No. 22-451

In the Supreme Court of the United States

LOPER BRIGHT ENTERPRISES, et al.,

Petitioners,

v.

GINA RAIMONDO, in her official capacity as Secretary of Commerce, et al.,

Respondents.

On Writ of Certiorari to the United States Court Of Appeals for the District of Columbia

BRIEF OF *AMICUS CURIAE* AMERICA FIRST POLICY INSTITUTE IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether the Court should overrule *Chevron* or at least clarify that statutory silence concerning controversial powers expressly but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency.

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America First Policy Institute ("AFPI") is a 501(c)(3) non-profit, non-partisan research institute dedicated to advancing policies that put the American people first. Its guiding principles are liberty, free enterprise, the rule of law, America-first foreign policy, and a belief that American workers, families, and communities are the key to our country's success.

AFPI's leadership includes many former leaders of the United States government. AFPI's leaders and members alike appreciate that bedrock principles of separation of powers, enshrined in the Nation's constitutional design from its birth, produce critical checks on government power while promoting accountability to the American people.

AFPI believes that this Court's decision in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), violates the Constitution's separation of powers, diminishes important checks on accountability, and produces a government less responsive to its people. AFPI thus submits this *amicus curiae* brief to promote a return toward the diffusion of power the Framers crafted when they intentionally separated authority among our country's three governmental branches.

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[1] No party or counsel for a party authored this brief in whole or in part. No party, counsel for a party, or person other than *amicus curiae*, its members, or counsel made any monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

In requiring courts to defer to agencies' reasonable interpretations of ambiguous federal statutes, *Chevron* announced a rule that violates basic constitutional principles surrounding the separation of powers. The Congress legislates, the President executes, and the judiciary interprets and applies the laws. These powers cannot be shared, and they cannot be surrendered. The very purpose of separating and dividing the powers of government was to diffuse power and thereby better secure liberty.

Chevron, however, collides with these principles. Under the guise of showing "respect" for an agency's "legitimate policy choices," *Chevron* forfeits the judiciary's role as the branch that bears the solemn duty to interpret the laws in the last resort. That abdication of constitutional responsibility violates the Vesting Clauses and the constitutional design. *Chevron* also offers agencies a discretionary power to speak with the force of law that under the circumstances amounts to nothing less than legislative power. As a result, *Chevron* holds the dishonorable distinction of authorizing the consolidation of legislative, judicial, and executive authority in the hands of administrative agencies.

The Court's efforts in *Chevron* to ground the decision in longstanding deference to executive actions cannot support the decision. Many cases support respecting executive actions and even administrative expertise, but compulsory deference is an abdication of responsibility, not a show of respect. The precedent of mandamus actions, which declined relief where executive officials interpreted laws, does

not support *Chevron* but rather refutes it. The Court previously made clear that, where courts have jurisdiction to interpret statutes, they would not be bound to adopt executive interpretations but instead would pronounce executive interpretations wrong when they are wrong. *Chevron* did not follow that precedent—it jettisoned it.

Moreover, even if the judiciary had the prerogative to delegate its interpretive duties to unelected bureaucrats, it should decline to do so. *Chevron* raised concerns about policymaking, but courts interpret statutes as a matter of course, and judicial policymaking need not intrude on statutory analysis. In addition, placing the consequences of statutory interpretation at Congress's feet would increase the legislative branch's accountability to the American people for statutory meaning. That congressional action in response to a judicial decision may be slow or difficult is not a flaw but rather a feature of the constitutional design.

The time has thus come to overrule *Chevron*, not simply announce another limitation on its reach. The decision was egregiously wrong from its inception and continues to work real harm through an administrative state that touches all Americans' lives. The decision needs a clear tombstone, and this Court is the only body that can set it.

ARGUMENT

I. *Chevron* Violates Basic Principles Surrounding Separation of Powers and Diminishes, Rather than Improves, Political Accountability Regarding Statutory Interpretation.

