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What Deference Does it Make? Reviewing Agency Statutory Interpretation in Maryland

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INTRODUCTION

Recent scholarship found that Maryland courts switch between *Chevron*-like[1] deference and *Skidmore*-like[2] deference when reviewing agency interpretations of the law.[3] The state courts were criticized for being unable to "make up their mind[s]" about how much weight to give to agency interpretations.[4] Inconsistency in how courts apply the law can be troubling' and confusing for regulated parties and state agencies.[5] Without knowing how much weight a court will give to an agency interpretation, it may be difficult to predict how a court will rule on a given administrative law issue, and parties may lose confidence in the judiciary for its ad hoc approach to deference.[6]

This Article explores how Maryland courts review agency interpretations of the law. Although recent scholarship found that Maryland courts switch between *Chevron*-like deference and *Skidmore*-like deference,[7] a closer look at Maryland administrative law shows that these findings are

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1. A federal deference doctrine named for Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837 (1984).

2. A federal deference doctrine named for Skidmore v. Swift & Co., 323 U.S. 134 (1944).

3. Daniel M. Ortner, *The End of Deference: The States that Cannot Make Up Their Mind*, YALE J. ON REGUL.: NOTICE & COMMENT (Apr. 2, 2020), https://www.yalejreg.com/nc/the-end-of-deference-the-states-that-cannot-make-up-their-mind-by-daniel-m-ortner/; Daniel M. Ortner, *The End of Deference: How States Are Leading a (Sometimes Quiet) Revolution Against Administrative Deference Doctrines* 38 (Mar. 11, 2020) (unpublished manuscript) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3552321. Deference applies when courts give weight to an administrative agency's interpretation of a law they administer. Aditya Bamzai, *The Origins of Judicial Deference to Executive Interpretation*, 126 YALE L.J. 908, 912 (2017).

4. *See* Ortner, *The States that Cannot Make Up Their Mind*, *supra* note 3.

5. *See id.*

6. *Id.*

7. *Id.*; Ortner, *How States Are Leading a (Sometimes Quiet) Revolution Against Administrative Deference Doctrines*, *supra* note 3 (manuscript at 38).

incorrect.[8] When Maryland courts give weight to an agency interpretation of the law, it almost always resembles federal *Skidmore* deference.[9] However, in some cases, Maryland courts decline to give any deference to agency interpretations.[10] Thus, the real inconsistency in Maryland is whether courts use *Skidmore*-like deference or review agency interpretations of the law de novo.

This Article does not advocate for the adoption of a specific deference doctrine at the state level. Instead, this Article explores Maryland courts' inconsistencies in reviewing statutory interpretations of the law. Ultimately, this Article proposes that the Maryland Court of Appeals clarify the state deference doctrine to bolster confidence in the judiciary.

Part I of this Article provides background on deference. First, Part I outlines deference and the federal deference doctrines. Then, Part I provides an overview of the findings of recent scholarship on deference in state administrative law. Part II focuses on the Maryland judiciary and summarizes the key cases illustrating how Maryland courts review agency interpretations of the law. Part III analyzes this Article's findings and shows how the standard of review a court applies affect the outcome of the case. Then, Part III.A explores possible explanations for how courts decide what standard of review to apply to a case. This Article concludes by proposing that the Maryland Court of Appeals clarify the state deference doctrine.

I. BACKGROUND

A. *Federal Deference Doctrines*

In administrative law, judicial deference is a principle of judicial review providing that a reviewing court must give weight or defer to an administrative agency's reasonable interpretation of the law.[11] When a court yields to an agency interpretation of a statute or regulation, the amount of weight given to the agency interpretation depends on the form of deference

8. *See infra* Parts II and III.

9. *See, e.g.*, Bd. of Physician Quality Assurance v. Banks, 354 Md. 59, 68–69, 729 A.2d 376, 380–81 (1999) (giving *Skidmore*-like deference to an agency interpretation); Fogle v. H & G Rest., Inc., 337 Md. 441, 455–56, 654 A.2d 449, 456 (1995) (same); Finucan v. Md. State Bd. of Physician Quality Assurance, 151 Md. App. 399, 411, 827 A.2d 176, 183 (2003) (same).

10. *See e.g.*, Liberty Nursing Ctr., Inc. v. Dep't of Health and Mental Hygiene, 330 Md. 433, 443, 624 A.2d 941, 946 (1993) (stating that the court may substitute its judgment for that of the agency); Medstar Health v. Md. Health Care Comm'n, 376 Md. 1, 21–22, 827 A.2d 83, 95–96 (2003) (stating that a court may determine if an agency decision is consistent with the policy of the organic statute).

11. *See* Antonin Scalia, *Judicial Deference to Administrative Interpretations of Law*, 1989 DUKE L.J. 511, 511 (1989).

the court is using.[12] Federal courts have several deference doctrines for reviewing different types of agency actions, including *Skidmore*[13] deference, *Chevron*[14] deference, and *Auer*[15] deference.[16]

Although this Article focuses on deference in Maryland state courts, most scholars are familiar with federal deference doctrines. The federal deference doctrines provide context for the discussion of deference at the state level. This Section briefly outlines de novo review, *Skidmore* deference, *Chevron* deference, and *Auer* deference.

1. *De Novo Review*

De novo review is a no-deference standard of review.[17] When a court reviews an agency interpretation de novo, the court is not required to give weight to the agency decision at all.[18] De novo review does not necessarily mean the court will rule against the agency,[19] but that the court does not give the agency's conclusion weight in the court's statutory interpretation.[20] At the federal level, de novo review applies when courts review agency interpretations of laws the agencies are not responsible for administering.[21]

2. Skidmore *Deference*

Skidmore deference is a sliding scale of deference that is not controlling on the courts.[22] Courts applying *Skidmore* deference consider several factors, including agency expertise, as a basis for giving weight to agency interpretations.[23] When *Skidmore* deference applies, the agency's

12. *Deference (Administrative State)*, BALLOTPEDIA, https://ballotpedia.org/Deference_(administrative_state) (last visited Oct. 20, 2021).

13. Skidmore v. Swift & Co., 323 U.S. 134 (1944).

14. Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837 (1984).

15. Auer v. Robbins, 519 U.S. 452 (1997).

16. *See Deference supra* note 12.

17. Stephanie Jurkowski, *De Novo,* LEGAL INFO. INST. (July 2017), https://www.law.cornell.edu/wex/de_novo.

18. *Id.*

19. *See* William N. Eskridge, Jr. & Lauren E. Baer, *The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from* Chevron *to* Hamdan, 96 GEO. L.J. 1083, 1099, 1117–19 (2008) (finding a sixty-six percent agency win rate with de novo review).

20. *See* Richard J. Pierce, Jr., *What Do the Studies of Judicial Review of Agency Actions Mean*, 63 ADMIN. L. REV. 77, 83 (2011).

21. David Zaring, *Reasonable Agencies*, 96 VA. L. REV. 135, 146 (2010). De novo review may also apply in other rare contexts, such as review of inadequate procedures. *Id.* at 146–47.

22. Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944).

