favor of the right-wing interests that brought the *Jarkesy*, *Loper/Relentless*, and *Corner Post* cases, it could clear a path for this destructive agenda to be enacted. And it will leave virtually no legal recourse for those who are harmed by this agenda to prevent their rights from being trampled.

Loper Bright **and** ***Relentless*****: Unelected judges' policy preferences supplanting elected officials' and agency experts' directives**

Loper Bright v. Raimondo and *Relentless v. Department of Commerce,* argued on January 17, 2024, are two cases dealing with an identical issue—whether herring fishermen on commercial vessels are required to pay for onboard fisheries monitors.[30] The lower courts upheld the rule using the 40-year old *Chevron* doctrine that gives deference to agency experts creating rules that reasonably interpret a statute if the statute is silent or ambiguous to the specific action the rule addresses.[31] Instead of taking up that narrow issue of whether the rule should be overturned, however, the court opted to consider whether it should overturn *Chevron* deference, a bedrock administrative law case that was cited over 19,000 times since its inception in 1984.[32] As in *Jarkesy*, the court's conservative justices exhibited a willingness to upend 40-year-old judicial precedent in a move that could result in a return to unelected judges placing their policy preferences over those of the experts at politically responsive agencies. That case established the *Chevron* doctrine, providing that when a statute is silent or ambiguous as to a specific issue, an agency is granted deference in its rulemaking authority if its interpretation of the statue is

reasonable and permissible.[33] An adverse outcome would have massive negative implications both for Congress to grant rulemaking authority to agencies and for agencies to reasonably interpret authorities, which they have already been granted and have been regulating for decades.

The Supreme Court adopted the *Chevron* doctrine in 1984 following several years of decisions in which the D.C. Circuit Court would strike regulations if they did not serve the purposes of the underlying legislation, which effectively allowed judges to read their own policy preferences into the legislation to second guess agency expertise.[34] Conversely, use of *Chevron* deference resulted in judges making less ideologically driven rulings when reviewing regulations.[35] Depoliticizing the courts, removing judicial bias from second guessing agency action, and deferring to the expertise of agencies in promulgating rules permitted under enacting legislation was the intent of establishing the doctrine, as the court held:

> **Judges are not experts in the field, and are not part of either political branch of the Government. Courts must, in some cases, reconcile competing political interests, but not on the basis of the judges' personal policy preferences. In contrast, an agency to which Congress has delegated policymaking responsibilities may, within the limits of that delegation, properly rely upon the incumbent administration's views of wise policy to inform its judgments. While agencies are not directly accountable to the people, the Chief Executive is, and it is entirely appropriate for this political branch of the Government to make such policy choices – resolving the competing interests which Congress itself either inadvertently did not resolve, or intentionally left to be resolved by the agency charged with the administration of the statute in light of everyday realities.[36]**

However, at oral argument, the court's extreme majority appeared ready, willing, and able to overrule the *Chevron* doctrine.[37] Whether they strike the doctrine in its entirety or significantly limit its scope is yet to be seen, though the court seems prepared to revert back to a precursor interpretation of statutes known as the *Skidmore* doctrine. *Skidmore* allows courts to "consider the rulings, interpretations and opinions" of agencies but that they are "not controlling upon the courts," merely having the "power to persuade."[38] Justice Antonin Scalia described *Skidmore* review thus, "[T]he test most beloved by a court unwilling to be held to rules (and most feared by litigants who want to know what to expect): th'ol' [sic] 'totality of the circumstances' test."[39] In effect, this would revert to a pre-*Chevron* regime where purportedly neutral judges were allowing their ideological biases to dictate whether they would strike down or uphold rules created by federal agencies.

As noted in previous Center for American Progress publications on this subject, innumerable rules that help Americans improve their lives and protect them from bad actors could be at risk if the court strikes down the *Chevron* doctrine. This includes legal challenges that could affect:

- Fair housing regulations for survivors of domestic violence under the Violence Against Women Act[40]
- Minimum salary requirements that allow workers to collect overtime pay under regulations created by the Department of Labor[41]
- Protecting students from being taken advantage of by unscrupulous and

low-quality education programs through gainful employment rules under the Higher Education Act[42]

- Regulations to tighten methane emissions—a greenhouse gas 80 times more potent than carbon dioxide—under the Clean Air Act[43]
- Rules that protect consumers from junk fees and credit card late fees under the Wall Street Reform and Consumer Financial Protection Act.[44]
- The ability of Medicare, Medicaid, and Children's Health Insurance Program—which cover covers 65 million Americans—to operate with the speed, flexibility, and technical expertise necessary to function effectively[45]

