



The Clean Water Act in the Supreme Court

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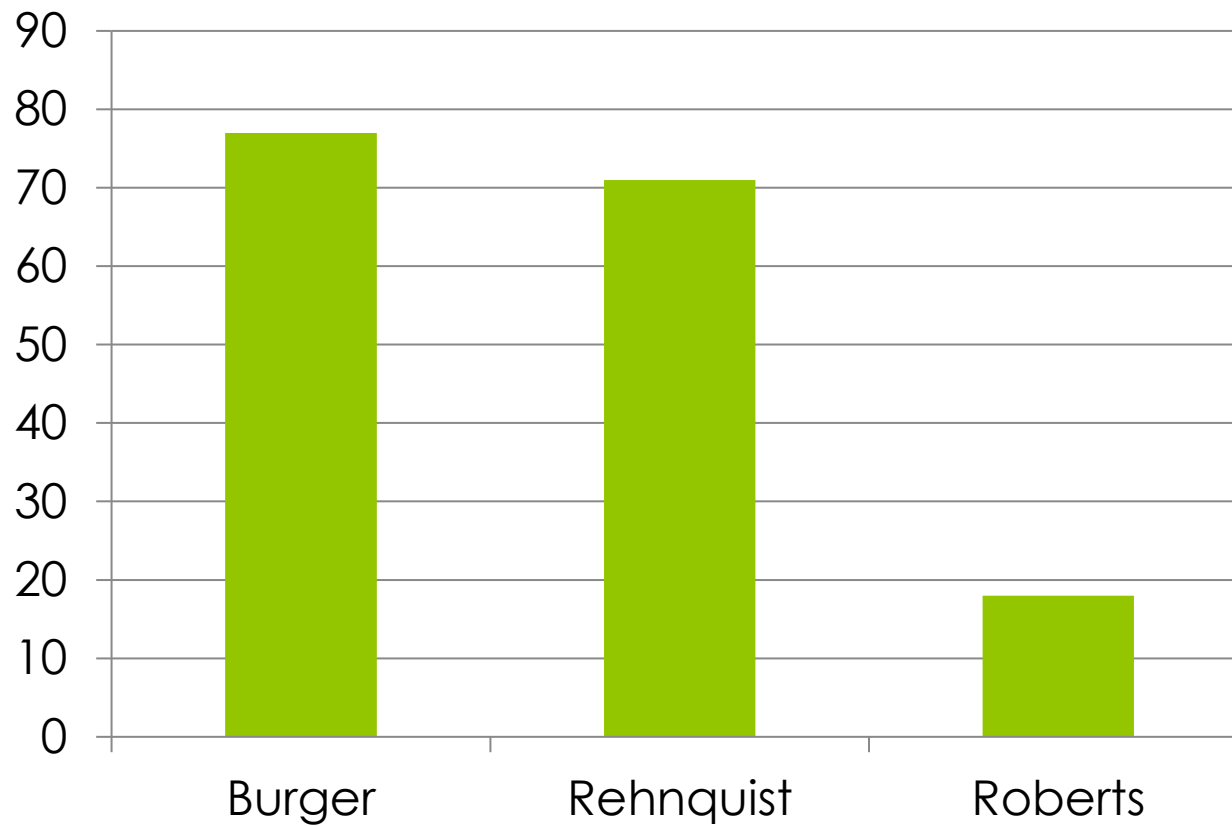
Imagining the Clean Water Act's Next Fifty Years

- Evolution of the Court's Statutory Interpretation Since 1972
- Comparing *Riverside-Bayview Homes* and *Sackett*