23. *Id.*

interpretation is not binding.[24] Instead, a court applying *Skidmore* deference will base how persuasive it finds the agency interpretation on several factors: "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, if lacking power to control."[25]

Some scholars have said that *Skidmore* review is just as ad hoc as de novo review.[26] The late Justice Antonin Scalia once said that "*Skidmore* deference is a recipe for uncertainty, unpredictability, and endless litigation."[27] Other commenters have said that *Skidmore* deference is unfairly biased toward the government.[28] These critics argue that parties other than the government may also have significant expertise and these non-government experts are not afforded the same level of deference.[29]

Skidmore deference was the primary deference doctrine used by federal courts from 1944 until it was displaced by *Chevron* deference in 1984.[30] Although courts now review most questions of agency statutory interpretation under *Chevron* deference, *Skidmore* deference is still used for judicial review of opinion letters, operating manuals, enforcement guidelines, and other contexts where other deference doctrines do not apply.[31]

3. Chevron *Deference*

The highly deferential *Chevron* standard applies when an agency is interpreting a statute the agency is charged with administering.[32] When an agency interpretation is challenged and the *Chevron* standard applies, courts

24. *Id.*

25. *Id.*

26. *See e.g.*, Jack M. Beermann, *End the Failed* Chevron *Experiment Now: How* Chevron *Has Failed and Why It Can and Should Be Overruled*, 42 CONN. L. REV. 779, 849 (2010) (noting that the reviewing court "goes along with the agency" when the court agrees with the agency). *But see* Kristin E. Hickman & Matthew D. Krueger, *In Search of the Modern* Skidmore *Standard,* 107 COLUM. L. REV. 1235, 1267, 1309 (2007) (finding that in a sample of appellate cases applying *Skidmore*, the majority of courts tailored their deference in accordance with the factors outlined in *Skidmore* rather than conducting a de novo review).

27. United States v. Mead Corp., 533 U.S. 218, 250 (2001) (Scalia, J., dissenting).

28. Mike Rappaport, *Against* Skidmore *Deference*, LAW & LIBERTY (Jan. 5, 2018), https://lawliberty.org/against-skidmore-deference/.

29. *Id.*

30. *See* Derek P. Langhauser, *Executive Regulations and Agency Interpretations: Binding Law or Mere Guidance? Developments in Federal Judicial Review*, 29 J. COLL. & UNIV. L. 1, 14 (2002).

31. Christensen v. Harris Cnty., 529 U.S. 576, 587–88 (2000).

32. Hickman & Krueger, *supra* note 26, at 1242–43.

engage in a two-step review. First, the court asks whether, after "employing traditional tools of statutory construction," it is evident that "Congress has directly spoken to the precise question at issue."[33] In other words, the first step considers whether the underlying statute is ambiguous.[34] If the statute is unambiguous, the inquiry ends and the court applies Congress's clearly expressed intentions.[35] If the court determines the statute is ambiguous under step one, the court proceeds to step two of the *Chevron* framework.[36] Step two requires the court to uphold the agency's interpretation if it is a reasonable construction of the statute.[37]

The *Chevron* standard relies upon a theory of implied delegation.[38] Unlike *Skidmore*, which relies on the agency's expertise, *Chevron* assumes that "Congress intends agencies to write regulations that have the force of law."[39] Under this justification, an agency's reasonable interpretation of an ambiguous statute should be upheld because Congress vested the agency with the authority to interpret the ambiguous statutory text.[40]

Some critics of the *Chevron* two-step framework say that *Chevron* violates the separation of powers principles because it concentrates executive, legislative, and judicial power in administrative agencies.[41] Many of these critics argue that statutory interpretation is the judiciary's role, and *Chevron* deference encourages judges to "depart from their judicial office or duty . . . to exercise their own independent judgement."[42] Without a strong judicial check over federal agencies, some critics warn that *Chevron* deference can lead to regulatory instability if agencies switch their positions based on the policy priorities of the President.[43]

33. Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837, 842, 843 n.9 (1984).

34. *Id.* at 843.

35. *Id.* at 842–43.

36. *Id.* at 843.

37. *Id.*

38. Evan J. Criddle, *Chevron's Consensus*, 88 B.U. L. REV. 1271, 1276 (2008).

39. Ronald J. Krotoszynski, Jr., *Why Deference: Implied Delegations, Agency Expertise, and the Misplaced Legacy of* Skidmore, 54 ADMIN. L. REV. 735, 736 (2002).

40. *Id.*

41. Gutierrez-Brizuela v. Lynch, 834 F.3d 1142, 1149–50 (10th Cir. 2016) (Gorsuch, J., concurring).

42. PHILIP HAMBURGER, THE ADMINISTRATIVE THREAT 43 (2017).

43. *Gutierrez-Brizuela*, 834 F.3d at 1152 (Gorsuch, J., concurring).

4. Auer *Deference*

When administrative agencies interpret their own regulations, federal courts apply what is known as *Auer* deference.[44] Under *Auer* deference, a federal court must defer to an agency's interpretation of an ambiguous regulation that the agency has promulgated unless the court finds that the interpretation is "plainly erroneous or inconsistent with the regulation."[45] The primary justification behind *Auer* deference is similar to *Skidmore* deference: judges should defer to an agency's expertise regarding its own regulations because agency officials often know more about technical policy details than judges.[46]

Critics of *Auer* deference warn that *Auer* gives too much discretion to the executive branch and creates judicial bias in favor of the federal government.[47] On several occasions, the Justices of the Supreme Court have expressed concerns with *Auer* deference, often saying the doctrine violates the separation of powers principle by transferring the judicial power to interpret the law to the executive branch.[48] In 2019, the Supreme Court upheld *Auer* deference, but a concurrence by Justice Neil Gorsuch warned that the Court would likely have to address the issue again in the future.[49]

B. *Arguments For and Against Deference*

Although judicial deference to agency interpretation may seem at odds with the principle that "[i]t is emphatically the province and duty of the judicial department to say what the law is,"[50] judicial deference is based on the longstanding tradition of the courts giving weight to agency interpretation of statutes they are entrusted to administer.[51] Some proponents of judicial deference doctrines point to agency expertise and political accountability as

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44. Richard J. Pierce, Jr., *What Do the Studies of Judicial Review of Agency Actions Mean?*, 63 ADMIN. L. REV. 77, 83 (2011).

45. Auer v. Robbins, 519 U.S. 452, 461 (1997) (internal quotation marks omitted) (citing Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 359 (1989) (quoting Bowles v. Seminole Rock & Sand Co., 325 U.S. 410, 414 (1945))).

46. *See* Kisor v. Wilkie, 139 S. Ct. 2400, 2413 (2019).

47. *Id.* at 2425 (Gorsuch, J., concurring).

48. *See* Perez v. Mortg. Bankers Ass'n, 575 U.S. 92, 124 (2015) (Thomas, J., concurring); Decker v. Nw. Env't Def. Ctr., 568 U.S. 597, 619, 621 (2013) (Scalia, J., concurring in part and dissenting in part).

49. *Kisor*, 139 S. Ct. at 2448 (Gorsuch, J., concurring).

50. Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803).

51. Bamzai, *supra* note 3, at 993–94.

justifications for deferring to agency interpretations.[52] Others justify the practice as "pragmatic": agencies are best equipped to make these decisions because Congress delegated that authority to them.[53]

Some critics of judicial deference argue that deferring to agency statutory interpretation is unconstitutional. These critics argue that judicial power is vested solely within the courts, and the judiciary should not defer to agencies on matters of statutory interpretation.[54] Other criticisms include the idea that judicial deference violates the separation of powers principles because it ignores the role of the judiciary to check the other branches,[55] and deferring to agency interpretation of the law incentivizes the legislature to write poorly drafted laws, frustrating the notice and predictability purposes of rulemaking.[56] Despite the debate surrounding judicial deference, it plays a significant role in federal and state administrative law.

C. *Deference in State Administrative Law*

Judicial deference to agency interpretations is not limited to the federal level. State agencies make interpretations subject to judicial review, and all states have state administrative procedure acts.[57] The federal deference doctrines are not binding on the states, but some state courts use different versions of the federal doctrines in their review of state agency interpretations.[58]

There is a wealth of scholarship on the federal deference doctrines, but there is limited discussion of deference doctrines at the state level. In 2008, Professor Michael Pappas analyzed state courts' doctrines of judicial review of agency interpretation.[59] Professor Pappas separated the states' varying

52. John F. Duffy, *Administrative Common Law in Judicial Review*, 77 TEX. L. REV. 113, 189 (1998).

53. *See* Bamzai, *supra* note 3, at 928; Thomas W. Merrill, *Judicial Deference to Executive Precedent*, 101 YALE L.J. 969, 972–73 (1992).

