

Next week, the Supreme Court will hear oral arguments about whether to overrule the *Chevron* doctrine. That doctrine allows administrative agencies that implement statutes to resolve ambiguities in those statutes. Overruling the doctrine would shift that power to courts. Institutionally, then, judges would be the big winners, with more sway over how laws are implemented. But overruling *Chevron* would also shift power in more subtle ways. Basically, judges, government lawyers, and bureaucrats win; Presidents, Congress, and policy wonks lose.

### **Losers.**

**The President.** Presidents are actually the biggest losers. Presidents have immense control over the regulatory process these days and use that control to push agencies toward their preferred policies. *Chevron* gives the President more policy influence since agencies will follow presidential policies in interpreting ambiguous statutes. Presidents will lose that leverage.

**Policy wonks.** Cost-benefit analysis has become a key part of the regulatory process. But that is partly based on the greater policy leeway that *Chevron* gives agencies. Cost-benefit analysis will simply have less room to operate if agencies are tightly constrained by courts.

**Congress.** Congress has many tools to influence congressional policy apart from passing new laws: hearings examining agency conduct, appropriations that can reward or punish agencies, and direct lobbying of agencies by members of Congress. But if agencies have less leeway, these tools have less scope to operate.

**Voters.** This is really a corollary of the loss of presidential and congressional power to shape agency decisions. Less policy leeway means less room for elections to impact the conduct of agencies.

### **Winners.**

**Government lawyers.** As policy loses its role in interpreting statutes, legalistic considerations loom larger. And those, of course, are the domain of lawyers. Since agency lawyers are much more familiar with the technicalities of the federal statutes they work with, they will also gain authority compared to the lawyers in the Justice Department and the White House.

**The bureaucracy.** In the absence of *Chevron*, one factor that courts are likely to consider is whether an agency's interpretation of a statute is long-established. It's the bureaucrats

who are the keepers of the agency's traditional practices, not the political appointees.

***Congressional staff.*** If interpreting statutes becomes more legalistic, power shifts to the people who actually draft the detailed language of new statutes. This job is done by congressional staffers, sometimes assisted by agency staff. Members of Congress are rarely aware of the fine points of language that courts find so significant.