The *Chevron* doctrine requires judges to defer to an agency's interpretation of a statute if that interpretation is reasonable. The *State Farm case*, which is much less widely known, requires courts to defer to an agency's expert judgment unless its reasoning has ignored contrary evidence or has a logical hole. As you probably already know, two cases now before the Court will probably result in abandoning or revamping *Chevron*. But the "abortion pill" case that will be argued tomorrow will test the Court's adherence to State Farm. Will the conservative Justices stand by *State Farm* even when doing so expands access to abortion?

Unlike *Chevron*, *Motor Vehicle Manufacturers v. State Farm* (to give the full name) is known only to experts in administrative law. The case involved a deregulatory action by Reagan's Department of Transportation (DOT). DOT had rolled back a Carter Administration rule requiring new cars to have air bags or automatic seatbelts. The rationale for the rollback was that the carmakers planned to comply by using a kind of automatic seatbelt that drivers could easily disable. The Court struck down the rollback because the agency had completely failed to consider two obvious alternatives: mandating airbags or at least mandating automatic seatbelt designs that couldn't be disabled. In other words, there were gaping holes in DOT's reasoning.

The crux of *State Farm* is that "the agency must explain the evidence which is available" and "must offer a 'rational connection between the facts found and the choice made.'" Or in other words, the Court said, an agency rule is "arbitrary and capricious" only if the agency has:

1. "Relied on factors which Congress has not intended it to consider,"
2. "Entirely failed to consider an important aspect of the problem,"
3. "Offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."

What this comes down to is that the court cannot second guess the agency's judgment if the agency has a reasoned explanation for its decision.

That brings us to the case now before the Court, which involves FDA's decision to allow at-home use and access to abortion pills by mail. The Fifth Circuit overturned FDA's finding that the pills' use under those conditions was "safe and effective." The decision is an exercise in nit-picking. For instance, it faulted the agency for removing several restrictions, which FDA based on evidence that none of the

restrictions individually was necessary for safety.

According to the Fifth Circuit, FDA failed to point to studies showing what would happen if multiple restrictions were all removed at the same time. This seems to be inaccurate — FDA did cite studies involving elimination of multiple restrictions — and also unrealistic, because studies are unlikely to track the precise combination of circumstances that an agency is considering. The Fifth Circuit also faulted FDA for relying on reports of adverse effects from manufacturers (rather than doctors) as a safeguard, but this is standard for drugs generally.

The Court is likely to either hold that the anti-abortion doctors who brought the case lack standing, or else uphold FDA's decision. But if the Supreme Court affirms the Fifth Circuit, it will send a strong signal that courts need not defer to agency expertise, at least in cases where the judges have strong policy views.

Such a ruling probably would not overrule *State Farm*. Instead, it would twist *State Farm* into a license to nitpick agency decisions to death, requiring agencies to provide bullet-proof justifications for their actions and eliminate any possible source of doubt. That would be a much more serious blow to government regulation than overruling *Chevron*, because regulators make controversial decisions about statutory interpretation infrequently but *always* engage in expert judgment.