This Court's decision in *Chevron* requires the judiciary to defer to executive agencies' interpretations of ambiguous federal statutes. The Court intended to take advantage of agencies' substantive experience and, ironically, to promote accountability by placing interpretive decision-making in the hands of a politically accountable executive branch. Those intentions were misplaced, however, as *Chevron*'s rule of deference violated basic constitutional principles surrounding the separation of powers and diminished, rather than improved, political accountability regarding statutory meaning.

Under *Chevron*, when a court reviews an agency's interpretation of a statute it administers, the court begins with the statutory language and determines "whether Congress has directly spoken to the precise question at issue." 467 U.S. at 842. If the court determines that the statute clearly addresses the question, then the court and the agency must give effect to Congress's "unambiguously expressed intent," and the matter ends there. *Id.* at 843. If, however, "the statute is silent or ambiguous with respect to the specific issue," then the court does not engage in its own construction of the statute but instead determines "whether the agency's answer is based on a permissible construction of the statute." *Id.* By *Chevron*'s plain terms, unless a court

determines that the statute is unambiguous on the issue presented, then the court defers to the agency's interpretation so long as that interpretation is reasonable.

Chevron rooted its prescribed analysis in the view that "considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer" whenever "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." *Id.* The Court thus embraced "the principle of deference to administrative interpretations," *id.* at 844, in part because, unlike administrative agencies, "[j]udges are not experts in the field" at issue. *Id.* at 865. *See also, e.g.*, *Pension Ben. Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 651–52 (1990) ("This practical agency expertise is one of the principal justifications behind *Chevron* deference.").

Chevron also defended its deference to administrative determinations on grounds of political accountability. Judges "are not part of either political branch of the Government," the Court explained. 467 U.S. at 865. While administrative agencies may not be "directly accountable to the people," the Court pointed out that "the Chief Executive is," and the Court considered it more appropriate for one of the "political" branches of government, rather than the judiciary, to address competing policy choices in interpreting ambiguous statutory provisions. *Id.* The Court framed the matter as one of duty and respect. *See id.* at 866 ("[F]ederal judges—who have no

constituency—have a duty to respect legitimate policy choices made by those who do.").

Both grounds were misplaced. The courts are fully capable of, and constitutionally responsible for, analyzing ambiguous statutory provisions. In addition, deferring to administrative agencies to fill gaps and resolve ambiguities within statutory language creates less political accountability for such decisions than if the courts simply interpreted statutory language and allowed Congress to address the matter if the resulting course bears correction.

A. *Chevron* Reassigns Powers Vested in the Legislative and Judicial Branches to Administrative Agencies.

The separation of governmental powers across different government branches is among the Constitution's most critical features. Indeed, the separation of powers "was not simply an abstract generalization in the minds of the Framers: it was woven into the document that they drafted in Philadelphia in the summer of 1787." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021) (quoting *INS v. Chadha*, 462 U.S. 919, 946 (1983)).

Thus, the Constitution delegates powers to a national government and divides those powers "into three defined categories, Legislative, Executive, and Judicial." *Bowsher v. Synar*, 478 U.S. 714, 721 (1986). Under Article I, "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." U.S. Const., Art. I, § 1. Article II provides that "[t]he executive Power shall be vested in

a President of the United States of America," U.S. Const., Art. II, § 1, who "shall take Care that the Laws be faithfully executed . . . ." U.S. Const., Art. II, § 3. Finally, under Article III, "the judicial Power of the United States" is vested in "one supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." U.S. Const., Art. III, § 1.

"The declared purpose of separating and dividing the powers of government, of course, was to 'diffus[e] power the better to secure liberty.'" *Bowsher*, 478 U.S. at 721 (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring)). "That this system of division and separation of powers produces conflicts, confusion, and discordance at times is inherent, but it was deliberately so structured to assure full, vigorous, and open debate on the great issues affecting the people and to provide avenues for the operation of checks on the exercise of governmental power." *Id.* at 722.

