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# An Examination of the Application of the Chevron Doctrine in U.S. District Courts

Rebekah Ruth Prince

*University of Arkansas, Fayetteville*

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## An Examination of the Application of the Chevron Doctrine in U.S. District Courts

An Examination of the Application of the Chevron Doctrine in U.S. District Courts

A thesis submitted in partial fulfillment  
of the requirements for the degree of  
Master of Arts in Political Science

By

Rebekah Ruth Prince  
University of Arkansas  
Bachelor of Arts in Communication, 2008

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University of Arkansas

**Abstract**

This paper is an examination of the case *Chevron v. Natural Resources Defense Council* (1984). Using cases from the U.S. Ninth District Circuit Courts, from the years 2008 and 2009, I examine how this case is being used today. Both behavioral models and models made explicitly to study the use of *Chevron* were used in order to determine not only how a judge cites this case but also whether their political orientation plays a role.

This thesis is approved for recommendation  
to the Graduate Council.

Thesis Director:

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Dr. William D. Schreckhise

Thesis Committee:

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Dr. Andrew Dowdle

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Dr. Rafael Jimeno

**Thesis Duplication Release**

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## **Dedication**

This thesis is dedicated first and foremost to my mentor, Dr. William Schreckhise. He has been a constant source of inspiration and support. He was always willing to meet with me and answer any questions I had as well as never making me feel like my thoughts and ideas were inadequate. I am greatly appreciative of his help and know that this paper would have been much more difficult to complete without it.

I would also like to dedicate this thesis to my family and friends. They were there to listen both to my frustrations and my successes in the last year. Their support was more helpful than they know.



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## **Introduction**

*Chevron U.S.A., Inc. v. Natural Resources Defense Council* (1984),<sup>1</sup> has become one of the most frequently cited cases in American administrative law (Merrill, 1992). In the case of *Chevron* the Court specified what standard of review courts should apply when reviewing a government agency's reading of a statute. The result was the Court's development of a two-step analysis, called the Chevron Two-Step.

This test is what makes *Chevron* of particular interest and why it is so important to the field of administrative law. The case's analysis is the most clear articulation of the Doctrine of Deference – the notion that courts should defer to agencies' expertise and their need for flexibility -- to the point that the Court has used the phrase "Chevron deference" in more recent cases (533 U.S. 218).

In his written opinion, Justice Stevens established a two-part test courts should employ when reviewing an agency's interpretation of Congressional statute.

1. A reviewing court must determine whether Congress has spoken directly to the question at hand or if their intent is ambiguous.

If Congress was clear in its direction, all that is left is to determine whether the agency complied with Congress's will. However, if they were not clear the court then moves to step two, which, as Stevens explains, states that:

2. If the statute is silent or ambiguous on the specific question, the court must defer to the agency's interpretation of the statute. The court can only overturn an agency's interpretation if it deems the agency has acted arbitrarily or capriciously in their construction of the statute.

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<sup>1</sup>467 U.S. 837.

Although *Chevron v. NRDC* is one of the most widely cited decisions rendered by the U.S. Supreme Court, it may be the case that lower courts still refuse to give agencies the degree of deference *Chevron* demands. Some observers believe it to be a “revolution on paper” only and therefore less important than using the traditional contextual models of judicial decision-making (Kerr 1998, 1). Notably, Orin Kerr (1998) examined applications of the *Chevron* Doctrine in United States Court of Appeals and found that judges applied *Chevron* selectively; that is, Republican-appointed judges were more likely accept agencies’ interpretations when doing so leads to conservative outcomes and rejecting agencies’ interpretation when doing so would lead to a liberal outcome. Democratic-appointed judges similarly employed *Chevron* in a liberal way. Hence *Chevron*’s true impact is muted by the political ideology of judges tasked with the case’s application.

This thesis builds from Kerr’s work. It provides an updated view of the court system by combining Kerr’s models with two other models widely used to explain judicial decision-making. Using these models, I am able to design an empirical study that can help to explain why judges make the decisions that they do. This could in turn, help to explain the broader dynamics of judicial decision-making, rather than only identifying the role of *Chevron* as Kerr’s article does.

To do this, I examined cases that applied *Chevron* in the years 2008 and 2009. Each case comes from the United States district courts located in the Ninth Circuit Court of Appeals. District courts located in the Ninth Circuit were chosen because the Ninth Circuit is the largest, and its district courts had the most *Chevron* citations when

compared to district courts in other circuits. I limited my analysis to the district courts of only one circuit. This was done to avoid any intercircuit variations in *Chevron's* application.

In the following section, I will discuss the literature developed by political scientists that explains how judges make their decisions. In the section after that, I discuss Orin Kerr's article and how *Chevron* can be tested using three distinct models that were developed when attempting to explain why judges apply precedents the way that they do. To conduct this study, a Lexis/Nexis search was conducted of cases that were decided by U.S. District Courts in the Ninth Circuit that used the *Chevron* test on an agency's interpretation of statute. Six hypotheses were developed and each one tested *Chevron* in a separate way, each examining different potential explanations behind *Chevron's* application. My findings, after testing these hypotheses, show that none of them are correct. Judges tend to apply *Chevron*, not to further policy agendas, or to act strategically, but instead because the precedent is applicable to the case at hand.

### **Explaining Judicial Decision-Making**

For fifty years, political scientists have been exploring how judges behave and why they reach the decisions they do. Today there are four main models that attempt to explain why judges reach the decisions they do: the attitudinal model, strategic new institutionalism, constitutive new institutionalism, and role theory. Although they seek to explain how judges reach their decisions, each model asks different questions, and each affects how scholars view the judiciary in a very important way. While strategic new institutionalism and role theory do not fall within the scope of my study, they are both

mentioned so that the reader may have a full understanding of the theories scholars deem the most important in explaining judicial decision-making.

### **The Attitudinal Model**

The first of these models is the attitudinal model. A melding of concepts from political science, economics, legal realism, and psychology, this model holds that Supreme Court justices vote the way they do because of the ideological attitudes and their values (Segal and Spaeth, 2002). In other words, a justice votes the way that he or she does because they lean more towards the conservative or liberal side of the ideology scale.

Herman Pritchett (1948) was the first to conduct an empirical assessment of the Supreme Court by examining patterns in the Roosevelt Court. In his book, Pritchett is able to place justices on a “left-right” ideological scale, based on their votes on cases that came before the Court. Specifically, certain justices would consistently vote in a liberal bloc, others in a conservative bloc. The most important contribution from Pritchett’s study, however, is that this book, in part, proves that judges are not mechanically applying the law but instead rendering decisions that are consistently influenced by their own personal political preferences.

The next major study written, on the subject of judicial decision-making, was written by Glendon Schubert (1965). While his findings confirmed Pritchett’s main findings, there was one major issue that Schubert was able to bring into the light. Schubert showed that judges did not always line up in a neat ideological row on a political spectrum. Instead, in some cases, two justices would be on opposite ends of Pritchett’s spectrum, but on others, they would line up next to each other and vote the same way. This confounded Pritchett’s model. Thus, two justices who usually vote

together on cases dealing with civil liberties would find themselves on opposite sides on cases that dealt with the issue of judicial power. Schubert showed that when different types of cases were examined, there were voting patterns that emerged, whereas, if Pritchett's model was followed the results would be less predictable.