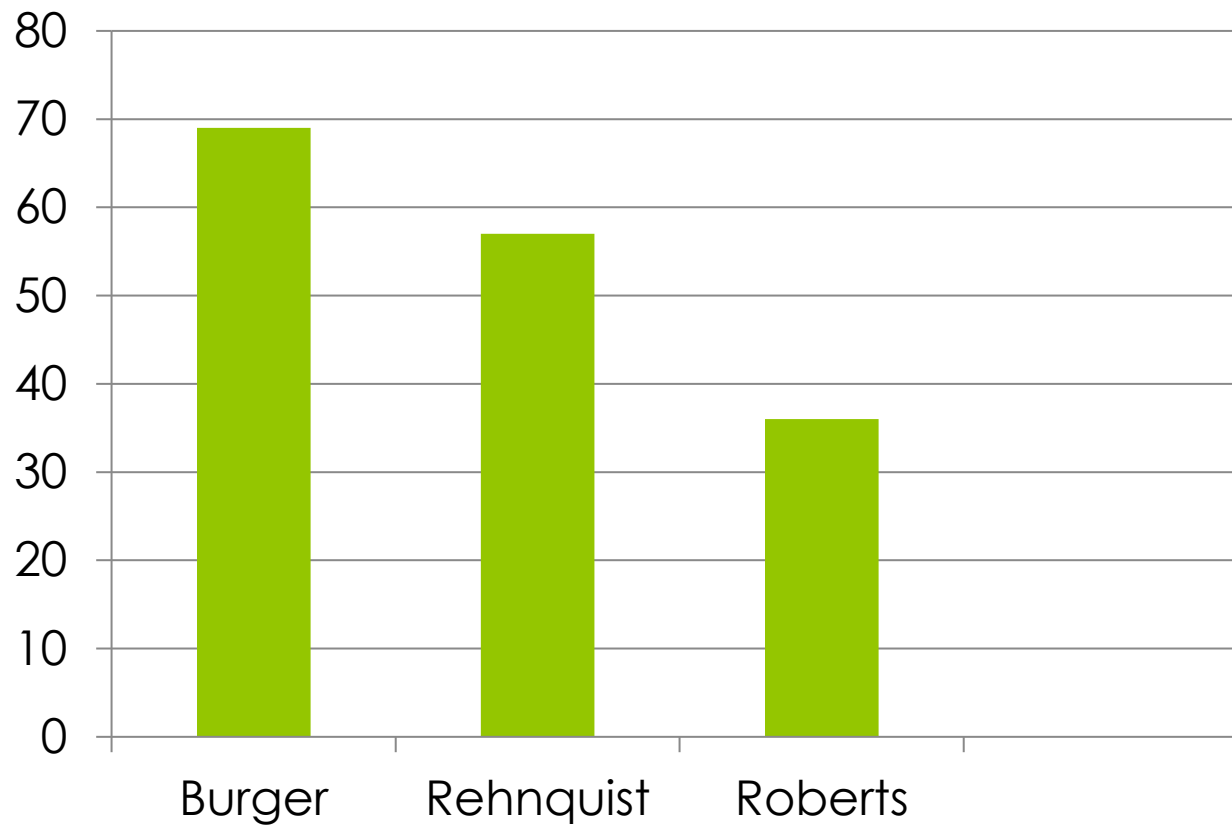
Findings

- Shift from Purposivism to Textualism
- Erosion of Consensus
- The Shift to Textualism and Judicial Activism
- Rise of States' Rights
- Decline in Opinions Favoring the Environment
- Government Success Rate
- Impact of Chevron

Focus on Legislative History



Focus on Purpose



Goals of the Clean Water Act

101(a)

- restore and maintain the chemical, physical, and biological integrity of the Nation's waters

101(b)

- recognize, preserve and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, [and] to plan the development and use ... of land and water resources