54. *See* Jonathan R. Siegel, *The Constitutional Case for* Chevron *Deference*, 71 VAND. L. REV. 937, 939 (2018).

55. Daniel Ortner, *Ending Deference?: Why Some State Supreme Courts have Chosen to Reject Deference and Others Have Not* 4 (Jan. 1, 2021) (unpublished manuscript) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3798079.

56. *Id.* at 6.

57. *See State Administrative Procedure Acts*, BALLOTPEDIA, https://ballotpedia.org/State_administrative_procedure_acts (last visited Nov. 10, 2021). State Administrative Procedure Acts govern administrative processes of state agencies and "provide for judicial review of agency decisions." *Id.*

58. Michael Pappas, *No Two-Stepping in the Laboratories: State Deference Standards and Their Implications for Improving the* Chevron *Doctrine*, 39 MCGEORGE L. REV. 977, 979 (2008).

59. *Id.*

doctrines into four categories: (1) "strong deference"; (2) "intermediate deference"; (3) "de novo review with the possibility of deference to agency expertise or experience"; and (4) "de novo review with deference discouraged."[60] Professor Pappas put Maryland in the third category, noting that other states in this category emphasize the importance of de novo review where the case concerns statutory interpretation or legal analysis.[61]

In 2020, Daniel Ortner conducted the first fifty state survey of state deference doctrines since Professor Pappas in 2008.[62] Ortner separated the state deference doctrines into six categories: (1) "[s]tates that have expressly rejected deference"; (2) "[s]tates that expressly employ *Skidmore* deference"; (3) "[s]tates that employ some types of deference but not other types of deference"; (4) states that are "skeptical of deference"; (5) inconsistent states; and (6) states with full deference.[63] Ortner identified Maryland as one of the inconsistent states, noting that Maryland courts switch between a weak form of deference—*Skidmore*-like—and a much more deferential standard akin to *Chevron*.[64] Unlike Professor Pappas, Ortner does not describe Maryland courts as using no deference, and his description of Maryland is limited to the inconsistent weight courts give to agency interpretations.[65]

II. AGENCY STATUTORY INTERPRETATION IN MARYLAND

This Article focuses on Maryland appellate courts' review of agency interpretations of the law. The Maryland Judiciary has a unique makeup and function that differs from federal courts and other state courts. This Part provides a brief overview of the judiciary and the key cases that illustrate how the Maryland appellate courts review agency interpretations of the law.

A. *The Maryland Judiciary*

The Maryland Judiciary is made up of two trial courts and two appellate courts.[66] "The trial courts consider evidence . . . in a case and make

60. *Id.* at 984.

61. *Id.* at 996, 1015.

62. Ortner, *How States (and Territories) are Leading a (Sometimes Quiet) Revolution Against Administrative Deference Doctrines*, *supra* note 3, at 2.

63. *Id.* at 2–3.

64. *Id.* at 38.

65. *Compare* Pappas, *supra* note 58, at 1015, *with* Ortner, *How States (and Territories) are Leading a (Sometimes Quiet) Revolution Against Administrative Deference Doctrines*, *supra* note 3, at 38.

66. *About the Maryland Court System*, MD. COURTS, https://www.courts.state.md.us/courts/about (last visited Oct. 11, 2021).

judgments based on the facts, [and] the law."[67] The Maryland Court of Special Appeals ("COSA") is the intermediate appellate court, and the Maryland Court of Appeals ("COA") is the state's highest court.[68] The appellate courts may "review a trial court's . . . actions and decisions in given cases and decide whether the [lower courts] properly followed the law and legal precedent."[69]

With the assistance of the Judicial Nominating Commission, Maryland's Governor fills judgeship vacancies.[70] Judges are appointed to the appellate courts with the consent of the State Senate.[71] Maryland judges serve ten-year terms, subject to voter approval at the next election after the judge's appointment.[72] Additionally, appellate judges are subject to mandatory retirement at age 70.[73] The mandatory retirement age leads to frequent turnover in the appellate courts, giving the sitting governor significant influence over the makeup of the court.[74]

The role of the appellate courts is particularly relevant to this Article. Parties can challenge lower court decisions in Maryland's two appellate courts.[75] When a party disagrees with the outcome of a trial, most cases may be appealed to COSA.[76] COSA is made up of fifteen active judges.[77] Most often, a panel of three COSA judges will hear appeals on the case record

67. *Id.*

68. *Id.*

69. *Id.*

70. *Judicial Selection*, MD. COURTS, https://www.courts.state.md.us/judgeselect (last visited Oct. 11, 2021). For more information on the qualifications an individual must have to apply for a judgeship in Maryland, see MD. CONST. art. I, § 12, art. IV, § 2.

71. *Court of Appeals: Court Overview*, MD. COURTS, https://www.courts.state.md.us/coappeals/coaoverview (last visited Oct. 11, 2021).

72. *Id.* The Chief Judges of COA and COSA are exempt from the term limit and are instead designated by the governor to serve indefinite terms. *Id.*

73. MD. CONST. art. IV, § 3A(b).

74. *See* Bernstein v. State, 422 Md. 36, 63, 29 A.3d 267, 283 (2011) (describing speculation that the mandatory retirement age for Maryland appellate judges ensures frequent turnover). By the end of Larry Hogan's second term as Governor of Maryland in 2022, he will have appointed at least six of the seven judges on the State's highest court. *Judges Appointed by Larry Hogan*, BALLOTPEDIA, https://ballotpedia.org/Judges_appointed_by_Larry_Hogan (last visited Oct. 11, 2021). Charles E. Sydnor III, *Commentary*: *Legislator: There's Only One Right Choice for the Next Chief Judge of Maryland's Highest Court*, BALT. SUN (Jun. 29, 2021), https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0630-appeals-court-chief-20210629-dao73wlflvhhpokkc5zlwj4wfq-story.html.

75. *About the Maryland Court System*, MD. COURTS, https://mdcourts.gov/courts/about (last visited Oct. 11, 2021).

76. *Court of Special Appeals,* MD. COURTS, https://www.courts.state.md.us/cosappeals (last visited Oct. 11, 2021).

77. *Id.*

assembled by the circuit court below.[78] However, in rare cases, COSA will review a case en banc.[79] Unlike the intermediate appellate court, the COA hears cases "almost exclusively by way of certiorari," but is mandated by law to hear cases involving "legislative redistricting, removal of certain officers, and certification of questions of law."[80] There are seven judges on the court, all of whom hear oral arguments.[81]

When an agency makes a "conclusion of law" in a contested case, the Maryland Administrative Procedure Act ("Maryland APA") permits the court, on judicial review, to decide the correctness of the agency's conclusions and to substitute the court's judgment for that of the agency.[82] The Maryland APA sets vague standards for courts' review of agency interpretations of the law, and over time the courts have developed these standards of review through the common law.

B. *Deference in Maryland*

This Article compiles a sample of fifty Maryland administrative law cases from 1990 to 2020.[83] While Ortner characterized Maryland as inconsistent between affording agencies *Skidmore*-like deference and *Chevron*-like deference, a closer evaluation of Appendix Table 1 shows that Maryland appellate courts do not apply a version of *Chevron* deference. When applying the federal *Chevron* two-step test, the reviewing court first looks to whether the agency has spoken to the precise question at issue and, if not, then the court determines whether the agency's interpretation is reasonable.[84] Maryland courts evaluating agency interpretations typically acknowledge the relevance of the agency's policy expertise and give the agency's interpretation weight in their decision.[85] Unlike courts applying

78. *Id*; *Appeals to the Court of Special Appeals*, MD. COURTS, https://mdcourts.gov/legalhelp/appealscosa (last visited Nov. 11, 2021).

