No. 22-1219

IN THE

Supreme Court of the United States

RELENTLESS, INC., *et al.*,

Petitioners,

v.

DEPARTMENT OF COMMERCE, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF *AMICUS CURIAE* OF ENVIRONMENTAL DEFENSE FUND IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS CURIAE[1]

Amicus Environmental Defense Fund is a non-profit, non-partisan, public interest organization dedicated to protecting public health, stabilizing the climate, and strengthening people's and nature's ability to thrive—based on solutions firmly anchored in science, economics, and law. EDF has hundreds of thousands of members across the United States, including members in each of the 50 states and the District of Columbia.

As part of that work, EDF advocates for effective and stable implementation of federal statutes such as the Clean Air Act, Federal Food, Drug, and Cosmetic Act, Magnuson-Stevens Fishery Conservation and Management Act, Natural Gas Pipeline Safety Act, Federal Power Act, and Toxic Substances Control Act. EDF has participated in scores of administrative rulemakings and judicial review proceedings under these and other statutes. EDF has been a party in this Court's leading cases interpreting federal environmental and energy statutes. See, *e.g.*, *West Virginia* v. *EPA*, 142 S. Ct. 2587 (2022); *Michigan* v. *EPA*, 576 U.S. 743 (2015); *Util. Air Regul. Group* v. *EPA*, 573 U.S. 302 (2014); *EPA* v. *EME Homer City Generation, L.P.*, 572 U.S. 489 (2014); *Env't Def.* v. *Duke Energy Corp.*, 549 U.S. 561 (2007); *City of Chicago* v. *EDF*, 511 U.S. 328 (1994). And it has participated as amicus curiae in many others. See, *e.g.*, *FERC* v. *Elec. Power*

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[1] No party's counsel authored this brief in whole or in part, and no person or entity other than amicus curiae or its counsel contributed monetarily to the preparation or submission of this brief.

Supply Ass'n, 577 U.S. 260 (2016); *Alaska Dep't of Env't Conservation* v. *EPA*, 540 U.S. 461 (2004); *Whitman* v. *Am. Trucking Ass'ns*, 531 U.S. 457 (2001). EDF and its members have an interest in how these vitally important laws are administered and in ensuring that the standards courts employ in performing their congressionally assigned task of reviewing agency decisions are principled, coherent, and consistent.

INTRODUCTION AND SUMMARY OF ARGUMENT

In our amicus brief in *Loper Bright Enterprises* v. *Raimondo*, No. 22-451, EDF showed that the judicial review framework of *Chevron USA, Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), reflects Congress's choices regarding how its enactments should be implemented; respects the distinct constitutional status, expertise, and public responsiveness of Executive officials; and promotes stability, uniformity, and predictability in statutory administration.

In this brief, we address the outright insubstantiality of the *Relentless* petitioners' principal legal arguments for overturning *Chevron*—that judicial deference to administrative interpretations of statutes is *unconstitutional* under Article III and the Due Process Clause, and/or that such deference violates the Administrative Procedure Act's standard of review provisions. The constitutional arguments lack support in text or history. If they were correct, rafts of precedent (much of it predating, or doctrinally unrelated to, *Chevron*) would be undone, and many familiar statutes (some far afield from judicial review of agency rules) would be upended. The APA argument lacks

merit as an original matter of statutory construction. But were the question closer, the sheer weight of decided cases, both before and after the APA's enactment, would counsel overwhelmingly against a wholesale reinterpretation of the APA at this point. The history and text of the specialized Clean Air Act review provisions applicable in *Chevron* confirm that the unanimous Court was undoubtedly correct to perceive no statutory mandate to review agency interpretations de novo.

As in *Loper Bright*, petitioners here make no attempt to supply a *workable* alternative review regime that would honor the Legislative and Executive roles in determining policy. Nor do they offer a stable framework to protect the public's interest in reliable, predictable, and uniform administration of statutes. Besides overturning precedent by the library shelf, a regime that compelled judges to apply de novo review to interpretive judgments Congress assigned to agencies would, in practice, require judges to do just what the *Chevron* Court strained to prevent: substitute their own policy preferences for those of expert, politically accountable agencies. Their desired regime would not well serve the public or the judiciary, and would warrant rejection even if it did not have so many decades of settled law and such weighty reliance interests against it.

