

**[J-99-2025] [MO: Dougherty, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

LUTHERAN HOME AT KANE AND	: No. 7 MAP 2025
SIEMON'S LAKEVIEW MANOR ESTATE	:
	: Appeal from the Order of the
	: Commonwealth Court at No. 303
v.	: CD 2023 dated June 4, 2024,
	: Affirming the Decision of the
	: Department of Human Services,
DEPARTMENT OF HUMAN SERVICES	: Bureau of Hearings and Appeals
	: at Nos. 090-08-0113, 090-08-
	: 0130, 090-08-0134, 090-08-0157,
APPEAL OF: LUTHERAN HOME AT KANE	: 090-08-0158, 090-08-0159, 090-
AND SIEMON'S LAKEVIEW MANOR	: 08-0164, 090-08-0170, 090-08-
ESTATE, SUSQUEHANNA VALLEY	: 0174, 090-08-0176, 090-08-0186,
NURSING AND REHABILITATION CENTER,	: 090-08-0187, 090-08-0188, 090-
RHEEMS NURSING & REHABILITATION	: 08-0192, 090-08-0193, 090-08-
CENTER, ELLEN MEMORIAL HEALTH	: 0200 and 090-08-0213 dated
CARE CENTER, AND ELIZABETHTOWN	: March 1, 2023.
NURSING AND REHAB CENTER	:
	: ARGUED: November 20, 2025

DISSENTING OPINION

JUSTICE WECHT

DECIDED: October 1, 2026

This case is not about *Chevron* deference,¹ which never bound us and rightly has been entombed by the Supreme Court of the United States.² Nor is it about *Skidmore*

¹ See *Chevron U.S.A., Inc. v. Natural Res. Defense Council, Inc.*, 467 U.S. 837 (1984) (holding that, where “legislative delegation to an agency on a particular question is implicit,” “a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency”).

² See *Loper Bright Enterps. v. Raimondo*, 603 U.S. 369 (2024) (overruling *Chevron*, and holding that courts may not under the Administrative Procedure Act defer to an agency’s interpretation of the law simply because a statute is ambiguous). I have often expressed my skepticism and disagreement with core aspects of *Chevron* deference, as well as with this Court’s tendency to lean on that case and its progeny. See, e.g., *Snyder Bros., Inc. v. Pa. Pub. Util. Comm’n*, 198 A.3d 1056, 1083 (Wecht, J., concurring) (continued...)

deference,³ which again never bound us and is essentially meaningless in any event.⁴ This case is about *Auer* deference,⁵ which also never bound us and now is on life support in the U.S. Supreme Court—“zombified,” in Justice Gorsuch’s parlance.⁶

(Pa. 2018) (“The General Assembly tells us what a law is. When that law is less than clear, we must perform our interpretive duty. In cases involving ambiguous statutory language, the interpretation suggested by an agency charged with administering the statute may be considered, but ‘the meaning of a statute is essentially a question of law for the court.’”); *see also Crown Castle NG East LLC v. Pa. Pub. Util. Comm’n*, 234 A.3d 665, 710 (Pa. 2020) (Wecht, J., concurring) (“I question whether and to what extent this Court should rely upon federal law for purposes of assessing whether, when, and to what extent Pennsylvania courts should defer to Pennsylvania agency interpretations of their Pennsylvania enabling statutes.”); *accord, Harmon v. Unemployment Comp. Bd. of Rev.*, 207 A.3d 292, 310 (Pa. 2019) (Wecht, J., concurring).

³ See *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (“We consider that the rulings, interpretations and opinions of the Administrator under this act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon 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 . . .”).

⁴ *Crown Castle*, 234 A.3d at 692-93 (Wecht, J., concurring) (describing *Skidmore* as “a hopeless muddle” and observing that, “[u]npacked, [its] grand language describes nothing more than courts’ approach to appellate arguments generally, an enterprise that entails no deference at all,” and noting that I could “identify no Pennsylvania or federal case in which I can conclude with confidence that application of *Skidmore* deference *clearly* led to an agency-advocated ruling that the court would have rejected but for its deference” (emphasis in original)). Justice Scalia perhaps said it best when he called *Skidmore* deference “incoherent, both linguistically and practically,” and observed that “[i]f one has been persuaded by another, . . . there is no room for deferral—only for agreement.” *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 24 n.6 (2011) (Scalia, J., dissenting).