Separating powers among distinct governmental branches would serve no actual purpose, however, if the branches could simply exercise each other's powers—or hand them to each other. Thus, Article I places all legislative powers with the Congress, and "th[e] text permits no delegation of those powers . . . ." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001). Likewise, Article II vests executive authority in the President, and "the Constitution does not permit Congress to execute the laws . . . ." *Bowsher*, 478 U.S. at 726. Writing in The Federalist No. 47, James Madison pointed out that "there can be no liberty where the legislative and executive powers are

united in the same person . . . ." *See id.* at 722 (quoting The Federalist No. 47, p. 325 (J. Cooke ed. 1961)).

The same holds true with the judiciary. "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). That role cannot be reassigned. *E.g.*, *Stern v. Marshall*, 564 U.S. 462, 484 (2011) ("Article III could neither serve its purpose in the system of checks and balances nor preserve the integrity of judicial decisionmaking if the other branches of the Federal Government could confer the Government's 'judicial Power' on entities outside Article III."). Nor can it be abandoned. As Justice Story eloquently explained nearly 200 years ago:

> But it is not to be forgotten, that ours is a government of laws, and not of men; and that the judicial department has imposed upon it by the constitution, the solemn duty to interpret the laws, in the last resort; and however disagreeable that duty may be, in cases where its own judgment shall differ from that of other high functionaries, it is not at liberty to surrender, or to waive it.

United States v. Dickson, 40 U.S. (15 Pet.) 141, 162 (1841).

Chevron's call for courts to defer to administrative determinations on the meaning of federal statutes collides irreconcilably with these principles. *Chevron* assumed that where a statute administered by an agency is "silent or ambiguous" regarding a particular issue, Congress has made an

"implicit rather than explicit" delegation to the agency to interpret the statute's meaning and application. 457 U.S. at 844 ("Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." (footnote omitted)). *Chevron* considered such deference to be a matter of "respect" for the "legitimate policy choices" the agency makes. *See id.* at 866.

But affording controlling deference to an agency's interpretation of a federal statute goes well beyond showing respect. It forfeits the judiciary's role as the branch that bears "the solemn duty to interpret the laws, in the last resort . . . ." *Dickson*, 40 U.S. at 162. The judiciary must bear that duty notwithstanding that an agency's interpretation of any law it administers "is certainly entitled to great respect." *Id.* at 161.

Thus, Justice Thomas has observed that "deference under *Chevron* . . . likely conflicts with the Vesting Clauses of the Constitution." *County of Maui, Ha. v. Hawaii Wildlife Fund*, 140 S. Ct. 1462, 1482 (2020) (Thomas, J., dissenting); *see also Michigan v. EPA*, 576 U.S. 743, 761–62 (2015) (Thomas, J., concurring) (explaining that *Chevron* deference transferring courts' ultimate interpretive authority and giving it to the executive branch "is in tension with Article III's Vesting Clause, which vests the judicial power exclusively in Article III courts, not administrative agencies"). Similarly, in his concurrence in *Gutierrez-Brizuela v. Lynch*, then-Judge Gorsuch observed that *Chevron* "tells us we

must allow an executive agency to resolve the meaning of any ambiguous statutory provision," and, "[i]n this way, *Chevron* seems no less than a judge-made abdication of the judicial duty." 834 F.3d 1142, 1151 (10th Cir. 2016) (Gorsuch, J.). *See also id.* at 1149 (Gorsuch, J., concurring) (stating *Chevron* has permitted "executive bureaucracies to swallow huge amounts of core judicial and legislative power and concentrate federal power in a way that seems more than a little difficult to square with the Constitution of the framers' design").

Further, by authorizing administrative agencies to give their preferred meaning to federal statutes when "the statute is silent or ambiguous with respect to the specific issue," 467 U.S. at 843, *Chevron* permits an administrative agency to "speak with the force of law when it addresses ambiguity in the statute or fills a space in the enacted law, even one about which 'Congress did not actually have an intent' as to a particular result." *United States v. Mead Corp.*, 533 U.S. 218, 229 (2001). Doing so "treat[s] that discretion as though it were a form of legislative power." *Michigan*, 576 U.S. at 761 (Thomas, J., concurring).