The results of this study were confirmed by Rohde and Spaeth (1976) and Segal and Spaeth (2002) and became known as the attitudinal model. Segal and Spaeth (2002), in their updated work, explain that this model, in its pure form, applies most plausibly to the decision on the merits. They explain that attitudes are a crucial factor when shaping a decision, but not the only factor. Rather, this model holds that case stimuli, the facts of the case and what it is about, are contrasted against attitudes when trying to determine how a particular justice reaches a decision. Segal and Spaeth, took their research a step further in their attempt to explain how a justice makes the decisions they do.

However, not all judicial politics researchers find the models' findings compelling and are critical of how much it actually explains. While no one discounts the fact that these studies have provided insight into judicial decision-making, they still point out some of the attitudinal models flaws. Charles Sheldon (1974) is one such person. He pointed out that these studies focus primarily on the Supreme Court and virtually ignore the lower courts. While the Supreme Court's word is final, the fact that they hear less than one percent of cases shows that lower courts make precedent-setting decisions on a much larger scale and therefore cannot be ignored because of the sheer amount of cases they decide every day. Thus, as Sheldon explains, a large gap is left in our knowledge of the judicial process.

Richard Baum (1994) and Jack Knight (1994) are also critical of this model.

Baum believes that Segal and Spaeth employ the wrong evidence in support of their main argument. He explains that it is erroneous to believe that personal policy preferences are the only variable that influences decision-making. The very fact that they did not include the application of the law, into the justice's decision-making process is proof enough that the argument lacks validity. After all, even if a judge makes a decision based on his or her personal preferences, this does not mean that they completely set aside the law when handing down a decision. Baum also states that the evidence provided does not prove that a justice consistently votes to support certain policy preferences because of their own policy preferences.

Knight (1994), on the other hand, criticizes the model for what is not explained. He states that that attitudinal model fails to account for factors that would complicate a justice's vote and the effectuation of a particular outcome, such as why some cases are said to be meritless while others are not. Cornell Clayton (1999) continues with this argument by stating that attitudinalists give a false construction to other models, such as the legal model, which posits legal material, such as the Constitution, case law, legal doctrines, or federal statutes, determine the outcome of a case. Their attempt to create a straw man out of the legal model is one of the largest failings because it ignores the fact that the model is meant to be used as a model that can go hand in hand with the attitudinal model rather than work against it.

Ultimately, while the attitudinal model provides some insight into the dynamics of judicial decision-making, there is more that has yet to be explained. This is especially true when examining the decisions of the lower district and circuit courts. Since the

attitudinal model fails to explain how these judges make decisions, there is a whole world of judicial decision-making left to discover.

### **Strategic New Institutionalism**

New Institutionalism attempts to explain the constraints on judicial decision-making that the attitudinal model left out. Though, Supreme Court justices are much more free to do as they please when it comes to judicial decision-making, more recent scholars (Hall and Brace 1992; Brace and Hall 1993; Wahlbeck 1997) have tried to explain the institutional constraints by which judges of the lower courts are bound.

The work of March and Olsen (1983, 1989) had the most impact and are the ones that inspired later scholars, in this field. They explain that routines, convention, strategies, and technologies are what affect political behavior and this is what later scholars have attempted to examine and explain. Their work was influential with judicial politics scholars because many concluded institutions could better explain all of the nuances involved in the role of the judiciary than simple political preferences.

A main difference between the attitudinal and the new institutional approaches has to do with the role played by precedents and public and elite opinions. Adherents to the attitudinal model believe that these are factors that cannot be explained (or at least adequately measured) and therefore, cannot be understood when applying them to a Supreme Court justice (Clayton, 1999). The Court assents that such variables (i.e. precedents and public opinion) are crucial when it comes to explaining how a judge behaves when handing down a ruling from the bench. In other words, if public opinion were against a certain outcome, this would hold more weight in a judge's mind and could cause them to rule in the way that the public prefers.



Strategic new institutionalism is one of the theories presented that was part of the reemergence of institutional analysis. Like the attitudinal model, it holds that judges have political preferences, but are largely constrained by the institution from acting on those preferences. Along these lines, Hall and Brace (1999) explain how judges behave under the constraints of the institutional system. There are three main reasons that a judge would prefer to act strategically while in office, though one, will be explained later. One reason is that judges have ambition for higher office and will do what must be done to attain it. According to Schlesinger (1966), most judges should have ambitions to obtain a higher office for ambition lies at the heart of politics. Those who sit on the Supreme Court are no different than any other political player. The second reason is that a judge pursues goals, in a strategic manner in response to institutional and contextual arrangements. Their findings, when stated plainly, explain that it does not make sense to ignore the importance of institutions or to construct theories of decision-making that apply to only one court.

These findings corroborate what previous studies have already found, that judges do act strategically and within the constraints of their institution. Hall and Brace have done a remarkable amount of work in this area and their earlier works, especially in the area of dissent writing and have helped give a significant understanding of the strategic argument. Hall and Brace (1989) first examined this topic from the state supreme court level. They found that court-specific characteristics, such as how the judge attained their seat and the ease of being removed from office, do in fact affect the number of dissents written. Furthermore, Hall and Brace's series of studies on dissents (see Brace and Hall 1993, 1997; Hall and Brace 1992, 1996) in state courts found that a liberal judge, up for

election would be much less likely to dissent in conservative states. This is because they realize they could be removed from office and believe that keeping their seat was more important than whatever dissent they wanted to write.

It should be noted that evidence supporting the strategic new institutionalism model has come from studies, not only in state courts, but in the U.S. Supreme Court, as well. These various studies have shown that variables such as the preference of the president and the number of amicus briefs filed, among other factors, can change how a justice votes (see Wahlbeck 1997, 1998). Thus proving that even the men and women of the high court can be influenced by institutional factors as well.

### **Constitutive New Institutionalism**

Another model that seeks to explain the decisions and behavior of judges is constitutive new institutionalism. It looks at how institutions affect judicial behavior rather than how these institutions constrain them. Gillman (1999) explains where the strategic new institutionalism point fails however. He argues that using the strategic approach can only help shed light on the institutional features that are, in fact, purely strategic. This is a problem because it leaves a whole spectrum of judicial decision-making unexplored.

Kahn (1994) argues that justices have an obligation that helps guide their judicial behavior. Rather than political preferences or strategic objectives, he argues, that it is a sense of obligation directed by legal norms that guide the way in which they make their decisions. He explains that despite the fact that different courts have different members with different political beliefs, they will uphold the same precedents. They do this, because, though the members may have differing philosophical beliefs, they all view the

court as a countermajoritarian legal institution and share a sense of correctness for the Court and the law.

This theory focuses on legal interpretation and how a judge explains the law and the Constitution. Gillman (1994, 1999) takes this a step further by looking at how traditions in Constitutional law began. He finds that judges before the 19<sup>th</sup> century developed a uniform body of rules, based on the Constitution, which stated what legislative bodies, could and could not do. However, in the 19<sup>th</sup> century the judiciary, because of industrialization and progressive reformers, began to define liberties more broadly rather than sticking to what was clearly defined by their predecessors. Their reasoning behind this was so they could promote the expansion of government power, of which the judiciary approved. However, in the next century these judges began using a more interpretivist rationale as it helped them to better protect individual rights. They do this by attempting to reconstruct states of mind as well as political contexts in order to better understand what led a particular person to adopt a specific course of conduct.