79. *Id.*

80. *Court of Appeals: Court Overview*, *supra* note 71.

81. *Id.*

82. MD. CODE ANN., STATE GOV'T § 10–222 (h)(3)(i)–(iv) (West 2018).

83. *See infra* Appendix Table 1.

84. Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 843–44 (1984).

85. *See e.g.*, Bd. of Physician Quality Assurance v. Banks, 354 Md. 59, 69, 729 A.2d 376, 381 (1999) ("Even with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency. Thus, an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts."); Owusu v. Motor Vehicle Admin., 461 Md. 687, 698, 197 A.3d 35, 42 (2018) ("[P]urely legal questions are reviewed *de novo* with '"considerable weight" to the agency's interpretation and application of the statute which the agency administers.'") (quoting

Chevron deference, Maryland courts do not defer to any reasonable interpretation of an ambiguous statute.[86] Instead, Maryland appellate courts give weight to an agency's policy expertise, something more akin to *Skidmore* deference.[87]

It is more accurate to categorize deference to agency interpretations of the law in Maryland appellate courts as similar to *Skidmore* deference, with a specific emphasis on the agency's degree of expertise.[88] However, the courts sometimes decline to give weight to agency interpretations, and instead evaluate the agency interpretations de novo.[89] The inconsistency in Maryland is whether or not the courts give agency interpretations any weight at all.[90]

The Maryland General Assembly delegates authority to state agencies through statutes. These delegations of power are sometimes categorized as "quasi-legislative" and "quasi-judicial" functions. Agencies act in a quasi-legislative capacity when they create rules and regulations.[91] Agencies act in a quasi-judicial capacity when they issue orders and decisions.[92] Maryland appellate courts treat review of agency interpretations slightly differently depending on the type of agency action the court is reviewing.[93]

The trend in how Maryland courts review agency interpretation is best illustrated by breaking down quasi-judicial actions, quasi-legislative actions, and agency interpretations of their own regulations. When Maryland courts review agency interpretations in quasi-judicial and quasi-legislative contexts,

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People's Ins. Couns. Div. v. State Farm Fire & Cas. Ins. Co., 214 Md. App. 438, 449, 76 A.3d 517, 524 (2013)).

86. *Chevron*, 467 U.S. at 843–44.

87. *See infra* Appendix Table 1.

88. *See e.g.*, *Banks*, 354 Md. at 68–69, 729 A.2d at 380–81 (giving *Skidmore*-like deference to an agency interpretation); Fogle v. H & G Rest. Inc., 337 Md. 441, 455–56, 654 A.2d 449, 456 (1995) (same); Finucan v. Md. State Bd. of Physician Quality Assurance, 151 Md. App. 399, 411, 827 A.2d 176, 183 (2003) (same).

89. *See e.g.*, Liberty Nursing Ctr., Inc. v. Dep't of Health and Mental Hygiene, 330 Md. 433, 443, 624 A.2d 941, 946 (1993) (stating that, for issues of law, the court may substitute its judgment for that of the agency); Medstar Health v. Md. Health Care Comm'n, 376 Md. 1, 21–22, 827 A.2d 83, 95–96 (2003) (stating that a court may determine if an agency decision is consistent with the policy of the organic statute).

90. *See Banks*, 354 Md. at 68–69, 729 A.2d at 381 ("Despite some unfortunate language that has crept into a few of our opinions, a court's task on review is *not* to substitute its judgment for the expertise of those persons who constitute the administrative agency.") (internal quotations omitted).

91. *Quasi-legislative*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/quasi-legislative#:~:text=Definition,is%20a%20quasi%2Dlegislative%20act. (last visited Oct. 11, 2021).

92. *Quasi-Judicial Functions*, U.S. LEGAL, https://administrativelaw.uslegal.com/administrative-agencies/quasi-judicial-functions/ (last visited Oct. 11, 2021).

93. *See* Weiner v. Md. Ins. Admin., 337 Md. 181, 190, 652 A.2d 125, 129 (1995).

the courts are split between giving agency interpretations *Skidmore*-like deference and courts reviewing agency actions de novo. When the courts review agencies' interpretations of their own regulations, the courts consistently give agency interpretations a great deal of deference, something akin to *Auer* deference.

1. *Quasi-judicial Functions*

The Maryland APA allows state agencies to take actions and use discretion to investigate or ascertain facts and draw conclusions from them as a foundation for official actions.[94] In other words, state administrative agencies can make quasi-judicial decisions that carry the force of law. Maryland appellate courts typically evaluate agency interpretations in quasi-judicial actions in one of two ways. Most commonly, the courts give weight to agency interpretations of statutes the agency administers.[95] In some cases, however, the courts give no deference to agency interpretations and the court "substitute[s] its judgment for that of the agency."[96]

Two cases from the 1990s demonstrate the inconsistency in how the Maryland appellate courts defer to agency interpretations in quasi-judicial actions. In 1992, the COA heard *Liberty Nursing Ctr., Inc. v. Dep't of Health and Mental Hygiene*,[97] where a nursing home operator sought reimbursement for the cost of interest associated with the purchase a nursing center.[98] The Nursing Home Appeal Board ("NHAB") disallowed the nursing home ("Liberty") from being reimbursed for an interest expense because the interest was paid to a related party.[99] In rendering its decision, the NHAB relied on its interpretation of what constitutes a "related party" for purposes of determining whether the interest expense was reimbursable.[100]

The COA outlined the standard of review for appellate review of an agency interpretation, stating that "ordinarily no deference is appropriate[,]

94. MD. CODE ANN., STATE GOV'T § 10-222 (h)(3)(i)–(iv) (West 2018).

95. People's Ins. Couns. Div. v. State Farm Fire & Cas. Ins. Co., 214 Md. App. 438, 449, 76 A.3d 517, 524 (2013) ("[W]ith respect to an agency's legal conclusions, we give 'considerable weight' to the agency's 'interpretation and application of the statute which the agency administers.'") (quoting *Banks*, 354 Md. at 69, 729 A.2d at 381). *See also supra* note 88.

96. *See e.g.*, Liberty Nursing Ctr., Inc. v. Dep't of Health and Mental Hygiene, 330 Md. 433, 443, 624 A.2d 941, 946 (1993) ("When, however, the issue before the agency for resolution is one solely of law, ordinarily no deference is appropriate and the reviewing court may substitute its judgment for that of the agency.").

97. 330 Md. 433, 624 A.2d 941 (1993).

98. *Id.* at 435–36, 624 A.2d at 942.

99. *Id.* at 437, 624 A.2d at 943.

100. *Id.*

and the reviewing court may substitute its judgment for that of the agency."[101] The court proceeded to substitute its judgment for that of the NHAB and found that the case did "not present a proper situation in which to disallow interest payments based upon the 'related party' provisions."[102] This standard of review deviated from past practice,[103] and the court's decision to substitute its judgment for that of the agency was later criticized.[104]

After *Liberty Nursing*, Maryland courts were inconsistent on whether they deferred to agency interpretations in quasi-judicial actions. Sometimes the courts would give weight to an agency's interpretation, and other times they would give the agency's interpretation no deference at all.[105] Six years after *Liberty Nursing*, the COA referenced the *Liberty Nursing* decision as an example of "unfortunate" language in some of the court's opinions and attempted to clarify the court's task on review.[106] Writing for the court in *Board of Physician Quality Assurance v. Banks*,[107] Judge John C. Eldridge stated that "a degree of deference should often be accorded the position of the administrative agency," and "an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given *considerable weight* by reviewing courts."[108]

Although Judge Eldridge sought to clarify the standard of review for agencies' interpretations of statutes they administer, *Banks* did not overrule *Liberty Nursing*. Both cases remain good law in Maryland, and both lines of cases are still cited as precedent for review of agency interpretations in quasi-judicial actions.[109] These two lines of cases create an inconsistency in how

101. *Id.* at 443, 624 A.2d at 946.

