No. 22-1071

UNITED STATES COURT OF APPEALS
FOR THE DISCTRICT OF COLUMBIA CIRCUIT

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION,

Petitioner,

v.

KC TRANSPORT, INC. AND
FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION,

Respondents.

On Petition for Review of a Decision of the
Federal Mine Safety and Health Review Commission

BRIEF OF THE MANHATTAN INSTITUTE AND CATO INSTITUTE AS *AMICI CURIAE* SUPPORTING RESPONDENTS

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April 11, 2025

CERTIFICATE OF PARTIES, RULINGS, AND RELATED CASES PURSUANT TO CIRCUIT RULE 28(a)(1)

A. Parties and Amici. As of April 11, 2025, the date on which this brief was filed, *amici curiae* Manhattan Institute and Cato Institute are aware of no other parties, intervenors, or *amici* who have entered an appearance in this court, other than those listed in the respective briefs of the Petitioner and Respondents. Nor are *amici* MI and Cato aware of any parties, intervenors, or *amici* who appeared before the district court other than those listed in those briefs.

B. Ruling Under Review. *Amici curiae* MI and Cato are aware of no rulings under review other than those listed in the respective briefs of the Petitioner and Respondents.

C. Related Cases. *Amici curiae* MI and Cato are aware of no related cases other than those listed in the respective briefs of the Petitioner and Respondents.

April 11, 2025

/s/ *Ilya Shapiro*
Ilya Shapiro
Counsel for *Amici Curiae*

CORPORATE DISCLOSURE STATEMENT

The Manhattan Institute has no parent companies, subsidiaries, or affiliates, and does not issue public shares.

The Cato Institute has no parent companies, subsidiaries, or affiliates, and does not issue public shares.

April 11, 2025 /s/ *Ilya Shapiro*
Ilya Shapiro

STATEMENT REGARDING CONSENT TO FILE AND SEPARATE BRIEFING

Respondents consented to the filing of this brief, while petitioner took no position.[1] Pursuant to Circuit Rule 29(d), *amici* certify that a separate brief is necessary to provide a concise yet thorough explanation of how the Supreme Court's decision in *Loper Bright Enter. v. Raimondo*, 603 U.S. 369 (2024), fundamentally transformed this case.

April 11, 2025 /s/ *Ilya Shapiro*
Ilya Shapiro

[1] Pursuant to Fed. R. App. P. 29, counsel for *amici* states that no party's counsel authored any part of this brief and no person other than *amici* made a monetary contribution to fund its preparation or submission.

GLOSSARY

KC – KC Transport, Inc.

MI – Manhattan Institute for Policy Research

MSHA – Mine Safety and Health Administration

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IDENTITY AND INTEREST OF *AMICI CURIAE*

The Manhattan Institute for Policy Research ("MI") is a nonpartisan public policy research foundation whose mission is to develop and disseminate new ideas that foster greater economic choice and individual responsibility. To that end, MI has historically sponsored scholarship and filed briefs supporting economic freedom and opposing government overreach.

The Cato Institute is a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies promoteS the principles of limited constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, produces the annual *Cato Supreme Court Review*, and files *amicus* briefs.

Amici have a particular interest in defending constitutional protections and have special expertise in judicial, constitutional, and administrative history.

INTRODUCTION AND SUMMARY OF ARGUMENT

Family-run trucking companies face a fraught and competitive work environment even before the intrusion of burdensome governmental regulations. Here, the Mine Safety and Health Administration ("MSHA") applied a rule (30 C.F.R. § 77.404(c)) concerning the operation and maintenance of mining equipment against KC Transport's ("KC") trucks and repair shops. Despite the fact that neither

trucks nor repair shops are mines, an MSHA inspector cited KC for having two of its trucks insufficiently blocked while under repair.

A panel of this Court initially ruled in favor of the Secretary, applying the now-defunct *Chevron* deference and ruling that the statutory language concerning MHSA's jurisdiction was ambiguous. *Sec'y of Labor v. KC Transp., Inc.*, 77 F.4th 1015, 1022 (D.C. Cir. 2023). In his dissent, Judge Walker noted that "the Secretary's shifting and self-serving interpretations of the Mine Act show just how inappropriate remand is here. When KC Transport first contested its citations before the ALJ, the Secretary insisted that he had jurisdiction because 'each truck independently constituted a "'mine'" under the Act . . . . After the ALJ rejected that argument—in his view, calling trucks 'rolling mines' was 'absurd'—the Secretary tweaked his position, now contending that KC's truck-repair facility is a 'mine.'" *Id.* at 1040 (Walker, J., dissenting).

