

## **Chevron Overboard? Loper Bright Enterprises v. Raimondo With Prof. Kristin Hickman [PODCAST]**

Article By:

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Since the 1980s, Chevron deference has set the standard for when courts should defer to reasonable agency interpretations of ambiguous statutes. That may all change, however, as the US Supreme Court will reconsider the Chevron deference in *Loper Bright Enterprises v. Raimondo*.

In this episode of the Bracewell Environmental Law Monitor, host *Daniel Pope* talks with administrative law scholar *Kristin Hickman*, McKnight Presidential Professor in Law, Distinguished McKnight University Professor and Harlan Albert Roders Professor in Law at the *University of Minnesota Law School*, about the history and influence of Chevron deference, its significance in the current legal landscape, the separation of powers arguments and the role of stare decisis in the context of Chevron deference. They also discuss *Loper Bright Enterprises v. Raimondo* and its potential implications. Tune in to hear them unpack the issues surrounding Chevron and what post-Chevron administrative law might look like.

Environmental Law Monitor · Chevron Overboard? Loper Bright Enterprises v. Raimondo With Prof. Kristin Hickman

### **Featured Guest**

**Name:** *Kristin Hickman*

**About:** Professor Kristin Hickman is a leading authority in the fields of tax administration, administrative law and statutory interpretation. She has written dozens of articles, essays, book chapters and commentaries concerning Treasury Department and IRS regulatory practices, the Chevron, Skidmore and Auer judicial deference doctrines and various other legal topics. Professor Hickman's work is cited regularly in court briefs and judicial opinions, including on several occasions by the US Supreme Court.

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## Episode Highlights

[03:02] ***The Impact of Chevron on Administrative Law:*** Professor Hickman reflects on the 1984 *Chevron* decision. She notes how Justice Scalia proselytized judicial deference to agency interpretations of law under Chevron and yet was one of the least deferential justices himself.

[07:38] ***Chevron's Perceived Dominance:*** Chevron has become synonymous with administrative law and has dominated the administrative law conversation for decades, although there are other doctrines that apply to standards of review for agency action, Professor Hickman explains.

[10:19] ***The Current State of Chevron:*** Professor Hickman notes that "it has never been the case throughout Chevron's history that Chevron automatically means the agency wins". Additionally, Chevron has declined in significance in recent years, notably at the US Supreme Court level.

[14:06] ***Loper Bright Enterprises v. Raimondo:*** Professor Hickman shares her thoughts on the petitioners' argument in this case that Chevron

deference is a unique threat to separation of powers.

[21:07] ***Stare Decisis and Uncertainty***: The government argues in *Loper Bright* that settled agency interpretations under Chevron could all be undone, leading to widespread legal uncertainty. Professor Hickman pushes back against this “litigation hyperbole” while recognizing that uncertainty is a legitimate issue.

[23:41] ***Three Conceptualizations of Chevron***: Professor Hickman says there are three different ways Chevron can be conceptualized: as a canon of construction, a standard of review and a rule of decision. She wonders if this framing will affect the justices’ thinking in *Loper Bright*.

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