102. *Id.* at 456, 624 A.2d at 952.

103. In *Ramsay Scarlett & Co. v. Comptroller of Treasury*, COA criticized COSA for substituting its judgment for that of the agency and stated that the court may only do so if the agency's findings are only susceptible to one legal conclusion. 302 Md. 825, 832–33, 836, 490 A.2d 1296, 1300, 1302 (1985). In outlining the standard of review, the *Liberty Nursing* court manipulated the language in *Ramsay* to apply the de novo standard of review to the agency's interpretation. 330 Md. at 443, 624 A.2d at 946.

104. Bd. of Physician Quality Assurance v. Banks, 354 Md. 59, 68, 68 n.1, 729 A.2d 376, 381, 381 n.1 (1999).

105. *See e.g.*, United Parcel Serv. v. People's Couns., 336 Md. 569, 576–77, 650 A.2d 226, 230 (1994) (stating "[t]he court's task on review is *not* to substitute its judgment for" that of the agency) (internal quotations omitted); Miller v. Bd. of Educ., 114 Md. App. 462, 466, 690 A.2d 557, 559 (1997) (stating the court may substitute its judgment for that of the administrative agency).

106. *Banks*, 354 Md. at 68, 68 n.1, 729 A.2d at 381, 381 n.1.

107. *Id.* at 59, 729 A.2d at 376.

108. *Id.* at 69, 729 A.2d at 381 (emphasis added).

109. *Liberty Nursing* was cited for the standard of review for de novo review of an agency interpretation as recently as 2015. Md. State Bd. of Nursing v. Sesay, 224 Md. App. 432, 457, 121 A.3d 140, 155 (2015). *Banks* was cited for the standard of review for giving *Skidmore*-like

Maryland courts treat review of agency interpretations in this context. A similar division is present in how the Maryland appellate courts handle deference to agency interpretations in quasi-legislative actions.

2. *Quasi-legislative Functions*

Administrative agencies are sometimes given the authority to perform quasi-legislative functions through statutes passed by the Maryland General Assembly.[110] Agency rulemaking authority is an exception to the general principle that laws should only be passed by elected lawmakers.[111]

When appellate courts review agency interpretations in the quasi-legislative context, the courts most commonly give weight to agency interpretations like federal *Skidmore* deference.[112] This is especially true for specialized areas of law like health and safety.[113] The courts emphasize the importance of the agency's technical and subject-matter expertise in how much weight they give the agency's interpretation of the law.[114] However, courts do not *always* give weight to the agency's interpretation in this context. In some outlier cases, courts use the de novo standard of review.

When the Maryland General Assembly delegates authority to state administrative agencies to take quasi-legislative actions, the Maryland appellate courts often give considerable weight to agency interpretations in their respective fields.[115] The COA clearly outlined this principle in the 1995 case *Fogle v. H & G Restaurant*.[116] The case concerned whether the Commissioner of the Division of Labor and Industry exceeded his statutory authority when he promulgated a rule prohibiting smoking in enclosed workplaces.[117] The Circuit Court for Talbot County issued an injunction enjoining the enforcement of the regulation.[118] The state subsequently

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deference to agency interpretations as recently as 2020. Rogers v. State, 468 Md. 1, 60, 226 A.3d 261, 296–97 (2020).

110. *See* MD. CODE ANN., STATE GOV'T § 10-106 (West 2018).

111. MAEVE P. CAREY, CONG. RSCH. SERV., IF 10003, AN OVERVIEW OF FEDERAL REGULATIONS AND THE RULEMAKING PROCESS 1 (2021).

112. *See infra* Appendix Table 1.

113. Fogle v. H & G Restaurant, Inc., 337 Md. 441, 455, 654 A.2d 449, 456 (1995).

114. *Id.*

115. *See id.*

116. *Id.*

117. *Id.* at 457, 654 A.2d at 457. The Maryland General Assembly granted the Commissioner the authority to promulgate regulations "(1) to prevent conditions that are detrimental to safety and health in each employment or place of employment in the State, and (2) that the Board finds necessary to protect and to improve the safety and health of employees." *Id.* at 448, 654 A.2d at 452; MD. CODE ANN., LAB. & EMPL. § 5-308 (West 2018).

118. *Fogle*, 337 Md. at 451, 654 A.2d at 454.

appealed.[119] The COA reversed the circuit court decision, holding that the Commissioner did not exceed his statutory authority in promulgating the regulation.[120] The court used deferential language in regard to the agency's factfinding,[121] stating "we afford great deference to the Commissioner's findings . . . which are . . . based on his experience in understanding a multitude of complex scientific and factual data . . . ."[122] This language has been taken out of the factfinding context and has been applied to statutory interpretation. In later cases, the appellate courts relied on the principles outlined in *Fogle* to express that the courts should give weight to the agency's interpretations based on longstanding practice and agency expertise.[123]

In 2003, the COA reviewed a challenge to a Maryland Health Care Commission ("MHCC") regulation addressing Maryland's needs for cardiac surgery units in *Medstar Health v. Maryland Health Care Commission*.[124] The contested regulation allowed one additional hospital in the Washington region to offer cardiac surgery services—a unit highly sought after by Maryland providers.[125] In making this decision, the MHCC considered different approaches to measure net need for cardiac units.[126] The General Assembly granted the MHCC broad statutory authority "to develop standards and policies . . . [to] address 'the availability, accessibility, cost, and quality of health care.'"[127] The MHCC interpreted this to mean that it could choose the method of assessing the need for cardiac units.[128] Ultimately, the MHCC used a methodology that showed there was a need for an additional hospital in the region.[129] The challenger argued that the MHCC exceeded its statutory authority by creating a need for an additional open heart surgery program where there was not an actual need.[130] The Circuit Court for Howard County

119. *Id.* at 452, 654 A.2d at 454.

120. *Id.* at 457, 654 A.2d 457.

121. *Id.* at 458, 654 A.2d at 458.

122. *Id.*

123. *See e.g.*, Adventist Health Care Inc. v. Md. Health Care Comm'n, 392 Md. 103, 117 n. 12, 896 A.2d 320, 329 n. 12 (2006); McClanahan v. Wash. Cnty. Dep't of Soc. Servs., 445 Md. 691, 708, 129 A.3d 293, 303 (2015).

124. Medstar Health v. Md. Health Care Comm'n, 376 Md. 1, 827 A.3d 83 (2003).

125. *Id.*

126. *Id.* at 9–10, 827 A.3d at 88–89.

127. *Id.* at 30, 827 A.3d at 101 (Wilner, J., dissenting).

128. *Id.* at 4, 827 A.3d at 87–88.

129. *Id.* at 8, 827 A.3d at 88.

130. *Id.* at 19, 827 A.3d at 94.

granted summary judgment in favor of the MHCC.[131] The plaintiff health care provider appealed.[132]

The COA granted certiorari. In the standard of review, the court cited the *Fogle* principles for reviewing questions of agency statutory interpretations in quasi-legislative actions.[133] Specifically, the court noted that reviewing courts should defer to agencies' decisions because they make rules based on expertise, and this is especially true in the areas of health and safety.[134] Moreover, the court stated that "where 'the General Assembly has delegated . . . broad power to an administrative agency to adopt [legislative rules] or regulations [in a particular area], this Court has upheld the agency's rule or regulations as long as they did not contradict the language or purpose of the statute.'"[135]

After acknowledging the longstanding *Fogle* principle for deferring to agency interpretations, the court shifted its focus to a question of nondelegation. The court noted:

> This Court's attempt to demarcate the outer limits of an administrative agency's authority has focused on whether the regulations and rules promulgated by the agency are consistent with the statutory scheme under which the agency operates. So, too, with the Commission, the question is whether the regulation at issue is consistent with the underlying policy assumptions permeating the State Health Plan and the Commission's own factual analysis undertaken with the purpose of defining unmet need for cardiac surgery services.[136]

Although this decision involved the MHCC's specialized knowledge in healthcare, and the Maryland General Assembly had delegated broad authority to the agency to regulate health care needs in the state, the court disagreed with the MHCC and weighed in on the agency's policy decision.[137] In what was later described as a "sharply divided" decision,[138] the COA invalidated the regulation on the grounds that the MHCC exceeded its authority by distorting the meaning of "actual need."[139]

131. *Id.* at 18, 827 A.3d at 94.