The Supreme Court granted *certiorari*, vacated, and remanded the case for reconsideration in the light of its decision to overturn *Chevron*. *Loper Bright Enter. v. Raimondo*, 603 U.S. 369 (2024). Now back before this Court, KC seeks a rejection of the government's "absurd," thrice-rejected assertion that truck repair facilities constitute "mines." *See KC Transp., Inc.,* 77 F.4th at 1040 (Walker J., dissenting).

The government argues that its interpretation of "mine" is "permissible" under the language of the statute and should therefore be adopted by this Court. However,

the Supreme Court's decision in *Loper Bright* declares that "permissible" constructions of statutes proffered by administrative agencies no longer bear the color of law. "It therefore makes no sense to speak of a 'permissible' interpretation that is not the one the court, after applying all relevant interpretive tools, concludes is best." *Loper Bright*, 603 US at 373.

Instead, the new *Loper Bright* standard directs courts to "use every tool at their disposal to determine the best reading of the statute and resolve the ambiguity" rather than favoring any particular "permissible" readings offered by the parties. *Loper Bright*, 603 U.S. at 400. While this task certainly includes reviewing the agency's "body of experience and informed judgment," *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944), an agency's interpretation can in no way "bind [the] court." *Loper Bright*, 603 U.S. at 374. Therefore, what the Secretary urges this Court to do here is to ignore *Loper Bright*'s holding and continue to apply the now-defunct *Chevron* deference.

This Court should decline that invitation and instead apply the standard articulated in *Loper Bright*, construing the statute according to "'the reading the court would have reached' if no agency were involved." *Id.* at 373. After all, issues of statutory interpretation and construction "fall more naturally into a judge's bailiwick" than an agency's because courts, not administrative agencies, have a

"special competenc[y]" to resolve statutory ambiguities. *Id*. at 400-01 (citing *Kisor v. Wilkie*, 588 U.S. 558, 578 (2019)).

The Secretary's "absurd" interpretation is due no special respect. *Loper Bright* requires "due respect" only when an executive-branch interpretation is "warranted." *Loper Bright*, 603 U.S. at 386. This standard requires more than mere permissibility. An executive-branch interpretation is warranted only when such an interpretation "was issued roughly contemporaneously with enactment of the statute and remained consistent over time." *Id*. That is not the case here, as the Secretary's oft-changing interpretation came about only in the course of these proceedings.

ARGUMENT

I. ISSUES OF STATUTORY INTERPRETATION ARE IN THE "BAILIWICK" OF COURTS, NOT ADMINISTRATIVE AGENCIES

Under *Chevron*, courts were told "to treat statutory silence or ambiguity as an implicit delegation of authority from Congress to the agency." Thomas Griffith and Haley Proctor*, Deference, Delegation, and Divination: Justice Breyer and the Future of the Major Questions Doctrine*, Yale L. J. Forum 693, 695 (Nov. 21, 2022) (citing *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 843-44 (1984)). Such a high level of deference from the courts to the decisions rendered by administrative agencies may have been based on good intentions. *See, e.g.,* Thomas W. Merrill, *Step Zero After* City of Arlington, 83 Fordham L. Rev. 753, 753 (2014) ("*Chevron's* appeal for the courts rests in significant part on its ease of application as a decisional

device"). The Supreme Court's decision in *Loper Bright*, however, recognized the errors of encouraging the administrative state's invasion into the legislative and judicial branches in violation of the separation of powers set forth in the Constitution. Such a course correction is no doubt due, in part, to the "haphazard results" produced by the courts' interpretation of *Chevron* deference. Maxwell L. Stearns, Todd J. Zywicki & Thomas Miceli, *Law and Economics: Private and Public* 767, 774 (2018) (quoting *Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Serv.*, 545 U.S. 967, 983 (2005)). *See also*, *e.g.*, *MCI Telecomm. Corp. v. AT&T*, 512 U.S. 218 (1994) (holding that statutory authority to modify did not extend to setting aside tariffs entirely); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000) (finding FDA regulations invalid because Congress had not intended to give the agency the power to regulate tobacco); *Massachusetts v. EPA*, 549 U.S. 497 (2007) (holding that the Clean Air Act gave the EPA the power to regulate tailpipe emissions); *King v. Burwell*, 576 U.S. 473 (2015) (applying the major questions doctrine instead of Chevron deference). See also Aaron-Andrew P. Bruhl, *Hierarchically Variable Deference to Agency Interpretations*, 89 Notre Dame L. Rev. 727 (2014) (postulating that the Court's unique position and competencies necessitate that it gives agencies less deference than do lower courts).