Gillman (1999) further discusses the idea of the interpretivists and how they view decision-making. He explains that this group is frustrated with the prevailing theory that judges only involve themselves in the legal process in order to manipulate the rules in the interest furthering their political attitudes. While this group believes that politics are part of jurisprudence, they prevail upon scholars to look at other explanations. For example, interpretivists believe that a judge views the law, not as a strategic game, but instead as a reflection of their deepest convictions. Thus, Kahn (1994) states that justices uphold precedent simply because they believe in basing decisions on those Constitutional

principles that have been previously established in precedent rather than for agenda setting purposes.

Gillman views constitutive new institutionalism as a mission and argues that rather than focusing on a judge being selfish and making a rule based on their own preferences, this theory instead tries to reconstruct a state of mind or political context in order to explain why a particular judge made a particular ruling. Thus, Gillman argues that perhaps it would be best to go back to the theoretical frameworks and integrate them into the prevailing constitutive models of today.

Unfortunately, this model can only explain so much. While the model points a researcher towards the reason a judge makes a particular decision, ultimately it does not answer why they do. This is one reason that Tamanaha (1996) was critical of the interpretivist model. He argues that, while this model take a look at the internal viewpoint of a judge and how they feel about a particular case, it fails to explain why they are applying these viewpoints the way that they are.

### **Role Theory**

Role theory could be the one that helps explain the questions left behind by constitutive new institutionalism. This theory is well developed and much older than the one previously mentioned and actually comes from the study of legislators (Wahlke et al, 1962). James Gibson (1978) argued that the ideas of roles were not understood, as they should be, despite the fact that they are important predictors of behavior.

At the same time that Gibson began his studies, Woodford Howard (1977) also looked at the idea of judicial roles among federal circuit judges. According to this study, a judicial role is what a judge believes how their work should be performed. What he

finds is that when it comes to decision-making, whether a judge is a realist, an innovator, or an interpreter (i.e. their role conceptions), were slightly influential, but not the most significant factors in the decision-making process. Each type has a particular view of how justice should be handled from the bench: innovators, are the judges who feel obliged to make law when the opportunity presents itself, interpreters believe that judicial lawmaking should be held to a minimum, and realists are the judges in the middle who are both judicially creative and good at showing restraint.

To better understand how a judge's role orientation works and what factors affect them. Gibson (1977) examined judges' levels of judicial activism. It should be noted that this idea of activism is related to lower court judges and not those of the Supreme Court. Using this idea, it becomes more apparent that the law is usually only one of many criteria used in the process of decision-making. Other criteria tend to be non-legal factors such as the location of where the case originated or whether the claimant is a criminal or an alleged criminal. Gibson finds that, those judges who are more likely to be activists are those that tend to rate the importance of precedent relatively low in their decision-making, and thus, relied more on non-legal factors. This suggests that role orientation is related to the used of non-legal stimuli when the judge is in an activist role.

Gibson (1980) next looks at judicial roles by separating them into two groups. He does this by examining the environmental factors that tend to affect those lower court judges, which do not have the luxury of lifetime appointment. Role orientation, in this case, affects a judges' behavior by influencing the way in which they determine procedures. Thus, instead of just using the law to make their decision, Gibson explains that the process is the object of these orientations and therefore helps predict the degree

of influence environmental factors (i.e. being elected and owing favors versus being appointed) might have on the decision-making process. These factors tend to produce two “roles” that a judge will fall into: the delegate and the trustee. The delegate, actively seeks out cues from their environment therefore, they tend to take account local environmental political influences, such as local political culture, in their decision-making process. Those that assume the trustee role orientation, which are most federal judges, are the opposite of the delegate. This group tends to ignore environmental clues and focus instead on their own opinions, rather than what the constituents want.

Another study by Gibson (1981) examines why judges make the decisions and adopted the role orientations that they do. More specifically the role of self-esteem in judicial decision-making is used to determine if there is any connection to the rulings these men and women make. Those with higher levels of self-esteem are the ones that tend to take a more activist role. Those with lower self-esteem on the other hand are more strongly influenced by these outside factors. Because of this, if the judge socializes with those that would view a particular decision as unacceptable, then these judges do not have the necessary ego to go against the grain. Thus, these men and women are much more likely to perform their duties in a role that is more subservient to those they believe they are there to serve.

### **Chevron and the Two-Step Test**

While judicial review can come in different forms, precedent has considerable sway over the successive decisions judges makes from the bench. A precedent is an opinion that establishes a legal principle that must be followed by lower courts when they

are faced with similar legal issues. Not all cases are equally influential. One such case - *Chevron U.S.A., Inc. v. Natural Resources Defense Council* (1984),<sup>2</sup> - has the potential to be extremely influential, having been cited over 6300 times.<sup>3</sup> This landmark decision established a two-step test for judicial review of agency interpretations of statutes and also sparked a debate that continues on to this day (Kerr, 1998). Before understanding the debate involved on the outcome however, one must first understand the case itself.

Pursuant to the Clean Air Act Amendments of 1977<sup>4</sup>, the Environmental Protection Agency issued new rules regarding how air polluters would receive permits. Prior to the rule change, all sources of air pollution had to have their own permit. Thus, each smokestack for a factory would have to receive its own permit. The new rule allowed states to treat all pollution-emitting devices within the same group, as if they were encased in a single "bubble," and thus requiring only one permit be issued. The D.C. Circuit Court ruled that this was an incorrect interpretation of the statute, while the petitioner, Chevron USA, Inc. argued that this decision was in fact a reasonable construction of the statutory term "stationary source," as spelled in the 1977 amendments. The Supreme Court of the United States agreed and thus the decision was reversed. This was the birth of what is now known as the *Chevron* two-step test.

In the majority opinion, Justice John Paul Stevens, establishes the analysis that lower courts shall follow when a similar question is brought before them. Stevens stated when an agency's interpretation of statute is in dispute, courts should first ask the question of whether Congress has spoken directly to the issue. If Congress' intent is clear

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<sup>2</sup>467 U.S. 837.

<sup>3</sup> See the Pierce Law Library <http://blogs.law.unh.edu/library/2009/02/50-most-cited-us-supreme-court.html>.

<sup>4</sup> See 42 U.S.C. § 7401.

and unambiguous, then the Court will determine whether the agency complied with Congress's desires. However, if the language in the statute is vague, or if Congress has not spoken directly to the question at hand, then the reviewing court can only overturn the agency's interpretation of statute if it is arbitrary, capricious, or manifestly contrary to the language of the statute. These two steps are what should be used when deciding whether or not an agency is acting within the confines of the duties Congress has set them. Thus, in instances when a statute is not clear, an agency is largely free to adopt its own interpretation.

