

Chevron 's Political Domain: W(h)ither Step Three

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[Gus Hurwitz](#)

This Essay takes prior work on Chevron in a new direction, arguing that broad deference doctrines have the largely unrecognized but particularly pernicious effect of increasing the political gridlock and politicization of the legislative process. Untethered from the need to actively govern agencies that have been delegated sufficiently broad authority to keep the basic ship of state afloat, legislators refocus their attention on maintaining power for themselves and their political party. In the thirty or so years since Chevron became the law of the land, our country's governing institutions have grown increasingly politicized: At the risk of overstating this Essay's claim, perhaps Chevron itself—and the related embrace of broad judicial deference to the administrative state of which it is part—is in some measure responsible for our current sorry political state.

This is an undesirable outcome. And, as framed here, it is not only unfortunate, but also problematic on separation of powers grounds. The intuition explored in this Essay is that Chevron dramatically exacerbates Congress's worst tendencies, encouraging Congress to push its constitutional legislative duties to the Executive. Chevron thus effectively allows, and indeed encourages, Congress to abdicate its role as the most politically-accountable branch by deferring politically difficult questions to agencies. This argument is, at core, based in separation of powers concerns. While separation of powers concerns generally focus on preventing one branch of government from encroaching into the realm of the other branches, this Essay offers a twist, arguing that Chevron's demurral to agency interpretations encourages a Congressional abdication of its constitutional responsibilities—and that such deference is therefore an abdication of the Judiciary's constitutional role as a check on the problematic conduct of its sister branches.

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