ARGUMENT

Petitioners base their argument for overturning *Chevron* primarily on a claim that Article III of the Constitution, "reinforce[d]" by the APA, requires that judges decide all issues of statutory interpretation de novo, *i.e.*, with no deference to Executive officers'

interpretations. See Pet. Br. 2, 3, 21-22, 23-25. Putting aside the "convulsive shock to the legal system" (U.S. Br. 10) that overruling *Chevron* on these sweeping grounds would cause, petitioners' arguments are manifestly wrong. They would not justify overruling *Chevron* even if doing so were costless.

I. PETITIONERS' CENTRAL CONTENTION —THAT *CHEVRON* DEFERENCE VIOLATES ARTICLE III—IS MANIFESTLY WRONG

A. The Constitution Does Not Prohibit Judicial Deference to Administering Agencies' Interpretations of Ambiguous Statutory Provisions

The contention that *Chevron* "violates the Constitution" (Pet. Br. 12) has no basis in text or decisions of this Court. The Constitution's text does not prescribe a standard for reviewing Executive Branch interpretations of law. Instead, it empowers Congress to regulate prescribed subjects and enact laws "necessary and proper" to carrying out all federal-government powers; and enshrines the Executive's central place in law implementation and interpretation. See *Bowsher* v. *Synar*, 478 U.S. 714, 733 (1986) ("Interpreting a law enacted by Congress to implement the legislative mandate is the very essence of 'execution' of the law.").[2] Nothing in the Constitution prevents Congress from providing that the Executive's

[2] See U.S. Const. art. II, § 3 (the President shall "take Care that the Laws be faithfully executed"); see also *id.* art. II, § 2, cl. 1 (the President "may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices").

interpretations of public laws be accorded weight by courts adjudicating cases and controversies.

Nor does any decision of this Court embrace or support the theory that de novo review is constitutionally required. Scattered instances of de novo review of Executive Branch interpretations of statutes (Pet. Br. 21-22) hardly indicate a constitutional *obligation* to do so. In fact, for each example petitioners can cite, there are many more cases confidently affirming that Executive interpretations of statutes are entitled to deference. See, *e.g.*, *United States* v. *Shimer*, 367 U.S. 374, 381-82 (1961); *Chevron*, 467 U.S. at 844-46 & n.14; U.S. Br. 22-25; Admin. & Fed. Regul. Profs. *Loper* Amicus Br. 25. Accepting petitioners' legal theories would abrogate much more than the myriad decisions that have relied upon *Chevron* itself.

The proposition that judicial deference in statutory construction violates Article III cannot be reconciled with the huge corpus of administrative law decisions preceding and following *Chevron*, nor with the numerous specific areas in which the Court has emphasized particular needs for deference. *Abbott* v. *Abbott,* 560 U.S. 1, 15 (2010) (noting that it is "settled" that courts give "great weight" to "the Executive Branch's interpretation of a treaty") (citing *Sumitomo Shoji America, Inc.* v. *Avagliano,* 457 U.S. 176, 185 (1982)); *INS* v. *Aguirre-Aguirre*, 526 U.S. 415, 425 (1999) (stating that "judicial deference to the Executive Branch is especially appropriate in the immigration context"); *Haig* v. *Agee*, 453 U.S. 280, 292-94 (1981) (deferring to President's application of statute providing for revocation of passports); *Colgate-Palmolive-Peet Co.* v. *United States*, 320 U.S. 422, 426 (1943) (according

"weight" to Treasury's interpretation of tax provision, given Department's "wide experience in tax matters").