Although seemingly straightforward in its application, the *Chevron* Two-Step (as it has come to be known) is not automatic. Thus individual judges may defer to an agency's interpretation more or less based on how readily they perceive ambiguity in statutory text. In fact, Orin Kerr (1998) developed three models that try to explain how *Chevron* is perceived and used by judges (Kerr, 1998). Each of these models is conceptually different. As Kerr explains, they each present a jurisprudential paradigm where a particular set of factors alters the chances of whether the reviewing court will uphold the agency interpretation of statutory law.

In his 1998 article "Shedding Light on *Chevron*" Kerr employs the three models -- the political model, the interpretive model, and the contextual model -- to describe how courts apply the *Chevron* doctrine. Kerr looks at cases decided in 1995 and 1996 decided in the U.S. Court of Appeals to test the model's explanatory power. He explains that each model offers something different, although their foci are not necessarily mutually exclusive. Instead, they can be combined to explain patterns of judicial outcomes because there is rarely only one set of factors influencing the outcomes of *Chevron* cases.



## **The Contextual Model**

Kerr's first model is the contextual model. In this model Kerr posits that cases involving agency interpretation of statute will continue to be guided by traditional methods of judicial review of agency actions, regardless of what the *Chevron* test dictates. He points to legal observers that prefer the traditional methods of reviewing agency decisions that were in place before the 1984 *Chevron* decision (see Breyer 1986; Byse, 1988). According to the contextual model, certain factors will continue to determine judges' deference in the post-*Chevron* era (Kerr, 1998). These original factors allowed a court to keep their authority to declare law while still respecting the judgment of the agency under review (Merrill, 1992). These factors include whether an agency's construction was longstanding (i.e., if the agency adopted the interpretation many years ago), if the agency was consistent in its interpretation over time, whether the agency based their interpretation on expertise, whether the construction would expand agency influence, and whether or not Congress was aware of what the agency was doing and expressly declined to take action against them.

Stephen Breyer (1986) originally explained in an article he wrote before coming to the Supreme Court, *Chevron* does not fit well with a judge performing his duty when reviewing an agency's actions, as too many complex questions may arise for a single rule to provide an answer. Because of this, it seems unlikely that the doctrine will replace these traditional factors of review.

Thomas Merrill (1992) is similarly a traditionalist. He believes that the traditional factors that gave rise to the modern administrative state – such as agencies' need for flexibility, respect for their expertise, and their need to exercise freely discretionary

authority -- do a much better job of explaining how constitutional and legal frameworks relate to the ordinary modes of judicial interpretation. Hence, the political model provides a greater amount of authority to those with more expertise because judges realize that they are limited in their knowledge of most agency actions. This model also puts emphasis on whether an agency's interpretation has been longstanding and consistent. The better (or at least longer) the agency interprets the statute, the more likely it is to be upheld in the courts.

Another proponent of employing traditional factors in judicial interpretation is Abner Mikva (1986) who served on the United States Court of Appeals. His argument is that there is a clear distinction between complying with an agency's interpretation and following well-established principles of deference. It is important to note that *Chevron* is not applicable to all cases in which an agency has adopted an interpretation of a statute on which Congress has been silent or ambiguous. This is because judges do not always have the technical expertise needed to make decisions in these cases. Therefore, the Court should rely on its ability to determine Congress' intent using the traditional tools of construction, whatever those may be. Only when this method has failed to discern Congress' intent should *Chevron's* two-step be applied. As Mikva explains, this is especially true when one considers that Justice Stevens, author of the *Chevron* opinion, has stated that the analysis does not establish an absolute rule of deference, a blow indeed to those that believe in the absoluteness of the doctrine.<sup>5</sup>

Maureen Callahan (1991) asks if federal courts even need to defer to the interpretations of agencies in the first place. She believes that the *Chevron* decision is, in

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<sup>5</sup> See Stevens opinion in the case of *Bowen v. American Hospital Association* (1986) 476 U.S. 610.

part, unconstitutional. When explaining the decision in light of the separation of powers doctrine, Callahan argues that the decision is inconsistent because it views the deference requirement as constitutionally mandated, which is not the case. Rather she argues that this deference disrupts the separation of powers balance by conflicting with Article III and thus one must wonder if the doctrine is wholly appropriate to use in place of the traditional factors. More specifically, if a court is bound to adopt an agency's interpretation rather than doing so at its own discretion the duty of the judiciary, which is to say what the law is, breaks down. Because of this, Callahan believes that in the place of always applying deference, courts should recognize that some policy choices are better made by the political branches. However, *Chevron's* deference should not automatically follow statutory ambiguity or silence, but instead should be employed only when circumstances warrant its use, which would be only when an agency has seriously overstepped its legal bounds.

As a group, these observers are traditionalists. Because of this, they prefer that the traditional factors over doctrine established in the fairly recently decided *Chevron* case. Thus a judge who follows this model may do his or her best to avoid applying or even mentioning *Chevron* when an agency action is under review. Rather, they would use only the traditional factors when making their decisions. As a result, judges who adopt this method of interpretation would instead favor the more traditional factors when deciding *Chevron*-type cases.

### **The Political Model**

Kerr's (1998) political model examines how a judge applies *Chevron* by determining whether their personal orientation affects their decision-making process. It

draws from the attitudinal model and the belief that a judge votes the way he/she does because they lean further to one side of the political spectrum. Those that believe in this model find that the best predictor, of a judge, giving deference to the doctrine is his or her political attitude (Kerr, 1998). The idea of political preferences impacting judicial opinions is not a new one, as Cohen and Spitzer (1994) explain, judge's prefer to involve themselves in both administrative procedures and policy outcomes.

This view of the role of political preferences in judicial opinions, leads to two empirical claims (see Jordan 1989; Pierce 1995; and Vaughns 1995). First is the assertion that the inclination, of a judge to apply *Chevron*, depends on the level of political agreement they share with the administration's rule that is under review (Cohen and Spitzer 1994). For example, during the Reagan era, judges that were proponents of the current administration tended to approve of *Chevron*, while their opponents were critical of the doctrine. The second claim is the belief that a judge is making decisions strategically, which reflects their political ideologies (Pierce, 1995). In other words, a liberal judge will attempt to reach liberal outcomes in order to further their liberal agenda. *Chevron* would come into play, in this type of situation, because when reviewing agency decisions, a judge has the chance to affect policy decisions.

Sidney Shapiro and Richard Levy (1995) also ascribe to the tenets political model. As they explain, in administrative law, judicial review allows a judge to intervene when an agency decision conflicts with the beliefs they hold and also to defer when the decision falls in line with them. Thus the application, of *Chevron*, or the lack thereof helps in the determination of those manipulable categories to which different degrees of deference apply. It is of interest to note that the authors actually argue that judges not

apply *Chevron* because it is too determinant and thus in their best interest to avoid the application. In other words, they believe that a judge's decisions could more easily reflect their orientation by using a more indeterminate method when handing down a ruling.

### **The Interpretive Model**

While the third model does not fall into the scope of this study, it is still important to the study of *Chevron* and therefore should be discussed in part. The interpretive model is the more naïve sounding of the three because this posits that judges apply the two-step test as objectively as possible, and that they are governed by the language of the test and nothing else (Kerr, 1998). The general method used by interpretivists is textualism, which means that they seek statutory meaning in the language of the statutory text itself without using outside, non-textual sources. Adherents to this approach argue that the impact of the *Chevron* deference, to textualism, is less deference, a view held by Justice Antonin Scalia (Maggs, 1996). These judges will find plain meaning in the statute they are reviewing, which allows them to ignore an agency's expert judgment and base their decision based on what they believe the text of the statute to mean (Mank, 1996).

