

SUPREME COURT

Justices uphold agency deference rule

Ellen M. Gilmer, E&E News reporter • Published: June 26, 2019 at 10:16 AM



Supreme Court building. Architect of the Capitol/Flickr

The Supreme Court has preserved an administrative law standard the federal government often uses to defend its actions.

In a multipart [ruling](#) today in *Kisor v. Wilkie*, the high court upheld what's known as *Auer* deference, which directs federal judges to yield to agencies' interpretations of their own rules, as long as they're reasonable. But the justices sought to "reinforce" the limits of the standard.

The case involves veterans' benefits but has broader implications for federal agencies.

"*Auer* deference retains an important role in construing agency regulations," Justice Elena Kagan wrote. "But even as we uphold it, we reinforce its limits. *Auer* deference is sometimes appropriate and sometimes not."

"Whether to apply it depends on a range of considerations that we have noted now and again, but compile and further develop today. The deference doctrine we describe is potent in its place, but cabined in its scope."

The court remanded the veterans' benefits case to the U.S. Court of Appeals for the Federal Circuit to reconsider whether it's appropriate to apply deference in that case.

Conservative lawyers and other critics have targeted *Auer* — named for a 1997 precedent — and similar deference rules for years, saying the standards expand the executive branch's power by insulating agency actions from judicial review. Plus, they say, *Auer* allows agencies to effectively tweak regulations without formal process.

Defenders maintain that the standards appropriately give government experts the final say on technical details. The Trump administration struck a middle ground in the case, pushing for some limits to *Auer*'s application.

Debate over the precedent and a related rule known as *Chevron* crops up frequently in environmental policy and energy regulation, as EPA, the Interior Department and other agencies seek deference from judges on their interpretations.

During Supreme Court oral arguments in March, the justices appeared divided on several key issues ([Greenwire](#), March 27).

Many court watchers view today's ruling as an indicator of how likely the Supreme Court is to eventually overrule the more controversial *Chevron* deference standard. *Chevron* applies to agency interpretations of ambiguous laws.

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