Petitioners' theory that Article III categorically requires de novo review of legal questions would cast doubt on a range of settled principles, from the narrow review historically accorded under federal courts' mandamus jurisdiction, U.S. Br. 24; to statutorily prescribed deferential review standards for topics from post-conviction litigation, 28 U.S.C. § 2254(d)(1); to arbitral awards, 9 U.S.C. §§ 10-11; see also *Thomas* v. *Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 583, 592-93 (1985) (rejecting Article III challenge to mandatory arbitration procedure with narrow judicial review of arbitral awards).

A constitutional mandate of de novo review would appear to condemn Congress's longstanding practice, expressly referenced in the APA, of entirely precluding judicial review of certain Executive decisions where "statutes preclude review" or where "agency action is committed to agency discretion by law." 5 U.S.C. § 701(a) (noting that judicial review is not available); see also Barnett & Walker *Loper* Amicus Br. 23 (citing Laura Dolbow, *Barring Judicial Review*, 77 Vand. L. Rev. pt. II & app. B (forthcoming 2024) (identifying statutory bars on judicial review)).

More fundamentally, petitioners' legal theories would rule out deference to administrative interpretations even when it is most clearly warranted—in instances where interpretation entails the "formulation of policy." *Chevron*, 467 U.S. at 843 (citation omitted). Statutory delegations that implicate policy-making are extremely common, including where Congress has expressly assigned the agency authority to define

statutory terms,[3] or to adopt rules meeting an open-ended standard such as "reasonable," "appropriate," "feasible" or "practicable."[4] Many important statutory terms—like "stationary source" in *Chevron*, 467 U.S. at 845-53, 859-64—do not designate a unique referent that is sufficiently specific to allow the statute to be effectuated.

For example, for purposes of Clean Air Act permitting programs, there needs to be a metric for determining a pollution "increase[]," 42 U.S.C. § 7411(a)(4), but neither the text alone nor traditional statutory-construction tools reveal which metric to use. See EDF *Loper* Amicus Br. 26. In such instances, Congress has chosen to rely upon the agency's expert judgment. Under the longstanding judicial approach affirmed in *Chevron*, judges limit their inquiry to deciding whether the agency has stayed within the bounds of the discretion granted by Congress—rather than, *e.g.*, upholding the agency only if they, the judges, would have arrived at precisely the same ultimate policy choice. These policy questions are for agencies. See *id.* at 25 (noting that *Chevron* accommodates overlap

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[3] See, *e.g.*, *Massachusetts* v. *Morash*, 490 U.S. 107, 116 (1989) (discussing an ERISA provision authorizing the Secretary of Labor to define "accounting, technical and trade terms" and noting that Secretary's "reasonable views [get judicial] deference") (citing, *inter alia*, *Chevron*, 467 U.S. at 843; *Watt* v. *Alaska*, 451 U.S. 259, 272-73 (1981); *Udall* v. *Tallman*, 380 U.S. 1, 16 (1965)); see also U.S. Br. 36-37.

[4] See Brett M. Kavanaugh, *Fixing Statutory Interpretation*, 129 Harv. L. Rev. 2118, 2150-54 (2016) (book review).

between "reasonableness" and "arbitrary and capricious" review); see also Kavanaugh, 129 Harv. L. Rev. at 2153-54 (Courts should "defer to agencies in cases involving statutes using broad and open-ended terms like 'reasonable,' 'appropriate,' 'feasible,' or 'practicable.' . . . Courts should defer to the agency, just as they do when conducting deferential arbitrary and capricious review under the related reasoned decisionmaking principle of *State Farm*."); *Judulang* v. *Holder,* 565 U.S. 42, 52 n.7 (2011) (referring to analysis under *Chevron* Step 2 and "arbitrary and capricious" standard as "the same").

B. Deference to Executive Interpretations Promotes Judicial Independence

Petitioners' assertions that *Chevron* undermines judicial independence get things backwards. See Pet. Br. 12. When a court concludes that Congress has delegated an issue of statutory interpretation to an Executive official, and finds the official's interpretation reasonable, the court *has* evinced independent judgment. It has taken account of the legitimate roles of the other two branches which are charged, respectively, with making and executing the law. The courts

> give binding deference to permissible agency interpretations of statutory ambiguities *because* Congress has delegated to the agency the authority to interpret those ambiguities "with the force of law." *United States v. Mead Corp.*, 533 U.S. 218, 229 (2001).