⁵ See *Auer v. Robbins*, 519 U.S. 452 (1997) (prescribing judicial deference to agencies’ interpretations of their own regulations).

⁶ See *Kisor v. Wilkie*, 588 U.S. 558, 592 (2019) (Gorsuch, J., concurring) (“[T]he majority proceeds to impose so many new and nebulous qualifications and limitations on *Auer* that THE CHIEF JUSTICE claims to see little practical difference between keeping it on life support in this way and overruling it entirely. So the doctrine emerges maimed and enfeebled—in truth, zombified.” (capitalization in original)).

Should courts “defer” to agency interpretations of their own rules or regulations? No, they should not “defer.” Here’s what courts should do: They should interpret. They should reason. They should adjudicate. As I have previously written, when called upon to decide questions arising from apparently ambiguous agency rules, courts should respond to agency demands for “deference” by saying “Don’t command me. Convince me.”⁷ Of course we are interested, very interested indeed, in what an agency thinks its own rule means. But the matter having been brought to court, the court will now decide. And that decision will not be made by agency fiat or by giving an agency a leg up or tiebreaker leverage. Once a bona fide question earns our discretionary review, issue is joined and the Justices’ attention is focused on a matter of interpretation. It demeans the process, and the Court, to interpose in that deliberation a command for “deference,” which imports a flavor of obedience to superior wisdom. Presumably, if the agency was so superior and so wise, it would have promulgated a rule that was clear and unambiguous, obviating the need for expensive and time-consuming litigation that quarrels over the terms and meaning of that rule.

Today’s Majority has offered a workmanlike and fair-minded survey of the law in this area,⁸ but it ultimately allows agencies to preserve their preferred litigation status,⁹ a class distinction that is not supportable. All parties are invited freely and fully to press their claims before our courts. Those claims rise and fall according to their merits, not according to the identity of the speaker. I can no longer countenance agency demands

⁷ *Crown Castle*, 234 A.3d at 693 (Wecht, J., concurring).

⁸ See Maj. Op. at 16-33.

⁹ See, e.g., *id.* at 43 (asserting that if the text of a regulation is ambiguous, the agency’s interpretation “can be offered for more than persuasive value”); *cf. id.* at 60 (“1 Pa.C.S. § 1921(c)(8) [prescribing consideration of administrative interpretations] weighs heavily in favor of [DHS’s] interpretation”).

for elevated status. They should win or lose according to reason, not rank. With a hat tip to Justice Blackmun, “I no longer shall tinker with the machinery of” deference.¹⁰

In today’s case, the Majority affirms the Commonwealth Court’s decision to give deference to DHS’s interpretation of its own rule. Perhaps DHS was right. Perhaps DHS was wrong. I express no view on that. What I do express a view on is the framework that this Court should use for decision. We should not affirm the lower court here. Given the extent to which the Commonwealth Court relied on administrative deference in this case, we cannot assume that the existing record would suffice to inform the lower court’s application of the test I would prescribe. Accordingly, I would vacate and remand for further proceedings. These might reasonably include fleshing out the record to the extent deemed necessary, consistently with a standard that “defers” to no party, but rather invites all parties to muster their evidence and their advocacy to persuade the court why their view of the challenged rule is correct.¹¹

¹⁰ See *Callin v. Collins*, 510 U.S. 1141, 1145 (1994) (Blackmun, J., dissenting from denial of writ of *certiorari*) (“From this day forward, I no longer shall tinker with the machinery of death.”).

¹¹ The Majority’s selective quotation of the above language is fashioned to suggest that I take for granted that further record development would be required on remand. See Maj. Op. at 60 n.40 (ascribing to me the belief that “additional record development is necessary to resolve this legal issue” (emphasis added)). But it is clear on a fair reading that I merely would not *foreclose* that prospect; I would leave it to the sound judgment of the Commonwealth Court, applying a non-deferential standard. And while Providers may “have had ample opportunity to develop their arguments” in furtherance of their own interpretation, *id.*, what neither they nor we have had is the benefit of a lower court decision applying a deference-free rubric to the question.