Much like the political model, this model has two related empirical claims that help explain how it works. The first is best explained by Gregory Maggs (1996). Maggs took the idea that textualist judges accept executive interpretations at a different rate than non-textualists and applied it to the voting records of Justice Antonin Scalia. What he found was that Scalia accepted and rejected agency interpretations of statutes at almost equal amounts to agency interpretation rates. This indicates that his preference for textualism does not lead him to defer more or less than the other non-textualist Justices.

The second claim, whose primary proponent is Thomas Merrill (1994), states that textualist judges are much less likely to apply deference doctrines, such as *Chevron*, than their non-textualist counterparts. Merrill's study examines legislative history and Supreme Court applications of *Chevron*. He asserts that, as time progressed, there would be a decreasing use of legislative history and thus an increase in textualism, which would correspondingly lead to a decrease in the number of *Chevron* and related deference doctrine applications. Merrill believes that as statutes become increasingly complex, the Court's will allow more and more deference, under *Chevron*, that is based on agency expertise rather than legislative history. What he finds is as the 1980s progress, the Court relies less on legislative history, which he interprets to mean that there is a decreasing reliance upon deference principles.

While the interpretive model is interesting, as stated before it does not fall within the scope of this study. The very fact that it has more to do with textualism and proving that a judge is using *Chevron* exactly as it was meant to be, without any outside influences (such as pleasing constituencies), is much harder to prove.<sup>6</sup> Therefore, it would be best to focus on the remaining two models, which have also been discussed.

### **Hypotheses**

The purpose of this thesis is to examine how judges use *Chevron* in the Ninth Circuit Court of Appeals (further details about the methodology will be provided below). I am trying to determine which model, political or contextual, best explains the use of

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<sup>6</sup> As an indicator of a judge's textualism, Kerr used whether George H. W. Bush or Ronald Reagan appointed a judge, which is not a good measure of this. When one looks only at the appointing president and not at the way in which a judge applies citations there is a large room for error.

*Chevron*. I test six hypotheses. Each hypothesis deals with the issues mentioned previously.

Hypothesis one tests the contextual model. This model states that the older a rule the more likely it is to be upheld by a judge because the traditional methods put in place before the ruling on *Chevron* should carry more weight than the doctrine itself.

H<sub>1</sub>: Longstanding interpretations, rules that are more than 30 years old, are more likely to be upheld at a consistent rate compared to newer rules.

Hypothesis two is a test of the political model, informed by strategic new institutionalism. These models state that the political orientation of a judge and how they believe their job should be performed influences the decisions they make while on the bench.

H<sub>2</sub>: Republican judges will be more likely to uphold rules generated during Republican administrations and Democratic judges will be more likely to uphold rules generated by Democratic administrations.

Hypotheses three, four, five, and six examine components of the political model. Since attitudinalists argue that political orientations are what influence a judge the most, there would tend to be a noticeable difference between the rulings of judges that are conservative and those that are liberal.

H<sub>3</sub>: Republican judges will come to a conservative outcome more often than a liberal one.

H<sub>4</sub>: Democratic judges will come to a liberal outcome more often than a conservative one.

In hypotheses five and six I test whether the party of the president, when a rule

was adopted, was a factor in a judge's decision-making process. This is because a judge's partisan affiliation does matter, as strategic new institutionalism asserts. I believe that a judge does act strategically when making decisions and therefore if they want to further a particular political orientation then any rules set forth by an appointing president from the opposite party will be struck down. The strategy here is for a judge to find a way to further the political agenda that they are sympathetic to. If a conservative judge sees that a rule was set forth by a conservative president then they will be more likely to find ambiguity at step one in order to further that conservative viewpoint.

H<sub>5</sub>: Judges appointed by a Republican president will be more likely to allow agency rules at step one compared to their Democratic counterparts for rules generated during Republican presidential administrations.

H<sub>6</sub>: Judges appointed by Democratic president will be more likely to allow agency rules at step one compared to their Republican counterparts for rules generated during Democrat presidential administrations.

The following section will present the findings of my research and explain the processes used when gathering the data.

### **Data Collection**

This section provides an overview of where the data<sup>7</sup> came from as well as an explanation of my hypotheses. I will then present my findings and explain the relevance of *Chevron* in today's Ninth Circuit district courts.

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<sup>7</sup> For a reference on how the data was coded see Appendix B.



The study presented was designed to test the contextual and political models of *Chevron* while simultaneously testing whether the political orientation of a judge could be determined when it comes to judicial review. Therefore, the test results should show that a judge would decide to defer or not defer based on the outcome, either liberal or conservative, that they are hoping for.

A search of cases was conducted that were decided by U.S. district courts in the Ninth Circuit Court of Appeals in 2008 and 2009 that used the *Chevron* test on an agency's interpretation of statute<sup>8</sup>. The search rendered a total of 89 instances when a district court judge cited *Chevron*. In this instance, I restricted my search to only 2008 and 2009 because of limited time and resources. However, it should be noted that in most instances legal research does not include quantitative data in any form. While there are times when data is introduced in legal research, these scholars tend to focus on a much smaller number of cases (usually between one and five) to explain what they are saying because they are much more interested in what a precedent is saying rather than explaining how it is being applied to the world outside of the law. Therefore, the fact that I have included such research and a larger number of cases helps to strengthen the research that I conducted. Additionally, I am updating the 1998 work of Orin Kerr, which used a similar method when choosing cases for the research conducted. This way I could reproduce his work albeit on a smaller scale.

Ninth Circuit cases were used because that circuit it is the largest district in the country and provided the largest number of *Chevron* citations. My analysis was restricted to cases decided in one circuit to limit any inter-circuit variation of *Chevron*'s

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<sup>8</sup> For a comprehensive list of cases see Appendix A.

application. The problem with this variation is that each circuit can use a citation in a different way because there are different statutes in effect. Therefore, while *Chevron* citations may be used in similar cases, the circuit it is cited in affects how they are used. While this is in no way a bad thing, I thought that as a starting point it would be best to restrict the cases to one district, though this idea of variation is something that I would like to revisit in the future. I also focused on the Ninth circuit because it has the reputation of having very liberal judges. Thus, with this reputation I believed that it would be a good place to test whether the party of a judge truly does make a difference when they are handing down decisions from the bench. More specifically using the attitudinal and political models to determine if there are more liberal decisions coming from a supposed liberal circuit, which would be what one would expect.

A judges' party affiliation was collected from the biographies provided by the Ninth Circuit Court.<sup>9</sup> Data were also collected on the age of the rule challenged via the Lexis Nexis Academic Premier. In order to determine whether a judge was a Republican or Democrat, I looked at the party of the president that appointed the judge in questions. As to the definition of whether the judge themselves were liberal or conservative, I examined the text of the outcome of each case the judge decided and used Orin Kerr's assessment to determine whether the holding made would be considered liberal or conservative. For example, any case where the causes of environmental protection, immigration, entitlement benefits, government regulation of business, and employees rights against employees were furthered, were considered liberal decisions. Decisions that impeded the aforementioned causes were considered conservative.