Interconnected dark-money conservative groups inundate the Supreme Court with amicus briefs to sway support

Many of the same groups that have been tied to the Koch Network, Leonard Leo, and other right-wing billionaires—such as the Pacific Legal Foundation, Americans for Prosperity, and the New Civil Liberties Alliance—are either leading the charge to inhibit federal agencies or filing amicus briefs in each of these cases.[46] In each brief filed with the court, these groups advance legal theories that will significantly hinder the way federal agencies provide stability to regulated industries, benefits for everyday Americans, and protections from bad actors. Americans for Prosperity goes a step further in their amicus brief in *Corner Post*, arguing that anyone should be able to "seek declaratory and injunctive relief from unlawful federal regulations of any vintage without first risking and enforcement action."[47] In lay terms, this conceivably means that anyone, at any time, can file a lawsuit challenging a federal regulation regardless of whether it was finalized 70 years ago or last year—or whether it has even been enforced. These lawsuits could be brought unceasingly to chill agency action regardless of the effect that lawsuit will have on the ability of agencies to protect people, stop corporate fraudsters, financial predators, workplace abuses, cancer causing pollution, and so much more.

Corner Post v. Board of Governors of the Federal Reserve: Opening a Pandora's box against rules that protect Americans

The court will hear the last of these critical administrative law cases, *Corner Post v. Board of Governors of the Federal Reserve*, on February 21, 2024. As in the *Loper Bright*/*Relentless* matters, this case deals with a discrete issue—whether a Federal Reserve regulation capping debit card swipe fees charged by financial institutions to retailers could be challenged on its face.[48] Again, the plaintiff is a small business challenging the regulation that actually reduced debit card swipe fees from $0.44 per swipe to $0.21 per swipe plus 0.05 percent of the purchase value.[49] And once more, the court decided not to take up the question of whether the narrow regulation should be struck down but whether the six-year statute of limitations to challenge a regulation on its face as arbitrary or capricious should begin ticking when the rule was finalized or when the allegedly injured party was first harmed.[50]

Notably, the rule was finalized in 2011, putting the current challenge well outside the statute of limitations. Furthermore, the rule was upheld by the U.S. Circuit Court for the District of Columbia in 2014 (though requiring clarification which occurred in 2015), and the Supreme Court did not take it up.[51] By taking up the question of whether the statute of limitations should be eliminated rather than simply affirming the lower court's ruling, the court could be poised to open long-

standing regulations to a revolving door of complaints allowing unlimited bites at the apple depending on whether the litigants believe judges will find in their favor or not. [52] Effectively, any litigant could challenge any regulation—no matter when established—at any time, regardless of whether any agency attempted to enforce the rule against that party. Clearly, this outcome could have a massive chilling effect on the ability of agencies to function—or even create regulations to address changing societal needs.

Conclusion

This Supreme Court will have an entrenched conservative majority for the foreseeable future. In turn, the far-right justices on the court have become emboldened to put power over reason in their decisions, striking down bedrock protections for Americans—such as the right to abortion,[53] the right to be free from discrimination,[54] the right to clean air and water,[55] and in flouting judicial ethical standards in remaining on cases in which they have a clear conflict of interest.[56] The fact that this extreme Supreme Court accepted this set of cases —*CFPB*, *Jarkesy*, *Loper*/*Relentless*, and *Corner Post*—and took up broad questions that strike at the heart of government functionality rather than the narrow questions that they naturally present is telling.

Consider what could be at stake in each case: In *Jarkesy*, the court could eliminate the ability of agencies to enforce their regulations through administrative actions which would force every violation of the law into the federal courts. This would either overwhelm both the DOJ and the courts or open the door to allow only the most egregious violations to be prosecuted with innumerable minor violations—that nonetheless are harming everyday Americans—going unregulated. ALJs could also be rendered unconstitutional, further overwhelming the courts and significantly inhibiting the authority of Congress to direct agencies to act. This case would strip power from Congress and the president and put it in the hands of the courts.

If the 5th Circuit's decision in *CFPB* were upheld, it would prevent the agency from enforcing financial regulations derived from 18 statutes. It could also result in 12 years' worth of regulations that recovered billions of dollars for consumers from financial predators being challenged and potentially stricken. Lastly, the reasoning declaring the CFPB unconstitutional could be extended to the constellation of financial regulators that work to prevent crises and maintain the nation's economic stability.

In *Loper*/*Relentless*, the court could abandon agency expertise in favor of the policy preferences of unelected judges. Executive agencies will no longer be able to respond dynamically to the ever-changing economic, technological, and societal conditions of the modern world. Furthermore, the executive branch itself will no longer be responsive to the political will of the people who elect presidents to enact their agenda. Effectively, *Loper*/*Relentless* has the potential to strip power from the president and instead puts it in the hands of the judiciary.