Goals of the Clean Water Act

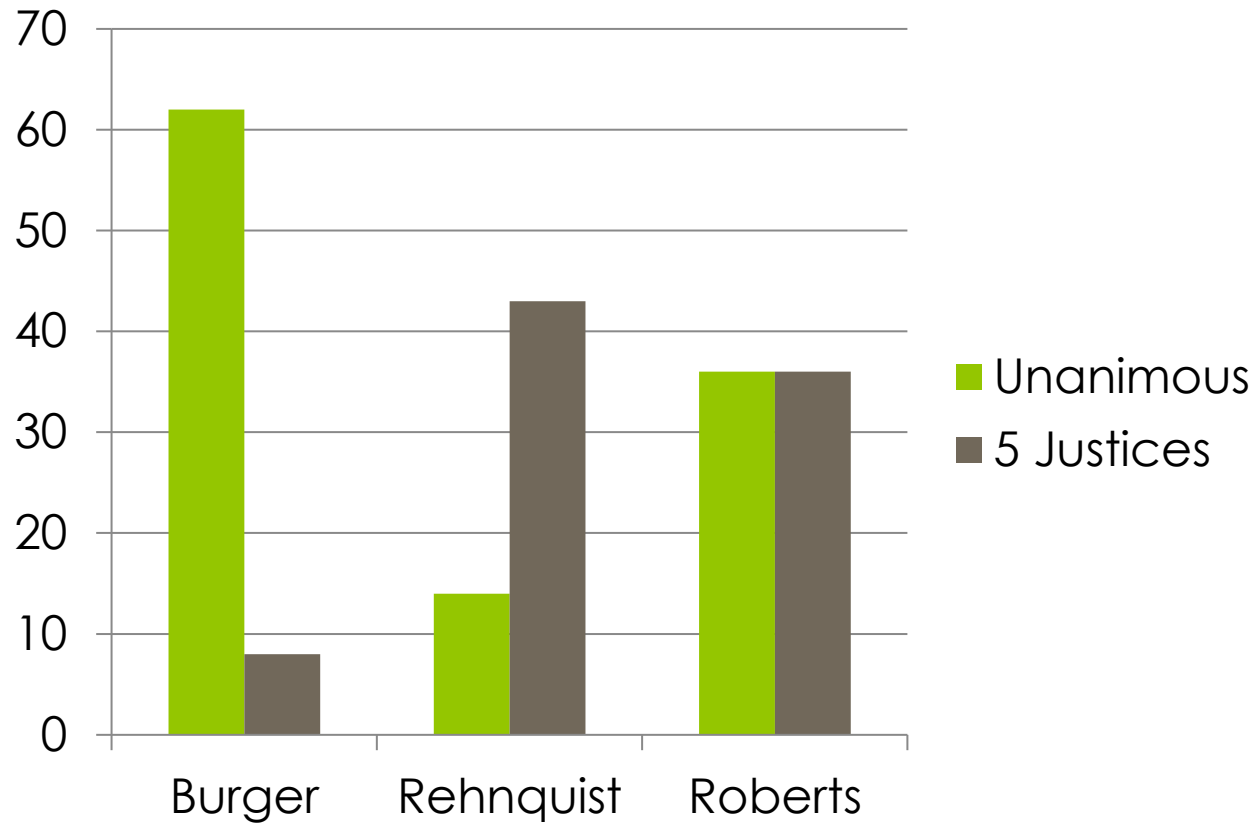
101(a)

- Cited in twice as many cases (13 v 7)

101(b)

- Not cited until 1987
- Cited almost as frequently as 101(a) since the Rehnquist Court