City of Arlington, Tex. v. *F.C.C.*, 569 U.S. 290, 317 (2013) (Roberts, C.J., dissenting); see also Kenneth Starr, *Judicial Review in the Post-*Chevron *Era*, 3 Yale J. Reg. 283, 298 (1986) (*Chevron* "vindicates" the

"traditional function of judicial review" and "confirms the judiciary's historic role of declaring what the law is").

Like the decades of prior decisions embracing deference, e.g., *Shimer*, 367 U.S. at 381-82, *Chevron* embodies a rule of judicial restraint. See NRDC *Loper* Amicus Br. 2-3 (discussing *Chevron* case history). Justice Stevens's opinion for the Court emphasized that when traditional statutory-interpretation tools cannot definitively answer a question, "federal judges—who have no constituency—have a duty to respect legitimate policy choices made by those who do." 467 U.S. at 866. Indeed, as the "honest agents of the political branches," judges' task is to "carry out decisions they do not make." Frank Easterbrook, *The Supreme Court, 1983 Term - Forward: The Court and the Economic System*, 98 Harv. L. Rev. 4, 60 (1984).

Chevron prevents courts from resolving issues that Congress has committed to Executive resolution, and thus evinces "a sensitivity to the proper roles of the political and judicial branches." *Pauley* v. *BethEnergy Mines, Inc.*, 501 U.S. 680, 696 (1991). It shields courts from political matters and makes it less likely that rules of federal law will turn on (or be seen as turning on) judges' "personal policy preferences." *Chevron*, 467 U.S. at 865; see also U.S. Br. 19-20.

In this way, *Chevron promotes* judicial independence. See Viet D. Dinh, *Threats to Judicial Independence: Real and Imagined*, 95 Geo. L.J. 929, 939-40 (2007) ("Judicial restraint is the key to maintaining judicial independence."). Petitioners' rule, by contrast, would tend to embroil courts in policy disputes that are most corrosive of the perception of judicial independence. See Barnett & Walker *Loper* Amicus Br. 28-

30 (discussing studies indicating that "*Chevron* is largely meeting th[e] goal of removing judges from deciding policy—that is, political—matters").

II. PETITIONERS' DUE PROCESS ARGUMENT IS MERITLESS

Petitioners' theory fares no better when dressed in Due Process garb. Just as it is impossible to discern a de novo review command in the grant (subject to Congress's discretion) of jurisdiction over certain cases or controversies, it is wrong to denounce as unconstitutionally "[]biased" (Pet. Br. 13, 30-33) adjudications conducted in accordance with narrow review standards that historically have governed many types of proceedings including mandamus petitions, or ones Congress expressly codified in statutes such as the Federal Arbitration Act, 9 U.S.C. §§ 10-11, and the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2254(d)(1).

Indeed, petitioners offer no explanation why it should make a difference as a *Due Process* matter whether a statute expressly specifies, say, a particular pollution control technology or fishing quota, or instead directs the appropriate official to make a reasonable choice in accordance with legislatively identified factors and standards. The second regime is, in fact, replete with procedural protections for regulated parties, including opportunities to comment, requirements for reasoned decision-making, prohibitions on ex parte contacts, and the like. See, *e.g.*, 5 U.S.C. § 553; 42 U.S.C. § 7607(d). And when a party regulated by an act of Congress seeks relief in court, no one would say a decision applying the rational basis standard is unconstitutionally "biased" in favor of the

government, even though that mode of review (which appears nowhere in the Constitution) requires that impositions be upheld based on any conceivable, but not actual, rationale. See *Williamson* v. *Lee Optical*, 348 U.S. 483, 491 (1955); but cf. *SEC* v. *Chenery*, 332 U.S. 194, 207 (1947) (establishing the opposite rule for review of administrative decisions).

