



Administrative Law at the Supreme Court

Lessons from Last Term and Issues to Watch in the 2026 Term

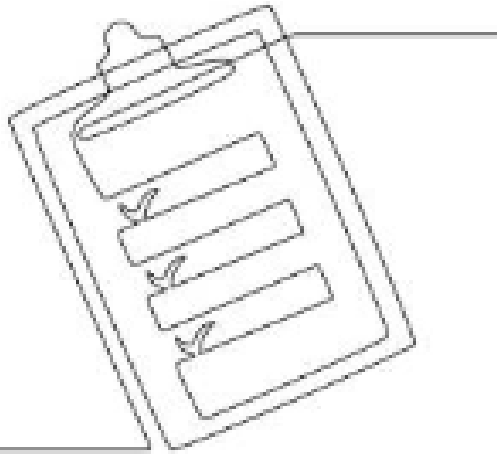


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VENABLE LLP

Agenda



1. Administrative law at the Court, by the numbers
2. Lessons from last term
3. Issues to watch in the 2026 Term
4. What it means for regulated parties

The Supreme Court by the Numbers



Executive Power Tested

Executive power drove some of the term's biggest decisions.
Humphrey's Executor overruled; IEEPA tariffs struck down.



A More Divided Court

44% of the decisions were unanimous.
About 23% of the cases were split 6-3 along ideological lines.
Up from the 11% average for the last several terms.



Agencies Are Losing Ground in the Lower Courts

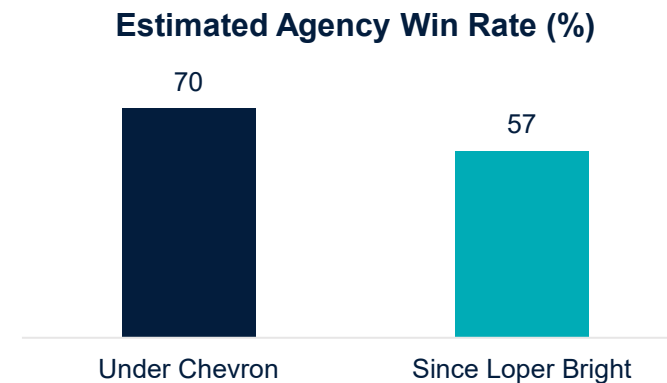
Studies show agencies now prevail in about 57% of deference cases.
Down from roughly 70% under *Chevron*.

Administrative Law by the Numbers

Chevron is overruled.

Courts now determine the single best reading of the statute — no deference to the agency.

- Agencies still win most challenges, but by a narrower margin.
- Courts cited *Loper Bright* more than 400 times in its first six months.
- The shift has been evolutionary, not revolutionary.



Administrative Law at the Court



Six cases, five recurring questions

- Who decides — a court, a jury, or an agency?
- How much power did Congress actually delegate?
- Who controls the agencies, and who may remove their leaders?
- When is agency action final enough to challenge?
- How much gets settled on the emergency docket?

Lessons from Last Term

Merits Docket: Key Decisions

Presidential Tariff Authority

Learning Resources, Inc. v. Trump (Feb. 20, 2026)

- President Trump invoked the International Emergency Economic Powers Act (IEEPA) to impose tariffs on imports from Canada, Mexico, and China, and later on nearly all U.S. trading partners.
- IEEPA lets the president, after declaring a national emergency, “regulate . . . importation.”
 - The statute never mentions tariffs, duties, or taxes.
- Importers and twelve states sued. The Court of International Trade and the D.C. District Court both held the tariffs unlawful; the federal circuit affirmed *en banc*.
- The Court granted certiorari on an expedited basis and heard argument November 5, 2025.

Why It Mattered

- Potential refunds estimated up to \$175 billion turned on a single question of statutory authority.

Merits Docket: Key Decisions (cont.)