132. *Id.* at 19, 827 A.3d at 94.

133. *Id.* at 21, 827 A.3d at 95.

134. *Id.* at 21, 827 A.3d at 96.

135. *Id.* (alteration in original) (quoting Christ v. Md. Dep't of Natural Res., 335 Md. 427, 437, 644 A.2d 34, 39 (1994)).

136. *Id.* at 22, 827 A.3d at 96.

137. *Id.*

138. Medstar Health v. Md. Health Care Comm'n, 391 Md. 427, 433, 893 A.2d 1099, 1102 (2006).

139. *Medstar*, 376 Md. at 27, 827 A.3d at 99.

In a dissenting opinion, Judge Alan M. Wilner criticized the *Medstar* majority for substituting the court's judgment for that of the agency. Judge Wilner noted:

> The Court reverses a determination by the [MHCC] that the public health needs of the more than two million Marylanders who live in the Metropolitan Washington Region would best be served by allowing one additional hospital in that region to offer cardiac surgery services, because the Court believes that those needs are already being adequately served.140

What the majority characterized as a "manipulation" of data to show the need for the cardiac unit, the dissent described as a "considered and well-supported policy choice."[141] The dissent relied heavily on the deference principles set forth in *Fogle*, noting that the court should defer to the MHCC's specialized knowledge in the area of health and safety.[142] Additionally, Judge Wilner cited the General Assembly's broad delegation of authority to the MHCC to consider cost, availability, and accessibility of health care services and to develop standards and policies to address the availability, accessibility, cost, and quality of health care.[143] The dissent argued that the majority erred in substituting its policy judgment for that of the MHCC's expertise.[144]

Without overruling or distinguishing *Fogle*, the *Medstar* decision left open the possibility for the court to decide whether to give weight to agency interpretations in rulemakings. The court did not set forth any distinguishing principles, and, like *Liberty Nursing*, *Medstar* gives the appellate courts precedent to substitute their own policy judgment for that of the agency charged with administering a statute.

3. *Agency Interpretations of Their Own Regulations*

Maryland appellate courts are extremely consistent in deferring to agency interpretations of their own regulations.[145] The courts have a well-settled practice of giving agencies *Auer*-like deference when they interpret

140. *Id.* (Wilner, J., dissenting).

141. *Id.* at 48, 827 A.3d at 111.

142. *Id.* at 40–41, 827 A.3d at 107.

143. *Id.* at 41, 827 A.3d at 107.

144. *Id.* at 48, 827 A.3d at 111.

145. *See, e.g.*, Bd. of Liquor License Comm'rs v. Kougl, 451 Md. 507, 514, 154 A.3d 640, 644–45 (2017); Md. Transp. Auth. v. King, 369 Md. 274, 288, 799 A.2d 1246, 1254 (2002); Homes Oil Co., Inc. v. Md. Dep't of the Env't, 135 Md. App. 442, 461, 762 A.2d 1012, 1022 (2000); Ideal Fed. Sav. Bank v. Murphy, 339 Md. 446, 461, 663 A.2d 1272, 1279 (1995).

their own regulations.[146] This practice is clearly described in *Ideal Federal Savings Bank v. Murphy*,[147] in which the COA effectively adopted federal *Auer* deference as the state appellate courts' standard of review.[148] In a later decision, COA reiterated this principle and emphasized that the agency is in the best position to discern the intent of its own regulations.[149]

III. DOES DEFERENCE MATTER?

Contrary to the characterization of Maryland as inconsistent in applying *Chevron*-like deference or *Skidmore*-like deference,[150] the inconsistency in Maryland is actually whether the courts give any deference to agency interpretations of the law at all. This Part first looks at trends in cases dealing with agency statutory interpretation and whether the standard of review influences the outcomes of cases. Then, this Part discusses how the courts decide *when* to invoke the de novo standard of review instead of the more common *Skidmore*-like standard.

A. *General Findings*

Part II divided the discussion of how Maryland courts treat review of agency interpretations in the context of quasi-legislative and quasi-judicial actions because the courts use different reasoning and separate lines of cases in each context.[151] Additionally, the courts have stated that the scope of judicial review is more narrow in the quasi-legislative context than in the quasi-judicial context because quasi-legislative decisions may involve significant policy determinations.[152] That is, "the interpretation of a statute by the agency charged with administering the statute" in quasi-legislative contexts "is entitled to great weight."[153]

Maryland courts reinforce the division between the two forms of agency actions by using different language to describe their decisions to apply de novo review in each context. In quasi-judicial contexts, the courts say the

146. *See Kougl*, 451 Md. at 514, 154 A.3d at 644–45.

147. 339 Md. 446, 663 A.2d at 1272.

148. *Id.* at 461, 663 A.2d at 1279 (citing Bowles v. Seminole Rock & Sand Co., 325 U.S. 410, 414 (1945)).

149. *King*, 369 Md. at 288, 799 A.2d at 1254.

150. Ortner, *The States That Cannot Make Up Their Mind*, *supra* note 3; Ortner, *How States Are Leading a (Sometimes Quiet) Revolution Against Administrative Deference Doctrines*, *supra* note 3.

151. Adventist Health Care, Inc. v. Md. Health Care Comm'n, 392 Md. 103, 117 n. 12, 896 A.2d 320, 329 n. 12 (2006).

152. *Id.*

153. *Id.* at 119, 896 A.2d at 330.

"court may substitute its judgment for that of the agency" when they are reviewing de novo.[154] In quasi-legislative contexts, the courts emphasize the scope of an agency's legal boundaries to interpret the law, which sounds narrower.[155] One could assume that in practice, courts would be more likely to uphold agency interpretations in quasi-legislative contexts because of the narrower scope of review.

Despite the courts' language treating quasi-judicial and quasi-legislative actions differently, the context of the agency action may not have any influence over the agency's "win"-rate (the percentage of cases in which courts uphold agency interpretations). Appendix Table 1 includes fifty Maryland administrative law cases from 1990–2020.[156] These data were further broken down to provide the statistics in Tables 1, 2, and 3. Although the sample size may be too small to have statistical significance, the data show that there may be little difference between the agency "win"-rate in quasi-judicial and quasi-legislative contexts.

Table 1: Agency Win/Lose Rates in Context of Review[157]

	Agency Win %	**Agency Lose %**
Quasi-Judicial	63%	37%
Quasi-Legislative	62%	38%
Agency Regulation	100%	0%

The overall "win"-rate for agency interpretations is 68%. When broken down into the three contexts of agency action, the data show that agency interpretations "won" in 63% of cases in quasi-judicial contexts, 62% of cases in quasi-legislative contexts, and 100% of cases when agencies interpreted their own regulations.

The data show no significant difference in how often agencies win overall in the quasi-legislative and quasi-judicial contexts. However, the data show that agencies always win when the courts review agencies' interpretations of their own regulations. As described in Section III.B, it is well-settled practice for Maryland courts to apply *Auer*-like deference when

154. Liberty Nursing Ctr., Inc. v. Dep't of Health and Mental Hygiene, 330 Md. 433, 443, 624 A.2d 941, 946 (1993).

155. *Adventist Health Care, Inc.*, 392 Md. at 117 n. 12, 896 A.2d at 329 n. 12.