Courts apply norms of reasoned decision-making that are far more demanding in cases where the imposition arises from an agency's implementing a congressional directive. *See Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (requiring that agency decisions be supported by express rationale articulating a "rational connection between the facts found and the choice made" (cleaned up)). The notion that judicial proceedings conducted under deferential review standards are impermissibly "biased" because parties litigating against the Government have a less-than-even chance of winning is startling. As just noted, constitutional challenges, mandamus proceedings, federal habeas cases, and Federal Arbitration Act cases are not unconstitutional because the party initiating them must make a particularly demanding showing to prevail—any more than is a proceeding under a statute requiring one party to make a showing by, say, "clear and convincing evidence." See *e.g.*, 42 U.S.C. § 6313(a)(6)(A)(ii)(II) (requiring "clear and convincing evidence" that the adoption of certain national standards "would result in significant additional conservation of energy and is technologically feasible and economically justified").

The fact that the Government is often a party to cases where such standards apply is immaterial: Precisely the same review standards apply when the

government is not a party, see *Long Island Care at Home, Ltd.* v. *Coke*, 551 U.S. 158, 171 (2007)—just as the same decisional standards govern if constitutional claims arise in litigation between private parties.

III. JUDICIAL DEFERENCE IS CONSISTENT WITH THE APA, WITH PRE-*CHEVRON* CASELAW, AND WITH THE JUDICIAL REVIEW STATUTE APPLICABLE IN *CHEVRON* ITSELF

Petitioners' theory that the APA forbids courts from deferring to agencies' interpretations of statutes is wrong as a matter of text and original understanding. U.S. Br. 25-26.[5] When a court decides that an agency has acted within the scope of its delegated authority, and has acted reasonably, it has decided the "relevant questions of law." 5 U.S.C. § 706; see also U.S Br. 25, 38, 44-45; accord *City of Arlington*, 569 U.S. at 317 (Roberts, C.J., dissenting) ("We do not ignore [Section 706's] command when we afford an agency's statutory interpretation *Chevron* deference; we respect it."). Petitioners cite no case in the APA's

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[5] The APA's text does not purport to prescribe which review standards apply to particular kinds of agency determinations. And it makes clear that an agency decision that a court has found to survive the applicable standard of review—including the deferential standards—is "in accordance with law." See 5 U.S.C. § 706(2)(A) ("arbitrary, capricious, an abuse of discretion, or *otherwise* not in accordance with law") (emphasis added); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 199 (2012) ("Where general words follow an enumeration of two or more things, they apply only to persons or things of the same general kind or class specifically mentioned (ejusdem generis).").

nearly 80-year history in which a court embraced their interpretation.

Like their constitutional theories, petitioners' APA argument proves far too much. Holding that the 1946 statute mandates de novo review would undo scores of decisions of this Court (many of them pre-*Chevron*), and thousands by lower courts. See, *e.g.*, *Shimer*, 367 U.S. at 381-82 (citing decisions embracing deference to agency interpretations stretching back "more than a half a century" and observing that the rule has been "consistently followed by this Court whenever decision as to the meaning or reach of a statute has involved reconciling conflicting policies, and a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations"). After decades of decisions affirming and reaffirming agencies' entitlement to deference in appropriate circumstances, statutory stare decisis strongly disfavors an abrupt reinterpretation of the APA. See U.S. Br. 27-36.

For decades, Congress has acted in reliance upon the settled understanding that the APA does not mandate de novo judicial review. Indeed, that reliance is manifest in the history of judicial review of Clean Air Act regulations—and of the Act-specific review provision applicable in *Chevron* itself, Section 307(d)(9) of the Clean Air Act. 42 U.S.C. § 7607(d)(9).