Presidential Tariff Authority

Learning Resources, Inc. v. Trump — The Decision

- Held (Chief Justice Roberts, 6-3): IEEPA does not authorize the president to impose tariffs.
- Six justices joined the core statutory analysis:
 - Tariffs are a branch of the taxing power, which Article I commits to Congress.
 - The government could point to no statute in which “regulate” authorizes taxation.
 - In 50 years, no president had read IEEPA to permit tariffs.
- Only three justices — Roberts, Gorsuch, and Barrett — joined the major questions analysis.
 - No emergency exception and no foreign-affairs exception to the clear-authorization requirement.
- Justice Kagan, joined by Sotomayor and Jackson, concurred: ordinary tools of interpretation were enough.
- Justice Kavanaugh dissented, joined by Thomas and Alito.

Merits Docket: Key Decisions (cont.)

Presidential Tariff Authority

Learning Resources, Inc. v. Trump — What It Means

- The major questions doctrine survived, but only three justices would apply it as a free-standing clear-statement rule.
 - Plead both the major questions argument and the ordinary textual one.
- Both carve-outs the government proposed were rejected.
 - Emergency statutes and foreign-affairs statutes get no special interpretive pass.
- The Court resolved authority but left remedy alone; the Court of International Trade has since indicated refunds are owed even to importers who never sued.
- DOJ has appealed to the Federal Circuit on the question of universal relief for non-plaintiffs.
- Tariff policy shifts back toward statutes that actually name duties — Sections 232, 301, and 122.

Takeaway

- Lower courts now have a roadmap for testing assertions of executive and agency power well beyond trade.

Merits Docket: Key Decisions (cont.)

Removal Protections for “Independent” Agencies

Trump v. Slaughter

- For more than a century, Congress has been creating “independent” agencies like the Federal Trade Commission, the Securities and Exchange Commission, and the Surface Transportation Board.
- These agencies are generally run by multi-member boards or commissions, appointed by the president for set terms, and removable only for cause.
- The Supreme Court had endorsed this structure as constitutional in *Humphrey’s Executor* (1935), though it had reached a somewhat different result in *Myers v. United States* nine years earlier.
- President Trump tested the continued vitality of *Humphrey’s Executor* by firing — without cause — several members of “independent” agencies, including the FTC.
- One of the fired FTC members sued to challenge her dismissal, squarely raising the *Humphrey’s Executor* question.

Merits Docket: Key Decisions (cont.)

Removal Protections for “Independent” Agencies

Trump v. Slaughter — Reasoning and Implications

- Unitary-executive theory triumphs.
 - Removal as an original, fundamental aspect of presidential power (Vesting Clause, Decision of 1789).
 - All executive officers accountable to the president, the president accountable to the people.
 - *Humphrey’s Executor* rested on the idea that the FTC was quasi-legislative and quasi-judicial, an idea that no one really defends anymore.
- “Greatest increase in Presidential power in the last 100 years.”
 - Not every board or commission member has been fired, but ...
 - Fewer checks on presidential authority; “expert” agencies more likely to be influenced by the president’s agenda.
 - High potential for chaos when a new president takes office.
 - What can Congress (or the courts) do?

Merits Docket: Key Decisions (cont.)

Seventh Amendment Jury Trial Right

FCC v. AT&T, Inc. (June 4, 2026)

- The FCC assessed millions of dollars of forfeiture penalties against two communications companies.
 - The companies paid the penalties and filed suit, alleging that the proceedings violated their Seventh Amendment jury trial right in light of *SEC v. Jarkesy*.
- Federal courts of appeals reached split decisions on whether the forfeiture penalties violated the Seventh Amendment.
 - To enforce the penalty, the government would have to bring an enforcement action in federal court, where the issues would be heard de novo and a jury trial is available.
- Held (Chief Justice Roberts, 8-1) that the FCC's initial adjudication of the penalty did not violate the Seventh Amendment, because the penalty could be enforced only in a federal court action heard de novo by a jury.

Takeaway

- Limits the reach of *Jarkesy* but may reduce the effectiveness of agency enforcement proceedings.