In addition to such inconsistencies, perhaps the most troubling aspect of the *Chevron*-deference regime was its encouragement of agency overreach. *Chevron*

and its progeny shifted "interpretive authority from courts to agencies—it was a 'counter *Marbury* for the administrative state.'" Nathan Richardson, *Antideference: COVID, Climate, and the Rise of the Major Questions Canon*, 108 Va. L. Rev. Online 174, 176 (2022) (quoting Cass R. Sunstein*, Law and Administration after Chevron*, 90 Colum. L. Rev. 2071, 2075 (1990)). *See also* Nathan Richardson, *Deference Is Dead (Long Live* Chevron*)*, 73 Rutgers U. L. Rev. 441 (2021). The Supreme Court recognized such a shift in interpretive authority as a stark departure from precedent. *See Loper Bright*, 603 U.S. at 387-88 (quoting *United States v. Am. Trucking Assns., Inc.*, 310 U.S. 534, 544 (1940) ("The interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function.")).

This Court should be cognizant of the errors of the *Chevron* era and how the Supreme Court looked to correct them in *Loper Bright*. Accordingly, the Court should avoid repackaging *Chevron* by deferring to the Secretary's "absurd" interpretation in lieu of conducting its own analysis.

II. THE SECRETARY'S "PERMISSIBLE" DEFINITION IS DUE NO SPECIAL RESPECT

Loper Bright certainly does not command courts to ignore administrative interpretations and opinions, but it significantly limits the weight that these interpretations and opinions should carry when courts analyze questions of statutory interpretation and construction. Agency interpretations are only entitled to "great

weight" when they are issued contemporaneously with the enactment of the statute. *Loper Bright*, 603 U.S. at 388. Nothing in the record here demonstrates that the Secretary's argument is anything but a novel interpretation that arose in the course of these proceedings, with no ties to the 1977 enactment of the Mine Act. Because of its novelty, the weight of the Secretary's interpretation depends on the "thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade." *Id*. (quoting *Skidmore*, 323 U.S. at 140).

The "absurdity" of the Secretary's interpretation demonstrates that this Court should give it no weight. Throughout this litigation the Secretary has adopted "shifting and self-serving interpretations," *KC Transp.*, 77 F.4th at 1040 (Walker, J., dissenting), demonstrating a startling lack of consistency. Initially, the Secretary argued that "each truck independently constituted a 'mine,'" but after that argument proved unsuccessful, he offered a new interpretation that the truck repair facilities, rather than the trucks themselves, constituted a "mine." *Id*. If the government cannot be confident in how the term "mine" applies to KC so as to be able to adopt a consistent interpretation, then its interpretation should merit no deference from this Court. Additionally, the Secretary's interpretation is "absurd," as neither the location of KC's trucks and facilities nor their function would in any way lead one to classify them as "mines."

The Secretary's lack of consistency—and lack of sound foundation for her agency's latest interpretation here—shows that she is due no special respect in the course of this Court's analysis.

CONCLUSION

For the foregoing reasons, the Court should find in favor of Respondents.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) and Federal Rule of Appellate Procedure 29(a)(5) because this brief contains 1,645 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), as determined by the word counting feature of the software (Microsoft Office 365) used to prepare this brief.

This brief complies with the typeface requirements of FRAP 32(a)(5) and the type-style requirements of FRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface, 14-point Times New Roman.

I further certify that this motion is virus-free, as determined by Windows Security—Virus & Threat Protection.

/s/ Ilya Shapiro
Counsel for *Amicus Curiae*

Dated: April 11, 2025

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2025, I electronically filed the above with the Clerk of Court using the CM/ECF system which will send notification of this filing to counsel for all parties.

/s/ Ilya Shapiro
Counsel for *Amicus Curiae*