The Clean Air Act Amendments of 1970 contained special provisions about the timing and forum for judicial review, but the scope of review was governed by the APA and longstanding administrative law precedent. See, *e.g.*, *Amoco Oil Co.* v. *EPA*, 501 F.2d 722, 731 (D.C. Cir. 1974). Under the 1970 Act, this Court

and the D.C. Circuit, in a series of high-profile cases, repeatedly affirmed that reviewing courts should defer to EPA's reasonable interpretations of the Act's terms.[6] During this same period, this Court's decisions reviewing actions under other legislative delegations likewise affirmed that agency interpretations are entitled to deference.[7] This point was "settled" in

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[6] See *e.g.*, *Train* v. *Nat. Res. Def. Council, Inc.*, 421 U.S. 60, 75 (1975) ("Without going so far as to hold that the Agency's construction of the Act was the only one it permissibly could have adopted, we conclude that it was at the very least sufficiently reasonable it should have been accepted by the reviewing courts."); *id.* at 87 (Given EPA's delegated authority and reliance by states, Court had "no doubt whatever that its construction was sufficiently reasonable to preclude the Court of Appeals from substituting its judgment for that of the Agency."); *Union Elec. Co.* v. *EPA*, 427 U.S. 246, 256 (1976) (citing *Train* approvingly for the proposition that "we have previously accorded great deference to the Administrator's construction of the Clean Air Act"); *Ethyl Corp.* v. *EPA*, 541 F.2d 1, 12 n.13 (D.C. Cir. 1976) (Administrator's interpretation of Clean Air Act is due "considerable deference" (citing *Train*, 421 U.S. at 60)).

[7] *Investment Co. Inst.* v. *Camp*, 401 U.S. 617, 626-27 (1971) ("It is settled that courts should give great weight to any reasonable construction of a regulatory statute adopted by the agency charged with the enforcement of that statute."); *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 433-34 (1971) ("The administrative interpretation of the Act by the enforcing agency is entitled to great deference[.]"); *Batterton* v. *Francis*, 432 U.S. 416, 424-26 (1977) (Congress "expressly delegated to the Secretary the power to prescribe standards for determining what constitutes 'unemployment' for purposes of [benefits] eligibility," and statute "entrusts to the Secretary, rather than to the courts, the primary responsibility for interpreting the statutory term"); *Quern* v. *Mandley*, 436 U.S. 725, 738 (1978) ("The interpretation of the agency

1971, *Investment Co. Inst.*, 401 U.S. at 626, and even more so by 1977.

That settled understanding was reflected in proposed legislation that would have amended the APA to require "de novo" review of agencies' statutory interpretations. In 1975, Senator Dale Bumpers introduced an amendment that "would have directed courts reviewing administrative action to decide all questions of law 'de novo' and to forswear any 'presumption of validity' associated with rules and regulations." Ronald M. Levin, *Review of 'Jurisdictional' Issues under the Bumpers Amendmen*t, 1983 Duke L.J. 355, 358 (1983). As first introduced, the Bumpers Amendment would have replaced the first sentence of the APA's scope of review provision with the following:

> To the extent necessary to decision and when presented, the reviewing court shall *de novo* decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.

S. 2408, 94th Cong. (1975). See also S. 86, 95th Cong. (1977); S. 111, 96th Cong. (1979); Ronald M. Levin, *Judicial Review and the Bumpers Amendment*, 1979 Admin. Conf. of U.S. 565, 567-68 (1979).

In the "lengthy," "detailed," and "complex" 1977 Clean Air Act Amendments, see *Chevron*, 467 U.S. at 848, Congress established elaborate new procedural requirements for Clean Air Act rulemakings, 42

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charged with administration of the statute is, of course, entitled to substantial deference.").

U.S.C. § 7607(d)(1)-(8); adopted a statute-specific standard of review provision, *id.* § 7607(d)(9); and provided that these provisions, rather than the APA, govern such rulemakings, *id.* § 7607(d)(1).[8] The 1977 Amendments' scope-of-review provisions are generally similar to the APA's taxonomy of various kinds of agency errors,[9] although the Clean Air Act provisions

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[8] The new 42 U.S.C. § 7607(d) established structured administrative and judicial procedures for the informal rulemakings that had come to dominate under the Clean Air Act; among other things, they clearly define the administrative record and its relationship to judicial review. These changes largely represented "a legislative adoption of the suggestions for a rulemaking record set forth in .... ([William F.] Pedersen [Jr.], 'Formal Records and Informal Rulemaking,' 85 Yale L.J. 38 (1975).)" *Clean Air Act Amendments of 1977: Hearing Before the Subcommittee on Environmental Pollution of the Committee on Environment and Public Works*, 95th Cong. 152 (1977) (discussing proposal for what would become § 7607(d)). The Pedersen article explains that, in the early 1970s, the courts "almost universally" applied the "arbitrary and capricious test for review of informal rulemaking." Pedersen, 85 Yale L.J. at 49.