Lastly, in *Corner Post*, the court could open every regulation ever created to challenge. It would amount to a power grab putting virtually all policy authority in the hands of the court, despite routine pronouncements from justices that they are not policymakers but rather neutral arbiters of the law.[57]

These cases represent the culmination of a decades-long effort by well-funded conservative interests to roll back much of the progress of the 20th century. It seems little coincidence that the questions the court is considering in these cases align with the far-right Koch Network that has, in their own words, "partner[ed] with organizations to get the right cases to the Supreme Court"

that could set up a "paradigm shift" in the way agencies are able to act to safeguard everyday Americans from the interests of right-wing billionaires and corporations.[58] There is little doubt that this year's term will result in a series of decisions that could inhibit the ability of government agencies to function and serve the American people.

The American people must demand, and Congress needs to implement, an agenda that will establish real reforms within the Supreme Court and place it back within the checks and balances established by the American system of governance. Instituting term limits with a binding code of ethics on the Supreme Court will begin reestablishing parity with its coequal branches of government. But those reforms alone are not sufficient to rein in an out-of-control court. Congress should also consider significant jurisdictional reforms, such as codifying *Chevron*, eliminating judge- and forum-shopping, and reforming the rules by which the court does its business.

Endnotes

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1 Ed Pilkington and Nick Surgey, "'Get the right cases to the supreme court': inside Charles Koch's network," *The Guardian*, October 26, 2023, available at https://www.theguardian.com/us-news/2023/oct/26/charles-koch-us-government-rightwing-supreme-court.

2 Lisa Mascaro, "Recruiting starts for plan to shrink government, fire federal workers," Federal Times, August 29, 2023, available at https://www.federaltimes.com/management/leadership/2023/08/29/recruiting-starts-for-plan-to-shrink-government-fire-federal-workers/;

3 See, Ed Pilkington and Nick Surgey, "'Get the right cases to the supreme court': inside Charles Koch's network," *The Guardian*, October 26, 2023, available at https://www.theguardian.com/us-news/2023/oct/26/charles-koch-us-government-rightwing-supreme-court; Heidi Przybyla, "'Plain historical falsehoods': How amicus briefs bolstered Supreme Court conservatives," *Politico*, December 3, 2023, available at https://www.politico.com/news/2023/12/03/supreme-court-amicus-briefs-leonard-leo-00127497

4 *Jarkesy v. SEC*, 34 F.4th 446 (5th Cir. 2022), available at https://casetext.com/case/jarkesy-v-sec-exch-commn (last accessed February 2024).

5 *SEC v. Jarkesy*, Oral Argument, No. 22-859 (November 29, 2023), available at https://www.supremecourt.gov/oral_arguments/audio/2023/22-859.

6 See *Jarkesy v. SEC.* Petitioners were fined a $300,000 civil penalty, required to disgorge $685,000 in ill-gotten gains, and were barred from engaging in securities industry activities for defrauding their clients.

7 Devon Ombres and Jeevna Sheth, "Supreme Court's Push to Weaken Government Oversight Opens Door for Meta to Attack FTC," Center for American Progress, December 5, 2023, available at https://www.americanprogress.org/article/supreme-courts-push-to-weaken-government-oversight-opens-door-for-meta-to-attack-ftc/.

8 Michael Hiltzik, "Elon Musk is suing to stop the government from enforcing labor laws. The Supreme Court might agree with him," *Los Angeles Times*, January 31, 2024, available at https://www.latimes.com/business/story/2024-01-31/column-elon-musk-nlrb-lawsuit-spacex.

9 Ibid.

10 *Wayman v. Southard*, 23 U.S. 1 (1825), available at https://supreme.justia.com/cases/federal/us/23/1/.

11 Congressional Research Service, "Administrative Law Judges: An Overview" (Washington: 2010), available at https://www.everycrsreport.com/reports/RL34607.html#:~:text=The%20Administrative%20Procedure%20Act%20(APA,ALJ)%20within%20the%20federal%20government.

12 Alan B. Morrison, *One of the Most Complex Cases of the Supreme Court Term Could Also Be One of the Most Devastating*, Slate (Nov. 28, 2023), available at https://slate.com/news-and-politics/2023/11/supreme-court-case-sec-jarkesy-stakes.html.

13 American Bar Association, *Will the Supreme Court Run a Wreking Ball Through Agency Adjudication?*, ABA Supreme Court Preview (Dec. 12, 2023), available at https://www.americanbar.org/groups/public_education/publications/preview_home/us-securities-exchange-commission-v-jarkesy/.