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<sup>9</sup> See [http://www.ce9.uscourts.gov/ninthcircuit/circuit\\_judges.html](http://www.ce9.uscourts.gov/ninthcircuit/circuit_judges.html).

### **Results**

As Table 1 shows, there were eight types of cases that cited *Chevron*, with the largest percentage of them dealing with penal immigration, and environmental legislation, together comprising nearly two-thirds of the cases examined. The remaining cases dealt with various other kinds of legislation dealing with employment and economic legislation, Medicare/Medicaid, and other types of entitlement statutes. Five cases involved states challenging an agency's interpretation of federal legislation. One case could not be categorized.<sup>10</sup>

**Table 1:  
Type of Cases that Apply *Chevron***

<b>Type of Case</b>	<b>Number of Cases</b>	<b>Percent of Cases</b>
Entitlement Benefits	3	3.4%
Immigration	18	20.2%
Environmental	16	18.0%
Employment	6	7.0%
Medicare/Medicaid	6	7.0%
Economic Matter	5	6.0%
States against a Federal Regulation	5	6.0%
Penal	29	33.0%
Unclear	1	1.1%
Total	89	100%

To test the contextual model, data were collected on when the rules that were challenged in the cases was adopted in order to see if agencies' interpretations of older rules were more likely to be upheld by reviewing courts. The reason for this being that the contextual model asserts that the traditional methods in place before *Chevron*

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<sup>10</sup> The one case that could not be categorized had too many different elements to pin down only one specific category in which to place it.

determine how judges will use the *Chevron* test. Specifically, judges will give more deference to agencies' interpretation of older, more established rules.

**Table 2:  
Decade Rules were Adopted**

<b>Decade Adopted</b>	<b>Number of Rules</b>
1930s	4
1940s	2
1950s	13
1960s	9
1970s	18
1980s	21
1990s	12
2000s	9
2010s	1

**Table 3:  
Longstanding Interpretations**

		<b>Age of Rule</b>	
		<b>under 30 years</b>	<b>30 years or older</b>
<b>Judge Accepted Agency Interpretation?</b>	<b>No</b>	31%	51%
	<b>Yes</b>	69%	49%

Chi-square=2.705; p=.100

As Table 2 shows, the largest number of challenged rules came from the 1980s, with the 1970s in a close second. Table 3 tests  $H_1$  and presents data showing the acceptance rate of a regulation (the number of times judges uphold particular rules) in relation to the length of time that regulation has been in effect. Since 30 years was the mean age, I thought it best for that number to be the cutoff in this particular case. The table shows that rules 30 years or older, are upheld less often than those that are younger

than 30 years. It should be noted that this table runs counter to the contextual model's prediction as it says that the older a rule the more likely it is to be upheld. Judges were less likely to defer to older, more established rules and more likely to defer to less-longstanding ones.

The political model posits a judge will be more likely to reach a decision that reflects his or her own political beliefs. As Table 4 shows, while testing H<sub>2</sub>, H<sub>3</sub>, and H<sub>4</sub> this is not necessarily the case. Republican judges presided over 27 cases and came to a conservative decision 59% of the time, while coming to a liberal decision only 41% of the time, which appears to agree with the proposed hypothesis. However, Democratic judges presided over 39 cases and came to a conservative decision 54% of the time, leaving only a small margin between them and their Republican colleagues. Democratic judges also only came to a liberal decision 46% of the time. After running a Person's chi-square to determine whether this was a significant difference in the direction of the two groups' decisions, it would seem that, while conservatives are slightly more likely to reach a conservative decision, there is, in fact, no statistically significant difference between the two groups in how they decide a case.

**Table 4:  
Percent of Conservative and Liberal Decisions**

<b>Judge Party</b>	<b>Number of Cases</b>	<b>Percent Conservative Decisions</b>	<b>Percent Liberal Decisions</b>
Republican	27 (66%)	59%	41%
Democrat	39 (59%)	54%	46%

Chi-square=.190; p=.663

I also examined whether or not conservatives and liberals were more likely to rule a particular way when dealing with a certain issue (immigration, environmental, etc.).

Tables 5 and 6 show these outcomes. There is a tendency, in some areas, for a judge to show his or her political orientations. For example, when the matter of states against a federal regulation occurs, conservative judges reach a conservative decision 60% of the time and when a liberal judge is confronted with employment issues they reach a liberal decision 50% of the time. This behavior is not consistent across the board however, as conservatives reach a conservative opinion 23% of the time and liberals reach a liberal decision 22% of the time.

**Table 5:  
Cases that Lead to a Conservative Result**

<b>Type of Case</b>	<b>Acceptance Rate, Republican Judge</b>	<b>Acceptance Rate, Democratic Judge</b>
Entitlement Benefits	50% (1/2)	0% (0/2)
Immigration	25% (4/16)	6% (1/16)
Environmental	20% (3/15)	20% (3/15)
Employment	0% (0/4)	50% (2/4)
Medicare/Medicaid	17% (1/6)	33% (2/6)
Economic Matter	0% (0/5)	20% (1/5)
States against a federal regulation	60% (3/5)	20% (1/5)
Penal	25% (5/20)	55% (11/20)
Total	23% (17/73)	29% (21/73)

**Table 6:  
Cases that Lead to a Liberal Result**

<b>Type of Case</b>	<b>Acceptance Rate, Republican Judge</b>	<b>Acceptance Rate, Democratic Judge</b>
Entitlement Benefits	50% (1/2)	0%(0/2)
Immigration	0% (0/16)	44% (7/16)
Environmental	27% (4/15)	33% (5/15)
Employment	25% (1/4)	25% (1/4)
Medicare/Medicaid	33% (2/6)	0% (0/6)
Economic Matters	20% (1/5)	0% (0/5)
States against a federal regulation	20% (1/5)	0% (0/5)
Penal	0% (0/20)	15% (3/20)
Total	14% (10/73)	22% (16/73)

**Table 7:  
Presidential Party and Allowance Found at *Chevron* Step One**

<b>Party of Appointing President</b>	<b>Number of <i>Chevron</i> Cases</b>	<b>Percent of Allowance at Step One</b>
Democratic	45	49%
Republican	29	67%

To get a sense of whether the political orientations of judges impact how likely they are to differ to agencies' interpretations, the party of the judge (or at least the president who appointed them) was crosstabulated in Table 7. The table shows, there is a difference between Democratic and Republican judges when allowing step one. Democratic judges are much more likely to allow step one by a margin of 18 percentage points.

**Table 8<sup>11</sup>:  
Party of President When Rule was Adopted and Allowance of Step 1**

	Party of President when Rule Adopted	
	Republican	Democrat
<b>% Step 1 allowed by Republican Judges</b>	62%	67%
<b>% Step 1 allowed by Democratic Judges</b>	71 %	44%

Table 8 tests H<sub>5</sub> and H<sub>6</sub> and determines whether a judge is more likely to uphold a rule when they agree with the party of the president when the rule was adopted. Republicans tend to allow step one more often when it means upholding a conservative decisions, whereas Democratic judges tend to uphold conservative administration rules more often than liberal ones. These findings disprove both hypothesis five and hypothesis six. Neither conservative nor liberal judges allow step one significantly more often when it means upholding a similar ideology.