[9] The Clean Air Act standard of review provision for rulemakings provides:

> In the case of review of any action of the Administrator to which this subsection applies, the court may reverse any such action found to be—
>
> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
>
> (B) contrary to constitutional right, power, privilege, or immunity;
>
> (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or without observance of procedure required by law . . . .

lack the specific language petitioners insist supplies the basis for their asserted APA de novo review mandate.[10]

By 1977 it was settled law, including in APA cases, that agency interpretations of regulatory statutes like the Clean Air Act were entitled to deference. Supra, pp. 14-15 & nn.6 & 7. When it enacted the Clean Air Act's scope-of-review provision, Congress well understood this was the background rule in Clean Air Act cases governed by the APA, and that judicial deference would continue under an amended review provision employing the same "arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law" language (although, as just noted, with textual omissions elsewhere making it even less amenable to petitioners' reading). See *Lorillard* v. *Pons*, 434 U.S. 575, 580 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute."). In discussing the Department of Justice's role in defending EPA actions, the Conference

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Clean Air Act Amendments of 1977, Pub. L. No. 95-95, § 305(a), 91 Stat. 772-73 (1977) (codified at 42 U.S.C. 7607(d)(9)).

[10] Petitioners accuse the *Chevron* Court of "traduc[ing]" APA requirements (Pet. Br. 3), but the APA did not apply to review of a 1981 Clean Air Act regulation, 42 U.S.C. § 7607(d)(1), and none of the APA language petitioners quote is found in the Clean Air Act review provision. See Pet. Br. 2-3 (quoting APA language relating to judicial power to "decide all relevant questions of law," "interpret constitutional and statutory provisions," and "hold unlawful and set aside" agency action exceeding the government's authority).

Committee's report on the 1977 amendments explained:

> [T]he Department ought to grant the deference to the Agency's views not only in scientific, factual and technical matters, but also in matters of judgment, risk balancing, policy choice and interpretation of Agency regulations. This deference has been accorded by the courts. See Ethyl Corp. v. EPA, 541 F.2d 1 (D.C. Cir. 1976). Even on issues of law which arise under the Act which the Administrator is charged with implementing and enforcing, courts will defer to reasonable Agency interpretations, even if alternative interpretations would also be reasonable. See Train v. NRDC, 421 U.S. 60 (1975).

H.R. Rep. No. 95-564, at 175-76 (1977) (Conf. Rpt.).

Against this backdrop, the *Chevron* Court was unquestionably correct to conclude that deferential review would apply to the extent the Clean Air Act did not specifically resolve the interpretive question regarding the meaning of "stationary source."

This is not to claim that *Chevron*'s particular, two-step formulation was dictated by statute or by precedent. But the basic understanding that an administering agency's interpretation of a statute is entitled to substantial weight on judicial review—and, in particular, that the APA did not *forbid* such deference—was "settled" long before *Chevron*, including in 1977 when Congress established the special judicial review regime for Clean Air Act rules. See *Investment Co. Inst.*, 401 U.S. at 626 (1971). Far from "egregiously wrong" (Pet. Br. 14), *Chevron* was unquestionably correct that judicial deference was consistent with relevant judicial review statutes.

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Like their constitutional theories, petitioners' APA-based attack on *Chevron* is meritless. Invalid legal theories do not justify overturning settled precedent that has engendered particularly extensive reliance.

CONCLUSION

This Court should affirm the judgment of the court of appeals.

Respectfully submitted,

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