14 *Jarkesy v. SEC* , 51 F.4th 616 (5th Cir. 2022).

15 Ibid.

16 Ibid.

17 Ibid.

18 *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U.S. __ (2020), available at https://www.supremecourt.gov/opinions/19pdf/19-7_n6io.pdf; *see also*, Senator Sheldon White House, *A Flood of Judicial Lobbying: Amicus Influence and Funding Transparency*

White House, *A Product of Judicial Lobbying: Amicus Influence and Funding Transparency*, Yale Law Journal (Oct. 24, 2021) (examining how many of the same parties tied to the Koch Network and Leonard Leo file amicus briefs in cases such as *Seila Law* and others with significant political effect, including every case highlighted in this report).

19 Consumer Financial Protection Bureau, "Twelve years of protecting consumers and honest businesses," July 20, 2023, available at .

20 Congressional Research Services, "Fifth Circuit: CFPB's Funding Authority is Unconstitutional" (Washington: 2023), available at . (emphasis added)

21 Ibid.

22 See Lilith Fellowes-Granda and others, "*CFPB v. CFSA:* How the Supreme Court Could Harm Consumers and Financial Markets" (Washington: Center for American Progress, 2023), available at .

23 Lisa Mascaro, "Recruiting starts for plan to shrink government, fire federal workers," Federal Times, August 29, 2023, available at ; Erich Wagner, "Conservative Think Tanks Are Preparing a List of 20K Potential Political Appointees in Hopes of Reviving Schedule F," Government Executive, April 24, 2023, available at .

24 See Ken Cuccinelli, "Chapter 5: Department of Homeland Security," in Paul Dans and Steven Groves, eds., *Mandate for Leadership: The Conservative Promise* (Washington: The Heritage Foundation, 2023), available at https://thf_media.s3.amazonaws.com/project2025/2025_MandateForLeadership_CHAPTER-05.pdf; Robert Bowes, "Chapter 27: Financial Regulatory Agencies, Consumer Financial Protection Bureau," in Paul Dans and Steven Groves, eds., *Mandate for Leadership: The Conservative Promise* (Washington: The Heritage Foundation, 2023), available at ; Hans A. von Spakovsky, "Chapter 29: Federal Election Commission," in Paul Dans and Steven Groves, eds., *Mandate for Leadership: The Conservative Promise* (Washington: The Heritage Foundation, 2023), available at ; Adam Candeub, "Chapter 30: Federal Trade Commission," in Paul Dans and Steven Groves, eds., *Mandate for Leadership: The Conservative Promise* (Washington: The Heritage Foundation, 2023), available at .

25 Lisa Mascaro, "Recruiting starts for plan to shrink government, fire federal workers," Federal Times, August 29, 2023, available at ; Erich Wagner, "Conservative Think Tanks Are Preparing a List of 20K Potential Political Appointees in Hopes of Reviving Schedule F," Government Executive, April 24, 2023, available at .

26 See Lindsey M. Burke, "Chapter 11: Department of Education," in Paul Dans and Steven Groves, eds., *Mandate for Leadership: The Conservative Promise* (Washington: The Heritage Foundation, 2023), available at .

27 See Roger Severino, "Chapter 14: Department of Health and Human Services," in Paul Dans and Steven Groves, eds., *Mandate for Leadership: The Conservative Promise* (Washington: The Heritage Foundation, 2023), available at .

28 See Jonathan Berry, "Chapter 18: Department of Labor and Related Agencies," in Paul Dans and Steven Groves, eds., *Mandate for Leadership: The Conservative Promise* (Washington: The Heritage Foundation, 2023), available at .

29 See Mandy M. Gunasekara, "Chapter 13: Environmental Protection Agency," in Paul Dans and Steven Groves, eds., *Mandate for Leadership: The Conservative Promise* (Washington: The Heritage Foundation, 2023), available at .

30 Amy Howe, *Supreme Court to Hear Major Case on Power of Federal Agencies*, SCOTUSblog.com (Jan. 16, 2024), available at https://www.scotusblog.com/2024/01/supreme-court-to-hear-major-case-on-power-of-federal-agencies/. C

31 Benjamin M. Barczewski, "*Chevron* Deference: A Primer" (Washington: Congressional Research Service, 2023), available at .

32 See Ibid.; SCOTUSBlog, "Loper Bright Enterprises v. Raimondo," available at (last accessed January 2024).

33 Coral Davenport, "Republican Drive to Tilt Courts Against Climate Action Reaches a Critical Moment," *The New York Times*, June 19, 2022, online at .