### **Conclusion**

This study set out to prove which model, the contextual or the political, of *Chevron* was the most applicable while simultaneously testing whether the political orientation of a judge could be determined when it comes to judicial review. This study was important because the question of whether how a judge is making his decisions is one that is of great interest to those that study the law and courts. Finding whether a

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<sup>11</sup> For the results in this table two separate chi-squares were run. The first reflects the distribution for republican judges only of allowances rate cross-tabulated with the party of the president when the rule was adopted. For this table chi-square=.025 and p= .873. The second was for democratic judges only and the chi-square equals 2.90 and p=.09



judge applies his orientation rather than facts and the law is a question that should be answered in order to keep our legal system in check.

As Kerr (1998) found, the political model does seem to offer the most explanation when attempting to explain how a judge makes their decisions, but this does not seem to be the case in this instance. As Table 3 shows the older interpretations challenged before the Ninth Circuit's district courts were not upheld at a higher rate. This is relevant because it gives evidence that the contextual model is not reliable as a model for *Chevron*, in this case. At the same time however, there was no significance found in the tables that test the political model either. While there are instances of Republican judges showing a slight favoritism towards conservative outcomes it does not prove that the political model is superior in this case. Kerr's models were not the only ones to show a lack of significance in this study however. The behavioral models (attitudinal, strategic new institutionalism, etc.) were also disproved in this instance, which is surprising. Perhaps in the future the idea of role theory should be included in the study as well to gain a more complete perspective and to further the study conducted here.

In this case, the findings were the exact opposite of what I expected to find. At present, what the tests conducted do indicate is that the alternate explanation, that the *Chevron* precedent is being used, as it should be, is in fact the case. Judges are not using it to make policy but instead are using this application only when they deem it necessary to further the rule of law. Therefore, the argument that this precedent is merely a revolution on paper does not seem to be a proper concern. Judges are applying *Chevron* as it was meant to be, which is when an agency has or has been accused of overstepping the administrative bounds set forth by Congress.

At the same time the concern that judicial oversight might be curbed does not seem plausible either. Judicial review is not threatened by the application of *Chevron* rather it is strengthened by it. Because, when used correctly, the doctrine allows the judiciary to review agency actions and determine whether they acted within their bounds or arbitrarily and capriciously and as this study shows, *Chevron* is used correctly, in the Ninth Circuit at least.

Further study is needed before the argument that judges are political players can be completely denied however, at the time the findings show that they are not. Future research should look at the weaknesses of this study to help make the information presented here more useful. In particular, an expansion of the number of years, cases and inter-circuit variation studied in order to have a more accurate picture of the judiciary as a whole would be the best place to start. After all, how one district operates cannot be applied to the whole of the United States. For now however, one can hold onto the belief that justice and the law are still pure from the stain of the political game.

## **Appendix A: Comprehensive List of Cases**

Ariz. Cattle Growers' Ass'n v. Kempthorne,  
-534 F. Supp. 2d 1013, 2008 U.S. Dist. LEXIS 12783

United States v. Terwilliger  
-2008 U.S. Dist. LEXIS 375

Susanville Indian Rancheria v. Leavitt  
-2008 U.S. Dist. LEXIS 365

Harding v. Smith  
-2008 U.S. Dist. LEXIS 44237

NRDC v. Winter  
-527 F. Supp. 2d 1216, 2008 U.S. Dist. LEXIS 8110

Bautista-Perez v. Mukasey  
-2008 U.S. Dist. LEXIS 11358

Rivera v. Clark  
-2008 U.S. Dist. LEXIS 12191

Wilderness Watch v. U.S. Fish and Wildlife Serv.  
-2008 U.S. Dist. LEXIS 70548

Wilderness Watch v. U.S. Fish and Wildlife Serv.  
-2008 U.S. Dist. LEXIS 70548

Felix v. United States  
-2008 U.S. Dist. LEXIS 79949

Chacon v. Smith  
-2008 U.S. Dist. LEXIS 1261

Saikaly v. Smith  
-2008 U.S. Dist. LEXIS 117628

Perez-Olano v. Gonzalez  
-248 F.R.D. 248, 2008 U.S. Dist. LEXIS 85675

Perez-Olano v. Gonzalez  
-248 F.R.D. 248, 2008 U.S. Dist. LEXIS 85675

Sharp Healthcare v. Leavitt  
-2008 U.S. Dist. LEXIS 28623

Sharp Healthcare v. Leavitt  
-2008 U.S. Dist. LEXIS 28623

County of L.A. v. Leavitt  
-2008 U.S. Dist. LEXIS 111627

Lang v. Chertoff  
-2008 U.S. Dist. Lexis 83565

Kingsberry v. Chicago Title Ins. Co.  
-586 F. Supp. 2d 1242, 2008 U.S. Dist. LEXIS 96606

Rubio v. Capital One Bank, (USA) N.A.  
-572 F. Supp. 2d 1157, 2008 U.S. Dist. LEXIS 89485

Rutkowski v. Reilly  
-622 F. Supp. 2d 1032, 2008 U.S. Dist. LEXIS 62738

Hawaii v. USDE  
-2008 U.S. Dist. LEXIS 92305

Fisherman's Finest, Inc. v. Gutierrez  
-2008 U.S. Dist. LEXIS 92936

Best v. Pasha Haw. Transp. Lines, L.L.C.  
-2009 U.S. Dist. LEXIS 17790

Palmer v. Sprint Nextel Corporation  
-674 F. Supp. 2d 1224; 2009 U.S. Dist. LEXIS 114111

Jones v. GMC  
-640 F. Supp. 2d 1124, 2009 U.S. Dist. LEXIS 69356

United States v. O'Donnell  
-2009 U.S. Dist. LEXIS 125596

Overstreet v. W. Prof'l Hockey League, Inc.  
-656 F. Supp. 2d 1114, 2009 U.S. Dist. LEXIS 81276

Zhang v. Napolitano  
-663 F. Supp. 2d 913; 2009 U.S. Dist. LEXIS 101194

Alimoradi v. U.S. Citizenship & Immigration Servs.  
-2009 U.S. Dist. LEXIS 126248

Teresita G. Costelo v. Michael Chertoff  
-2009 U.S. Dist. LEXIS 112960

Singh v. Clinton  
-2009 U.S. Dist. LEXIS 19198

G. Y. Hawaii  
-2009 U.S. Dist. LEXIS 39851

Phoenix Mem. Hosp. v. Leavitt  
-2009 U.S. Dist. LEXIS 126187

Bourgeois v. Astrue  
-2009 U.S. Dist. LEXIS 113464

Gaeta v. Perrigo Pharms. Co.  
-562 F. Supp. 2d 1091, 2008 U.S. Dist. LEXIS 68269

L.A. Haven Hospice, Inc. v. Leavitt  
-2009 U.S. Dist. LEXIS 125308

Cabaccang v. United States Citizenship & Immigration Servs.  
-2009 U.S. Dist. LEXIS 124483