156. *See infra* Appendix Table 1.

157. Data taken from Appendix Table 1; percentages are rounded to the closest whole number.

reviewing agencies' interpretations of their own regulations.[158] The data show that consistent application of this highly deferential standard may have a significant effect on the outcome of cases. The next Section will discuss whether the *Skidmore*-like and de novo standards of review may also influence outcomes.

B. *Outcomes Dependent on Deference Standards*

Scholars have debated whether the deference doctrine a court uses actually makes a difference in the outcome of a case.[159] In a recent study, scholars found that the federal judiciary upholds agency action in about 70% of all cases, no matter whether the courts applied de novo review, *Chevron* deference, or *Skidmore* deference.[160] A similar study has not been done on the outcomes of Maryland cases, but Table 2 and Appendix Table 1 show that the deference standard a Maryland court applies does impact the outcome of a case.

Table 2: Agency Win/Lose Rate by Deference Standard[161]

	Agency Win %	**Agency Lose %**
***Auer*-like**	100%	0%
***Skidmore*-like**	79%	21%
De Novo	29%	71%

Table 2 breaks down the Maryland agency "win"-rate by standard of review. Agencies won in 100% of cases where the courts used *Auer*-like deference, 79% of cases where the courts used *Skidmore*-like deference, and 29% of cases where courts applied de novo review. This is a stark contrast to the federal judiciary findings, in which there was little difference in the outcome between *Skidmore* deference and de novo review.[162]

Based on these data, courts are much more likely to uphold an agency action when reviewing agency statutory interpretation using *Skidmore*-like deference than reviewing interpretations de novo. This finding shows that the standard of review may have a significant influence over the outcome of a case.

158. *See supra* Section II.B.3.
159. Pierce, *supra* note 20, at 78–79.
160. *Id.* at 83.
161. Data taken from Appendix Table 1; percentages are rounded to the closest whole number.
162. *Compare* Pierce, *supra* note 20, at 83, *with* Table 2.

Maryland agencies and regulated parties would want to know whether an agency interpretation will be given weight because it may impact the outcome of a case. This highlights some of the problems with Maryland courts' inconsistent application of standards of review: The lack of uniformity leads to unpredictable results, and parties may lose confidence in the judiciary's stability if they believe the choice of standard of review is happening on an ad hoc basis.[163]

C. *When Do the Courts Apply De Novo Review?*

On multiple occasions, the Maryland appellate courts have expressed a desire to clarify the standard of review for agency statutory interpretations.[164] In *Banks* and *Maryland Aviation Administration v. Noland*,[165] the COA referred to the de novo language from previous opinions as "unfortunate" and "misleading."[166] Additionally, Judge Wilner's dissent in *Medstar* criticizes the majority acknowledging the *Fogle* deference principles and then "effectively disregard[ing] [them]."[167] Judge Wilner emphasizes that the majority acted outside of its judicial authority by weighing in on a policy choice that was within the agency's authority to decide.[168] Regardless of the court's efforts to clarify the standard of review, Maryland courts continue to apply both *Skidmore*-like deference and de novo review.[169]

The data in Table 2 indicate there may be a correlation between the standard of review a court applies and the agency "win"-rate. Appendix Table 1 shows that in quasi-judicial and quasi-legislative contexts alike, Maryland courts most commonly apply *Skidmore*-like deference. De novo review is an exception to this rule. This Section explores how and when this exception may apply.

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163. *See* Stefanie A. Lindquist & Frank C. Cross, *Stability, Predictability And the Rule of Law:* Stare Decisis *As a Reciprocity Norm*, 4 (2010) (unpublished manuscript) https://law.utexas.edu/conferences/measuring/The%20Papers/Rule%20of%20Law%20Conference.crosslindquist.pdf.

164. *See* Md. Aviation Admin. v. Noland, 386 Md. 556, 571–72, 873 A.2d 1145, 1154 (2005); Bd. of Physician Quality Assurance v. Banks, 354 Md. 59, 68, 68 n.1, 729 A.2d 376, 381, 381 n.1 (1999).

165. 386 Md. 556, 873 A.2d at 1145.

166. *Id.* at 571–72, 573 n. 3, 873 A.2d at 1154, 1155 n. 3.

167. Medstar Health v. Md. Health Care Comm'n, 376 Md. 1, 40–41, 827 A.3d 83, 107 (2003) (Wilner, J., dissenting).

168. *Id.* at 40–41, 827 A.3d at 107–08.

169. *See infra* Appendix Table 1.

1. *Nondelegation as an Explanation for De Novo Review*

One possible explanation for why Maryland appellate courts might review agency interpretations de novo is that courts are more likely to review de novo when the organic statute leaves room for broad agency interpretation. Statutes that leave room for overbroad agency interpretation may violate principles of nondelegation. The nondelegation doctrine is a legal principle holding that "legislative bodies cannot delegate their legislative powers to executive agencies or private entities."[170] The nondelegation doctrine is closely intertwined with the separation of powers principle.[171] Under a strict application of the nondelegation doctrine, agencies would have limited rulemaking power, as this authority is vested in the legislature.[172]

The concept of nondelegation is present in the *Medstar* decision. Writing for the majority, Chief Judge Robert M. Bell emphasized the COA's responsibility to define the outer limits of an administrative agency's authority.[173] Chief Judge Bell's reasoning focused less on tools of statutory interpretation and more on the problem of nondelegation and the limits of the agency's authority when choosing to review de novo.

Maryland has a flexible nondelegation doctrine, and the COA is consistent in how it handles questions of nondelegation. For example, in *Christ v. Department of Natural Resources*,[174] the court stated, "where the General Assembly has delegated similar broad power to an administrative agency to adopt legislative rules or regulations in a particular area, this Court has upheld the agency's rules or regulations as long as they did not contradict the language or purpose of the statute."[175] This understanding of nondelegation in Maryland is not disputed. Indeed, in *Medstar*, Chief Judge Bell wrote, "reliance upon broad statutory authority conferred by the

170. *Nondelegation Doctrine*, BALLOTPEDIA, https://ballotpedia.org/Nondelegation_doctrine (last visited Oct. 11, 2021).

171. Randolph J. May, *The Nondelegation Doctrine Is Alive and Well in the States*, REGUL. REV. (Oct. 15, 2020), https://www.theregreview.org/2020/10/15/may-nondelegation-doctrine-alive-well-states/.

172. *See* Stephen Wermiel, *SCOTUS for Law Students: Non-delegation Doctrine Returns After Long Hiatus*, SCOTUS BLOG (Dec. 4, 2014, 8:00 PM), https://www.scotusblog.com/2014/12/scotus-for-law-students-non-delegation-doctrine-returns-after-long-hiatus/.

173. *Medstar*, 376 Md. at 22, 827 A.3d at 96.

174. 335 Md. 427, 644 A.2d 34 (1994).

175. *Id.* at 437–38, 644 A.2d at 39.

Legislature generally will be sufficient to justify an agency's regulation/rule making authority."[176]

The court's decision to apply de novo review in *Medstar* due to nondelegation concerns was inconsistent with the deference principles articulated in *Fogle* and the nondelegation principles articulated in *Christ*. Without distinguishing or narrowing *Medstar*, the majority opinion left open the possibility for courts to substitute their policy judgment for that of the agency when determining whether an agency interpretation is consistent with the agency's statutory authority. With this precedent, a reviewing court may be more likely to review an agency statutory interpretation de novo if there is a broad delegation of power or nondelegation concern.