"Statutory ambiguity thus becomes an implicit delegation of rule-making authority, and that authority is used not to find the best meaning of the text, but to formulate legally binding rules to fill in gaps based on policy judgments made by the agency rather than Congress." *Id.* at 762 (Thomas, J., concurring). As Justice Kavanaugh once observed, "In many ways, *Chevron* is nothing more than a judicially orchestrated shift of power from Congress to the Executive Branch." Brett M. Kavanaugh, *Fixing*

Statutory Interpretation, Judging Statutes, 129 Harv. L. Rev. 2118, 2150 (2016).

"One of the principal authors of the Constitution famously wrote that the 'accumulation of all powers, legislative, executive, and judiciary, in the same hands … may justly be pronounced the very definition of tyranny.'" *City of Arlington, Tex. v. FCC*, 569 U.S. 290, 312 (2013) (Roberts, C.J., dissenting) (quoting The Federalist No. 47, p. 324 (J. Cooke ed. 1961)). *Chevron* holds the dishonorable distinction of having authorized the consolidation of legislative, judicial, and executive authority in the hands of administrative agencies.

Far from acknowledging the constitutional upheaval that its decision countenanced, *Chevron* suggested that its pronouncements were historically grounded. In particular, the Court stated it had "long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer," and the Court cited a string of decisions dating back to Chief Justice Marshall's tenure. 467 U.S. at 844 & n.14. However, the Court's effort to base interpretive deference in longstanding case law fell well short of its mark.

Historically, the Court treated executive officials' interpretations of statutory text as persuasive authority, to be distinguished from controlling authority. For example, in *Edwards' Lessee v. Darby*, 25 U.S. (12 Wheat.) 206 (1827), the oldest case *Chevron* cited, the Court explained that, "[i]n the construction of a doubtful and ambiguous law, the cotemporaneous construction of those who were called

upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect." *Id.* at 210. The law at issue in that case was a state law, and "those who were called upon to act" under it were commissioners appointed under that same law.

In *U.S. v. Mead Corp.*, 533 U.S. 218 (2001), Justice Scalia suggested that *Chevron* may have rooted its deference toward agency interpretations in cases seeking mandamus relief. *See id.* at 242–43 (Scalia, J., dissenting). Numerous mandamus cases rejected claims against executive officials on grounds the executive had exercised discretion in interpreting a legislative provision, but mandamus cases offer no support for interpretive deference under *Chevron*.

A writ of mandamus directs an official to perform a ministerial act that does not involve the official's discretion. *See, e.g.*, *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 168–170 (1803). In what is now a long-passed era, when federal courts' jurisdiction offered litigants few entry points, plaintiffs sometimes challenged executive actions by seeking writs of mandamus.

However, when executive officials interpreted law, writs of mandamus were held to be generally unavailable under *Decatur v. Paulding*, 39 U.S. (14 Pet.) 497, 514–15 (1840), because the officials' interpretive acts were said to be discretionary. To be clear, courts denied mandamus relief not based on deference to an executive official's interpretation but rather on the fact that the act of interpretation was considered a discretionary act that precluded mandamus relief. *See* Aditya Bamzai, *The Origins of*

Judicial Deference to Executive Interpretation, 126 Yale L. J. 908, 947–58 (2017). Thus, in *Decatur*, the Court emphasized that, when courts are not cabined by the narrow scope of mandamus review and have jurisdiction to interpret legislation, they will reject an agency's interpretation with which they disagree:

> If a suit should come before this Court, which involved the construction of any of these laws, ***the Court certainly would not be bound to adopt the construction given by the head of a department. And if they supposed his decision to be wrong, they would, of course, so pronounce their judgment.*** But their judgment upon the construction of a law must be given in a case in which they have jurisdiction, and in which it is their duty to interpret the act of Congress, in order to ascertain the rights of the parties in the cause before them.

39 U.S. at 515 (emphasis added).

Accordingly, the seeming discretion to interpret statutes afforded executive officials in mandamus cases lends no support to *Chevron* deference. In mandamus cases such as *Decatur*, courts actually lacked jurisdiction to proceed once they determined that the officials engaged in any interpretation at all. Under *Chevron*, by comparison, courts that plainly have jurisdiction to interpret statutes nonetheless opt not to do so and instead rely upon, and defer to, the substantive interpretations of administrative agencies.