34 See Michael W. McConnell, "Kavanaugh and the 'Chevron Doctrine'," Stanford Law School, August 2, 2018, available at .

35 Ibid.

36 *Chevron U.S.A. v. Natural Resources Defense Counsel*, 467 U.S. 837 (1984), available at .

37 *Loper Bright Enterprises v. Raimondo*, No. 22-451, Transcript of Oral Argument (Jan. 17, 2024), available at); *Relentless v. Dept. of Comm.*, No. 22-1219, Transcript of Oral Argument (Jan. 17, 2024), available at https://www.supremecourt.gov/oral_arguments/argument_transcripts/2023/22-1219_e2p3.pdf.

38 *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), available at .

39 See *U.S. v. Mead Corp.*, 533 U.S. 218 (2001) (Scalia, J., dissenting), available at .

40 Center for American Progress, "Ending *Chevron* Deference: Impacts on Civil Rights" (Washington: 2024), available at .

41 Center for American Progress, "Ending *Chevron* Deference: Impacts on Worker Protections" (Washington: 2024), available at .

42 Center for American Progress, "Ending *Chevron* Deference: Impacts on Federal Education Policies" (Washington: 2024), available at .

13 Center for American Progress, "Ending *Chevron* Deference Impacts on Federal Environmental Protections" (Washington: 2024), available at

.

14 Center for American Progress, "Ending *Chevron* Deference: Impacts on Financial Markets and Consumer Protections" (Washington: 2024), available at

.

15 Center for American Progress, "Ending *Chevron* Deference: Impacts on Health Care and Public Health" (Washington: 2024), available at

.

16 See Heidi Przybyla, "'Plain historical falsehoods': How amicus briefs bolstered Supreme Court conservatives," *Politico*, December 3, 2023, available at

. The article highlights that 69 percent of amicus briefs filed in the Supreme Court in the past two years were connected to Leonard Leo—i.e., he was on the board of the organizations, or they are run by those with a close connection to Leo, meaning they share board memberships with him, have worked for organizations funded by his network, or "are part of a close-knit circle of legal experts, such as Federalist Society chapter heads who serve under Leo." New Civil Liberties Alliance, "Supreme Court Hears Oral Argument in NCLA's Relentless Case Seeking to Overturn Chevron Deference," Press release, January 17, 2024, available at

; House Committee on Natural Resources Democrats, "Pacific Legal Foundation," available at

(last accessed February 2024).

17 *Corner Post v. Board of Governors of the Federal Reserve System*, Brief of Amicus Curiae Americans for Prosperity in Support of Petitioner, No. 22-1008 (November 13, 2023), available at

.

18 Kalvis Golde, "North Dakota truck stop objects to federal allowance for debit-card processing fees," SCOTUSblog, May 13, 2023, available at

.

19 Julia Kagan, "Durbin Amendment: What It Is, How It Works, Impact," Investopedia, June 11, 2023, available at

.

50 SCOTUSblog, Corner Post, Inc. v. Board of Governors of the Federal Reserve System," available at

(last accessed February 2024).

51 *North Dakota Retail Association v. Board of Governors*, 55 F.4th 634 (8th Cir. 2022), available at .

52 *Corner Post v. Board of Governors of the Federal Reserve System*, Petitioners' Brief, No. 22-1008 (November 13, 2023), available at

.

53 *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), available at

.

54 *Students for Fair Admissions v. Harvard*, 600 U.S. 181 (2023), available at

; Nina Totenberg, "Supreme Court guts affirmative action, effectively ending race-conscious admissions," NPR, June 29, 2023, available at .

55 See *Sackett v. Environmental Protection Agency*, 598 U.S. ___ (2023), available at .

56 Tobi Raji, "Some want Justice Thomas to skip Trump's ballot case. He doesn't plan to," *The Washington Post*, February 6, 2024, available at .

57 See Center for American Progress, "In Their Own Words: Roberts and Alito: Confirmation Hearing Pledges Not Kept," June 27, 2007, available at . Chief Justice John Roberts stated that judges have "a limited role" and cannot be "results-oriented" as "that's not the way the system is supposed to work." Justice Samuel Alito stated that "judges have to be wary about substituting their own preferences, their own policy judgments for those that are in the Constitution." Steven Breyer, "University of Pennsylvania Law School Commencement Remarks," U.S. Supreme Court, May 19, 2003, available at . The "other branches are better able than are courts to determine proper policy."

58 Ed Pilkington and Nick Surgey, "'Get the right cases to the supreme court': inside Charles Koch's network," *The Guardian*, October 26, 2023, available at .

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