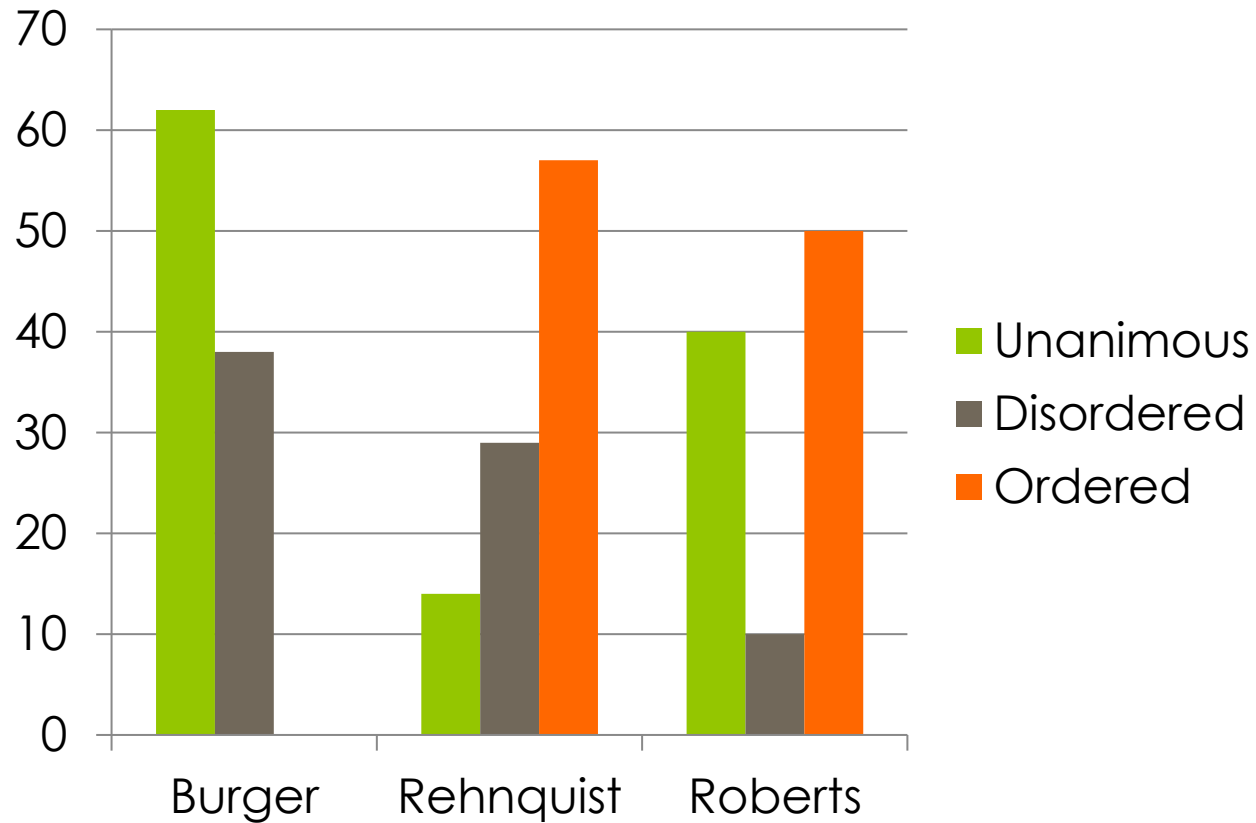
Shift from Consensus



Martin-Quinn Scores

- Thomas (3.05)
- Alito (2.47)
- Barrett (1.35)
- Gorsuch (1.05)
- Kavanaugh (0.81)
- Roberts (0.71)
- Kagan (-1.85)
- Breyer (-2.05)
- Sotomayor (-4.14)