It bears emphasis that *Chevron*'s deference standard is irreconcilable with what *Decatur* explained would occur where the judiciary has jurisdiction to review a statute's meaning: courts will review agency interpretations, and, if the courts determine the agency to have been wrong, "pronounce their judgment." 39 U.S. at 515. *Chevron* therefore did not follow precedent—it jettisoned it.

B. The Judiciary's Exercise of Its Constitutional Duty to Interpret Statutory Texts Will Lead to Greater, Not Less, Accountability—From Congress.

Chevron asserted that deference to administrative agencies for statutory interpretation would create greater accountability because judges "are not part of either political branch of the Government . . . ." 467 U.S. at 865. The Court acknowledged that "agencies are not directly accountable to the people," but "the Chief Executive is," *id.*, and the Court considered it more appropriate for one of the two "political" branches to make policy choices in interpreting ambiguous statutory provisions. *Id.* Whatever merit that view had in 1984, it has, over time, proved inaccurate. Thus, even if the judiciary had the prerogative to delegate its interpretive duties to unelected administrative bureaucrats—and it does not—it should decline to do so.

First, the judiciary's role should not be to make policy decisions but rather to determine the meaning of statutes enacted by Congress. Courts should do so using the tools of statutory construction, just as they

do when statutes are not within the charge of any agency or the agency has not reached an interpretive decision on the matter at issue. *See* 467 U.S. at 643 (recognizing it would be necessary for the court to impose its own construction "in the absence of an administrative interpretation").

Second, placing the consequences of statutory interpretation at the feet of Congress will increase Congress's accountability to the American people for statutory meaning. Under *Chevron*, unelected bureaucrats are encouraged to fill gaps and clarify ambiguities in statutory law. They inevitably do so based on policy preferences, not the relatively impartial interpretive methodology that courts utilize. At the same time, Congress is incentivized to direct difficult decisions to administrative agencies and leave those issues there, in bureaucrats' hands. The result is that administrators become unelected lawmakers, and the elected lawmakers can distance themselves from unpopular regulatory outcomes.

The problem is compounded by the sheer size of the present administrative state, which "wields vast power and touches almost every aspect of daily life" for everyday Americans. *Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 499 (2010). The President may be the nation's Chief Executive, but the office is a single position, elected every fourth year. The administrative state is a leviathan, with indefinite longevity and the potential ability to pursue its own agendas as administrations come and go.

Indeed, the years since *Chevron* have seen the rise of "sue and settle" practices whereby advocacy

groups sue agency officials, and, rather than defend the claims to the fullest extent, the agency agrees to a settlement that, upon court approval, binds the agency going forward despite changes in administrations. Such settlements can involve rulemaking obligations that take advantage of agencies' ability under *Chevron* to make law, which can present serious policy and constitutional concerns, particularly when the arrangements appear collusive. *See* David Bernhardt, You Report to Me: Accountability for the Failing Administrative State 110 (2023) ("In essence, agency officials and outside groups sometimes work together to force particular policy outcomes in settling litigation.").

If the judiciary retakes its proper constitutional role as the interpreter of legislation, however, then agencies will not be permitted to maintain erroneous statutory interpretations in the face of challenges, courts will declare what the law is, and it will fall to Congress to make any legislative changes it deems appropriate. Accountability will come from Congress, as the branch charged with passing legislation to address the Nation's needs. *See Gutierrez-Brizuela*, 834 F.3d at 1151 (Gorsuch, J., concurring) ("When the political branches disagree with a judicial interpretation of existing law, the Constitution prescribes the appropriate remedial process. It's called legislation."). Responsive action by a House and Senate consisting of 535 legislators elected from across the Nation may be slow or difficult, but, as then-Judge Gorsuch explained in *Gutierrez-Brizuela*, "that's no bug in the constitutional design: it's the very point of the design." *Id.*

II. The Time Has Come to Restore the Balance of Powers the Framers Intended and Overrule *Chevron*.

The question presented in this case offers the Court the option of narrowing *Chevron*, by removing from its scope circumstances in which legislation is silent on the matter at issue, or overruling *Chevron* to the full extent of its misplaced delegation of the judiciary's interpretive power. The Court should take the latter course.