Issues to Watch in the 2026 Term

Up Next on the Docket

Agency Adjudication After *Jarkesy*

Department of Labor v. Sun Valley Orchards, LLC (argument Nov. 10, 2026)

- Sun Valley Orchards, a family farm in southern New Jersey, hired seasonal workers through the H-2A agricultural visa program.
- Participation requires filing a certified “job order” setting terms of employment — housing, meals, transportation, and guaranteed hours.
- After investigating the 2015 growing season, the Department of Labor (DOL) alleged the farm breached those terms and assessed more than \$550,000 in back wages and civil penalties.
 - The case was tried entirely inside the agency — a DOL administrative law judge, then the Department’s Administrative Review Board.
- A unanimous Third Circuit panel reversed, holding that *Jarkesy* entitled Sun Valley to an Article III court.
- Certiorari granted April 27, 2026, on two questions: the Article III question, and whether 8 U.S.C. § 1188(g)(2) authorizes in-house adjudication at all.

Up Next on the Docket (cont.)

Agency Adjudication After *Jarkesy*

Department of Labor v. Sun Valley Orchards — The Arguments

- DOL argues the H-2A program is a classic public right.
 - Congress created the privilege of importing foreign labor and may condition it on agency enforcement.
 - Immigration is an area of plenary federal control with a long history of non-Article III adjudication.
- Sun Valley argues the claim is private and legal in nature.
 - The job order is a contract, and DOL litigated the case as a breach-of-contract action.
 - Civil penalties are quintessentially legal remedies under *Jarkesy* and *Tull*.
 - The immigration exception reaches admission and exclusion, not workplace conditions.

Takeaway

- A ruling for Sun Valley would put in-house monetary enforcement at risk across the government.

Up Next on the Docket (cont.)

Final Agency Action Under the APA

Department of the Air Force v. Prutehi Guahan (argument Oct. 7, 2026)

- The U.S. Air Force operates a base on Guam that has been used for unexploded ordnance disposal for over 40 years.
- The Air Force has held a RCRA permit for this disposal since 1982; it most recently sought renewal from the Guam EPA in 2021.
- Plaintiffs sued the Air Force to challenge the permit renewal, arguing that the Air Force should have performed a NEPA review before it submitted the application.
- The Ninth Circuit held that the application was final agency action challengeable under the APA, and that the Air Force should have prepared a NEPA review.
- Both issues are now before the Supreme Court; we'll focus on final agency action.

Up Next on the Docket (cont.)

Final Agency Action Under the APA

Prutehi Guahan & Bennett v. Spear

- *Bennett v. Spear* set the standard for what qualifies as final agency action:
 - “Consummation of agency decisionmaking process.”
 - “Rights or obligations have been determined” or “legal consequences will flow.”
- Plaintiffs frame the application as a final “decision to continue” ordnance disposal.
 - The existing permit was automatically extended while the new application was considered.
- Final agency action has often been characterized as a “pragmatic” test.
 - Is there a difference between a final agency decision and a final agency action?
 - If interim decisions can be challenged, there may be more opportunities for litigation.
- The Air Force emphasizes that it filed its application as an operator, not a regulator.
 - Private permit applicants usually don’t face litigation until the regulator acts.
- What is the point of the final agency action requirement — and is it met here?

Up Next on the Docket (cont.)

Preemption of State Tort Law for Climate-Change Harms

Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County (argument Oct. 5, 2026)

- The City of Boulder, Colorado, brought tort claims against energy companies in Colorado state court.
 - Boulder seeks damages for the role defendants' production, sale, and marketing of fossil fuels has allegedly played in exacerbating climate change and the harms it has caused to Boulder.
- The energy companies argue that the state tort claims are preempted by federal law.
 - Interstate pollution is an inherently federal area where state law cannot govern; state tort law is preempted by constitutional design.
 - They also argue preemption by the Clean Air Act.
- The Colorado Supreme Court rejected that argument, allowing the claims to proceed in the trial court.

Takeaway

- Could decide how far states and localities may go in holding companies liable for climate-change harms, or whether the area belongs to the federal government.
 - May have broader implications for preemption doctrine generally.

Other Cases to Watch on the Merits Docket

Veterans' benefits review

Sentencing Guidelines deference

ERISA pleading standards

Digital privacy

Religious preschool funding

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More grants as the Court fills out the term

Emergency docket disputes returning on the merits

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