First Nations Funding, Inc. v. United States Citizenship & Immigration Servs.  
-2008 U.S. Dist. LEXIS 72135

Quan v. Fed. Bureau of Prisons  
-2008 U.S. Dist. LEXIS 40587

In re Wash. Mut. Overdraft Prot. Litig.  
-539 F. Supp. 2d 1136, 2008 U.S. Dist. LEXIS 21504

Renee v. Spellings  
-2008 U.S. Dist. LEXIS 49369

Valladon v. City of Oakland  
-2009 U.S. Dist. LEXIS 61750

Friedman v. 24 Hour Fitness USA, Inc.  
-2009 U.S. Dist. LEXIS 88998

Melendrez v. Woodring  
-2008 U.S. Dist. LEXIS 84529

Partida v. American Student Loan Corp.  
-2008 U.S. Dist. LEXIS 4346

Ruiz-Diaz v. United States  
-2008 U.S. Dist. LEXIS 97050

Arctic Sole Seafoods v. Gutierrez  
-622 F. Supp. 2d 1050, 2008 U.S. Dist. LEXIS 40194

Pakootas v. Teck Cominco Metals, Ltd.  
-632 F. Supp. 2d 1029, 2009 U.S. Dist. LEXIS 62587

Ortiz v. Napolitano  
-667 F. Supp. 2d 1108, 2009 U.S. Dist. LEXIS 96643

Leckler v. Cashcall, Inc.  
-554 F. Supp. 2d 1025, 2008 U.S. Dist. LEXIS 42298

Skyson USA, LLC v. United States  
-651 F. Supp. 2d 1202, 2009 U.S. Dist. LEXIS 85644

Greater Yellowstone Coalition, Inc. v. Servheen  
-672 F. Supp. 2d 1105; 2009 U.S. Dist. LEXIS 111139; 39 ELR 20214

Leckler v. Cashcall, Inc.  
-2008 U.S. Dist. LEXIS 97439

Horne v. United States Dep't of Educ.  
-2009 U.S. Dist. LEXIS 119323

Ctr. for Biological Diversity v. Hemphorne  
-2008 U.S. Dist. LEXIS 109152

McGee v. Thomas  
-2009 U.S. Dist. LEXIS 62617

United States v. Abregana  
-574 F. Supp. 2d 1123, 2008 U.S. Dist. LEXIS 64606

Dugong v. Gates  
-543 F. Supp. 2d 1082, 2008 U.S. Dist. LEXIS 5234

NRDC v. Kempthorne  
-539 F. Supp. 2d 1155, 2008 U.S. Dist. LEXIS 8494

Ruiz-Diaz v. United States  
-2009 U.S. Dist. LEXIS 23814

Cal. Forstry Ass'n v. Bosworth  
-2008 U.S. Dist. LEXIS 77079

Fort Independence Indian Community v. State of California  
-679 F. Supp. 2d 1159, 2009 U.S. Dist. LEXIS 119692

United States v. Mohalla  
-545 F. Supp. 2d 1035, 2008 U.S. Dist. LEXIS 79834

Ortiz v. Napolitano  
-667 F. Supp. 2d 1108, 2009 U.S. Dist. LEXIS 96642

Borgelt v. Bureau of Alcohol, Tobacco & Firearms  
-2009 U.S. Dist. LEXIS 89281

Friends of the Columbia Gorge, Inc. v. Schafer  
-624 F. Supp. 2d 1253, 2008 U.S. Dist. LEXIS 95799

Friends of the Columbia Gorge, Inc. v. Schafer  
-624 F. Supp. 2d 1253, 2008 U.S. Dist. LEXIS 95799

Debry v. Dep't of Homeland Sec.  
-688 F. Supp. 2d 1103, 2009 U.S. Dist. LEXIS 125787

Esqueda v. Wrigley  
-2008 U.S. Dist. LEXIS 5599

Villarreal v. Wrigley  
-2008 U.S. Dist. LEXIS 14836

Flores v. Wrigley  
-2008 U.S. Dist. LEXIS 14755

Robbins v. Smith  
-2008 U.S. Dist. LEXIS 14343

Cumbie v. Woody Woo, Inc.  
-2008 U.S. Dist. LEXIS 56608

California for Humane Farms v. Schafer  
-2008 U.S. Dist. LEXIS 74861

Easterday Ranches v. United States Dep't of Agric.  
-2008 U.S. Dist. LEXIS 108816

Humane Soc'y of the United States v. Gutierrez  
-625 F. Supp. 2d 1052, 2008 U.S. Dist. LEXIS 96622

Colmenero v. Wrigley  
-2008 U.S. Dist. LEXIS 8469

Crampton v. Thomas  
-2009 U.S. Dist. LEXIS 63150

Comito v. Fed. Bureau of Prisons  
-2008 U.S. Dist. LEXIS 25486

Jones v. Rose  
-2008 U.S. Dist. LEXIS 15352, 67 Env't Rep. Cas. (BNA) 1444

Levine v. Conner  
-540 F. Supp. 2d 1113, 2008 U.S. Dist. LEXIS 15291

Tanner v. Deboo  
-2008 U.S. Dist. LEXIS 15523

Alimoradi v. United States Citizenship & Immigration Services  
-2008 U.S. Dist. LEXIS 86820

Medrano-Sanchez v. Smith  
-2008 U.S. Dist. LEXIS 42969

Northwest Envtl. Def. Ctr. v. Grabhorn, Inc  
-2009 U.S. Dist. LEXIS 101359

City of Ashland v. Schaefer  
-2008 U.S. Dist. LEXIS 58242

Comm. for Immigrant Rights v. County of Sonoma  
-644 F. Supp. 2d 1177, 2009 U.S. Dist. LEXIS 66485

Ruiz-Diaz v. United States  
-2008 U.S. Dist. LEXIS 91967



## Appendix B: Codebook

Case\_Name

Case\_Citation

Date\_Decided  
dd/mm/yy

Judge

Magistrate\_Judge

Date\_of\_Confirmation  
dd/mm/yy

Appointing\_President  
1=Johnson 5=Reagan  
2=Nixon 6=Bush Sr.  
3=Ford 7=Clinton  
4=Carter 8=Bush Jr.

Party\_of\_the\_Appointing\_President  
1=Republican  
0=Democrat

Type\_of\_Challenge  
1=entitlement benefits 6=economic matter  
2=immigration 7=states against federal regulation  
3=environmental 8=penal  
-by liberal public interest group  
4=employment 9=livestock  
5=Medicare/Medicaid 98=unclear

Chevron\_Applied  
1=Yes  
0=No

Step\_1\_Allowed  
1=judge finds Congress did not speak clearly  
0=judge finds Congress did speak clearly

Step\_2\_Allowed  
1=judge finds Congress did not speak clearly and agency was reasonable in its application

0=judge finds Congress did not speak clearly and agency was unreasonable in its interpretation

Rule\_Cited

Date\_Rule\_Adopted  
dd/mm/yyyy

Conservative\_Rule  
1=if upholding rule leads to a conservative outcome  
0=if upholding rule leads to a liberal outcome

Text\_of\_Outcome

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