Just over one year ago, the Court explained that *stare decisis* does not compel "unending adherence" to an "abuse of judicial authority." *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2243 (2022). The Court held that its controversial 1973 abortion decision was "egregiously wrong from the start," offered "exceptionally weak" reasoning, and had damaging consequences. *Id.* The Court overruled it.

Similar problems exist with *Chevron*, and the same result should follow. *Chevron* was egregiously wrong from its inception, even if the opinion's casual discussion of the issues, and its invocation of "well-settled principles," 467 U.S. at 845, could be read to suggest nothing controversial was afoot. That it took years for some to observe *Chevron*'s bad fruit does not make its poisonous trunk any less foul. *See, e.g.*, *Buffington v. McDonough*, 143 S. Ct. 14, 21 (2022) (Gorsuch, J., dissenting from denial of cert.) ("With the passage of time, the problems with reading too much into *Chevron* have become widely appreciated. Even Justice Scalia reconsidered his earlier support for broad judicial deference to executive interpretations of the law."); Richard J. Pierce, *The*

Combination of Chevron *and Political Polarity Has Awful Effects*, 70 Duke L. J. Online 91, 92 (2021) ("For over thirty years, I was one of the strongest supporters of *Chevron* deference. . . . In recent years, however, the increasing political polarity in America makes *Chevron*, as originally envisioned, a source of extreme instability in our legal system.").

Nor do the limiting mechanisms the Court has put in place over time eliminate the need for fundamental correction. The Court has insisted on a "step zero" point of analysis that inquires whether Congress delegated authority to the agency generally to make rules carrying the force of law. *See Mead*, 533 U.S. at 226–27. Most recently, the Court ratcheted up the constraints on administrative action by expounding on the major questions doctrine, which now limits agencies' authority to assert highly consequential powers absent clear congressional authorization. *West Virginia v. EPA*, 142 S. Ct. 2587, 2608–09 (2022). Ongoing interest in further limiting *Chevron* serves only to show that the decision was, and remains, both highly flawed and insufficiently corrected.

In his dissent from the denial of certiorari last term in *Buffington*, Justice Gorsuch outlined a panoply of problems *Chevron* created while also observing that an aggressive reading of the decision "has more or less fallen into desuetude—the government rarely invokes it, and courts even more rarely rely upon it." 143 S. Ct. at 22 (Gorsuch, J., dissenting from denial of cert.). All aspects of that analysis are plainly accurate, but an additional point should be made. *Chevron*'s existence continues to produce an irresistible impulse at the executive level,

and many persons burdened by improper regulation may lack the resources to pursue a challenge, resulting in aggressive executive actions being rewarded by the public's compliance. *See, e.g.*, Kavanaugh, 129 Harv. L. Rev. at 2151 ("Presidents run for office on policy agendas and it is often difficult to get those agendas through Congress. So it is no surprise that Presidents and agencies often will do whatever they can within existing statutes. And with *Chevron* in the mix, that inherent aggressiveness is amped up significantly. . . . Executive branch agencies often think they can take a particular action unless it is *clearly forbidden*." (emphasis in original)).

Justice Gorsuch's *Buffington* dissent concluded by questioning whether "*Chevron* maximalism has died of its own weight" but then acknowledging that, if so, it is of "little comfort" to "Americans who still find themselves caught in *Chevron*'s maw from time to time." 143 S. Ct. at 22 (Gorsuch, J., dissenting from denial of cert.). Justice Gorsuch accordingly recommended that "the whole project deserves a tombstone no one can miss." *Id.* The only body that can set that stone is this Court.

The time to announce *Chevron*'s passing is now. The judiciary should thus reclaim and reaffirm its "solemn duty to interpret the laws, in the last resort," *Dickson*, 40 U.S. at 162, and overrule *Chevron*.

CONCLUSION

For all of the foregoing reasons, the Court should overrule *Chevron*.

Respectfully submitted,

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