Ideological Ordering

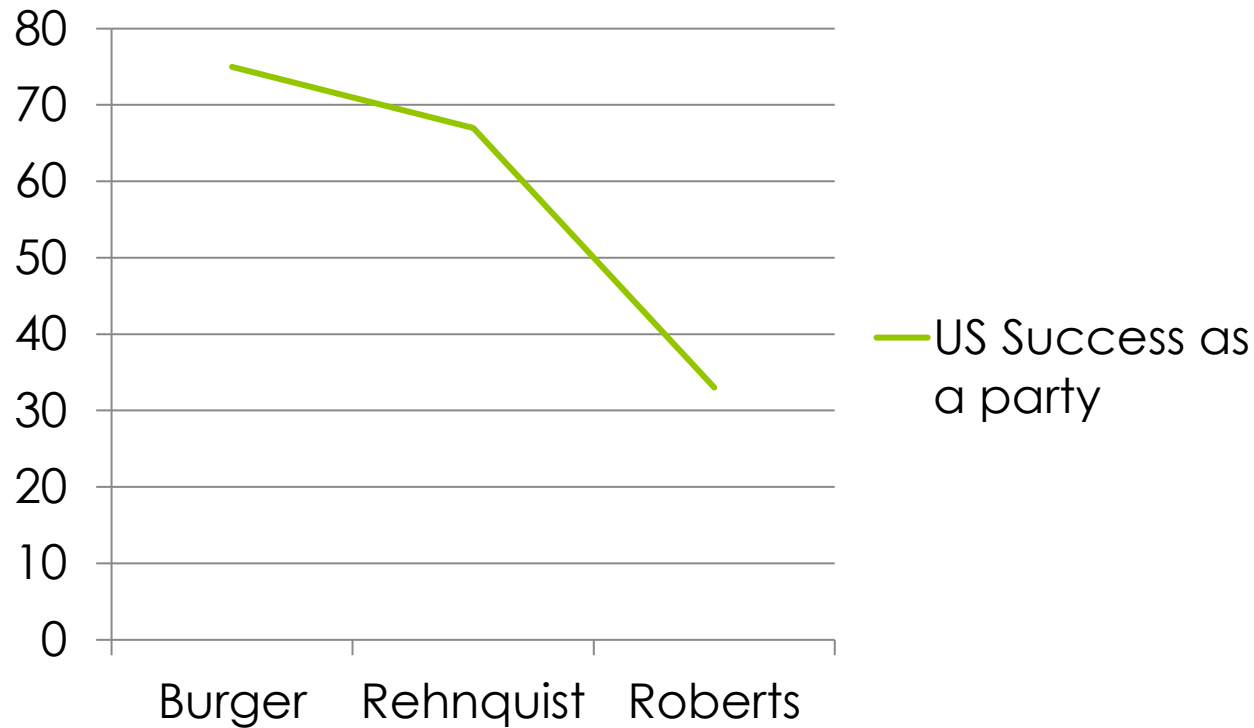


Pro-environmental decisions

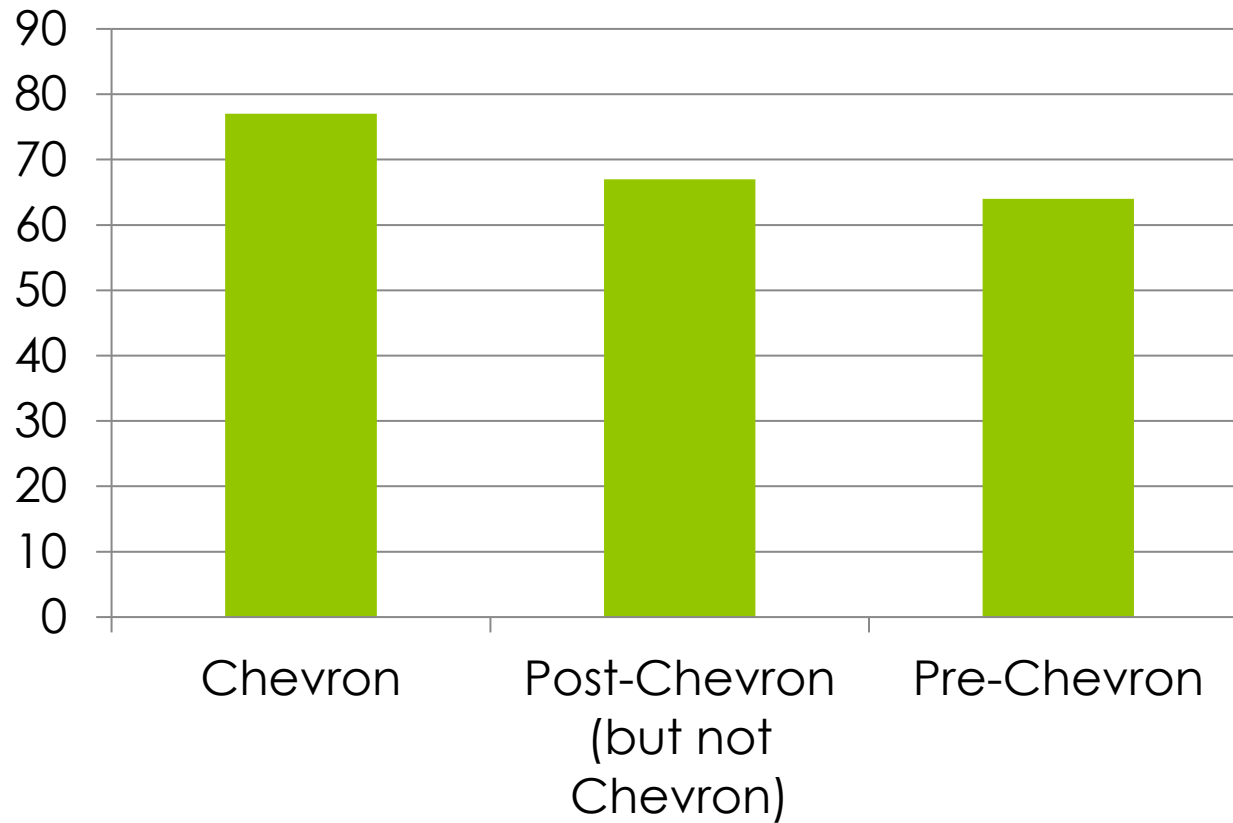


Government Success Rate

US Success as a party

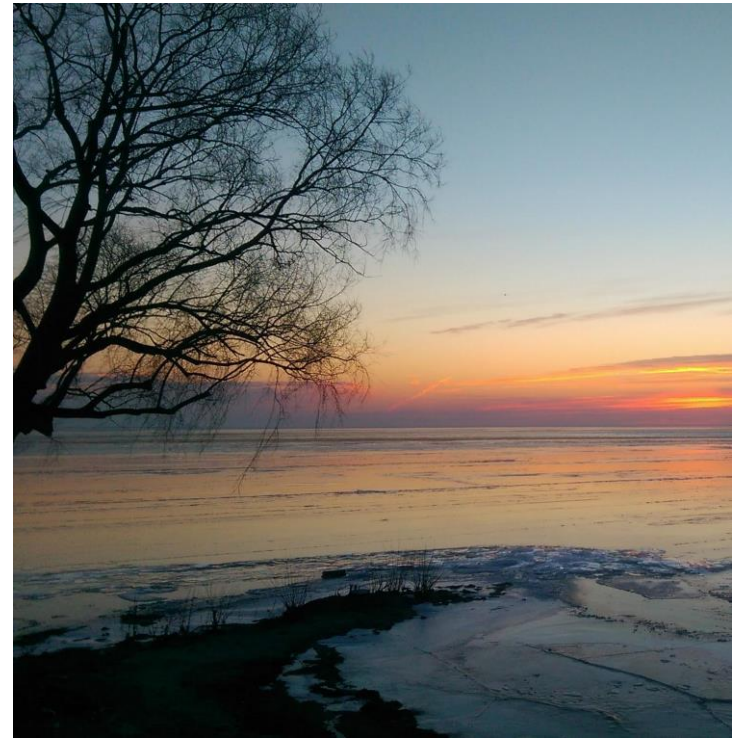


Chevron Impact

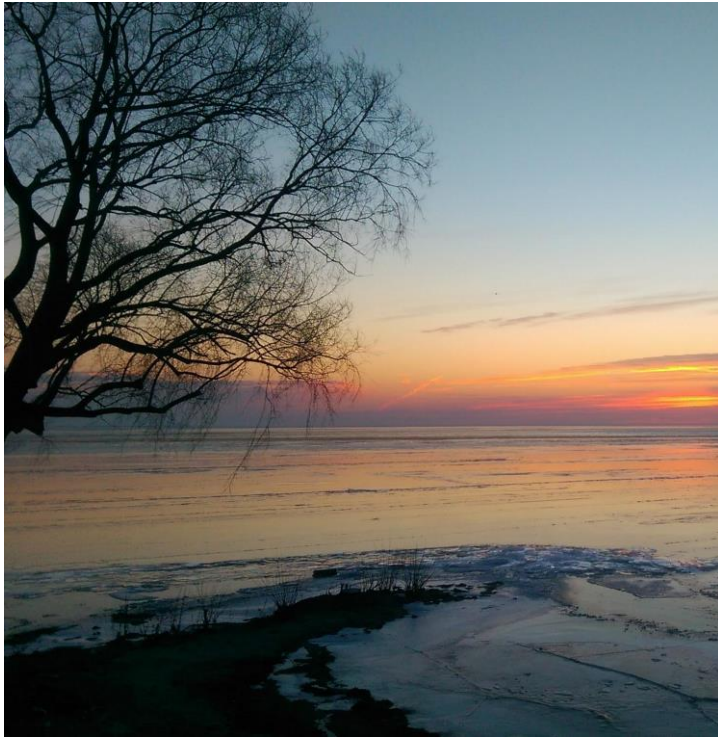


United States v. Riverside-Bayview Homes

- Unanimous decision
- Environmentally Protective
- Government Won



United States v. Riverside-Bayview Homes



- No citation to dictionaries
- Focus on purpose in Section 101(a)
- Focus on Legislative History (1972 and subsequent Congresses)
- Rejected constitutional avoidance canon

Sackett v. EPA



What a difference four decades make

Riverside-Bayview

- Unanimous decision
- Environmentally protective / Government won
- No dictionaries
- Purposivism – 101(a)
- Relied on Legislative History
- Relied on *Chevron*
- Rejected clear statement canon

Sackett

- 5-4 decision / based on ideology
- Not environmentally protective / Government lost
- Textualist – dictionaries and structure of statute
- No focus on purpose – 101(a)
- No focus on legislative history
- No application of *Chevron*
- Applied clear statement canon - federalism