2. *Outcome-driven Selection as an Explanation for De Novo Review*

Another possible explanation for how Maryland courts apply de novo review may be that the courts choose the standard based on the desired outcome of a case. Under this explanation, if a reviewing court wanted to promote a particular policy position or result of a case, the court would choose the deference or no-deference standard that best served that purpose. Outcome-driven selection assumes that the judges pick the standard to justify decisions that reflect their personal opinions or biases. In other words, courts "cherry pick" the standards of review.

This possibility seems unlikely. When Maryland courts give weight to agency decisions, it resembles *Skidmore* deference. *Skidmore*-like deference does not bind the court to the agency's interpretation, rather, applying this standard allows the court to give weight to the agency's interpretation.[177] Maryland's *Skidmore*-like deference gives courts the flexibility to rule against the agency, even after weighing the persuasiveness of the agency's interpretation.[178] Because the *Skidmore*-like deference standard is not binding and the Maryland courts weigh the persuasiveness of the agency's interpretation, there would be no real need for a court to change the deference standard based on the desired outcome if the court found the agency's

176. *Medstar*, 376 Md. at 22, 827 A.3d at 96.

177. Krotoszynski, *supra* note 39, at 740.

178. *See, e.g.*, McClanahan v. Wash. Cnty. Dep't of Soc. Servs, 445 Md. 691, 711, 129 A.3d 293, 304 (2015); Green v. Church of Jesus Christ of Latter-Day Saints, 430 Md. 119, 135, 59 A.3d 1001, 1010 (2013); Bayly Crossing, LLC v. Consumer Prot. Div., 417 Md. 128, 144, 9 A.3d 4, 13 (2010); United Parcel Serv. v. People's Couns., 336 Md. 569, 590–91, 650 A.2d 226, 237 (1994); Claggett v. Md. Agric. Land Pres. Found., 182 Md. App. 346, 377, 957 A.2d 1083, 1101 (2008); White v. Workers Comp. Comm'n, 161 Md. App. 483, 491, 870 A.2d 1241, 1245 (2005); Ocean City Police Dep't v. Marshall, 158 Md. App. 115, 128, 854 A.2d 299, 306 (2004).

interpretation unpersuasive. Recall some of the common criticisms of *Skidmore* are that the standard is vague and results in "uncertainty."[179] An outcome-driven approach to choosing the deference standard seems unnecessary given the court could reach the same decision under *Skidmore*-like deference if the agency's interpretation was unpersuasive.

3. *Relevance of Expertise as an Explanation for De Novo Review*

The court's decision not to give weight to an agency's interpretation may depend on whether there is room in the underlying statute for the agency's policy expertise. A reviewing court will look to the text of the statute to determine if the legislature has decided the interpretation question at issue, or if there is room in the statute for the agency to make policy determinations.[180]

Expertise plays an important role in how courts defer to agency interpretations at both the state and federal level. Legislatures specifically create administrative agencies for their specialized knowledge and experience in particular policy areas.[181] For this reason, courts look to agency expertise for technical guidance.[182] Courts use their own judgment to discern whether agency expertise is relevant to the interpretation question at issue. For example, in *King v. Burwell*,[183] the United States Supreme Court refused to give *Chevron* deference to an IRS interpretation of a healthcare statute because the agency's expertise is in tax, not health policy.[184] Likewise, Maryland courts may look to the relevance of expertise in deciding what standard of review to apply to an agency's interpretation of the law.

In *Adventist Health Care, Inc. v. Maryland Health Care Commission*,[185] Chief Judge Bell offered an insightful discussion of the COA's practice of giving weight to agencies' interpretations of statutes they administer while differentiating courts' obligations to follow the plain meaning of the statute.[186] Using the outcome of *Kushell v. Department of Natural Resources*[187] as an example, he wrote:

179. *See* United States v. Mead Corp., 533 U.S. 218, 250 (2001) (Scalia, J., dissenting).

180. *See* Scalia, *supra* note 11, at 516.

181. Krotoszynski, *supra* note 39, at 741.

182. *See* Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944).

183. 576 U.S. 473 (2015).

184. *Id.* at 474.

185. 392 Md. 103, 896 A.2d 320 (2006).

186. *Id.* at 125–26, 896 A.2d at 333–34.

187. 385 Md. 563, 870 A.2d 186 (2005). In *Kushell*, a boat owner challenged the Department of Natural Resources for assessing a tax on the boat owner's boat. *Id.* at 566, 870 A.2d at 187. The agency contended that it was within its statutory authority to assess the tax. *Id.* at 573, 870 A.2d at

> In *Kushell*, the statute was so plain, and clear, that the Department's expertise in the matter could not, and did not, make a difference. Deference to the [agency's] expertise simply could not carry the day; no matter how much expertise the [agency] had, it could not trump the statute itself. The plain meaning of the statute . . . dictated the result. Although the deference to which the [agency's] interpretation was entitled could not, and did not, cause the [agency's] position to prevail, the proposition for which it advocated, that deference should be afforded to its decisions, was by no means rejected or undermined.[188]

It is possible to reconcile the court's reasoning in *Kushell* with the reasoning in *Fogle* because the *Kushell* court explained why the agency's interpretation was not given weight.[189] The *Kushell* court relied on the plain meaning of the statute in making its decision and there was no room for the agency's interpretation of the statute to make a difference in the matter.[190] This is consistent with the principles set forth in *Fogle*, as the *Fogle* court acknowledges the role of the court on review:

> [The court's] power of review [of an administrative regulation], whether authorized by statute or assumed inherently, cannot be a substitution of the court's judgment for that of the agency. In those instances where an administrative agency is acting in a [quasi-legislative manner], the judiciary's scope of review of that particular action is limited to assessing whether the agency was acting within its legal boundaries.[191]

While relevance of expertise may not explain each case in which the court applied de novo review, it may explain at least some of the exceptions to the general rule that Maryland courts apply *Skidmore*-like deference to agency interpretations.

4. *Particular Judges as an Explanation for De Novo Review*

The inconsistency in the standard of review for agency statutory interpretations may be a result of particular judges' preferences. Individual

191. The court acknowledged that usually an agency's interpretation of a statute it administers should be given some weight, but ultimately concluded that the plain meaning of the underlying statute precluded the agency's reading of the statute, and the boat owner had no tax liability. *Id.* at 577, 870 A.2d at 193–94.

188. *Adventist*, 392 Md. at 125–26, 896 A.2d at 333.

189. *Kushell*, 385 Md. at 577, 870 A.2d at 193–94.

190. *Id.* at 577, 870 A.2d at 194.

191. Fogle v. H&G Restaurant, 337 Md. 441, 454, 654 A.2d 449, 455 (1995) (quoting Weiner v. Md. Ins. Admin., 337 Md. 181, 190, 653 A.2d 125, 129 (1995)).

judges may have ideas or beliefs that shape their judicial decisions or choice of standard of review.[192]

Table 3: Deference by Judge: Illustrative Examples[193]

	***Skidmore*-like Deference**	**De Novo Review**
Chief Judge Bell	3	3
Judge Eldridge	3	0
Judge Raker	1	3

Table 3 breaks down decisions written by Chief Judge Bell, Judge Eldridge, and Judge Raker in quasi-legislative and quasi-judicial contexts. Table 3 shows that Judge Eldridge consistently applied the *Skidmore*-like standard, and Chief Judge Bell and Judge Raker used both *Skidmore*-like and the de novo standards of review.

This small sample shows that it may be more likely for certain judges (or certain panels of judges) to apply the de novo standard of review than others. For example, Chief Judge Bell wrote the majority opinions in both *Liberty Nursing* and *Medstar*.[194] In each opinion, Chief Judge Bell emphasized how important it is for the court to ensure the agency is acting within its legal boundaries when interpreting the law. It is possible to draw the inference that part of Chief Judge Bell's judicial philosophy may be a strict approach to interpreting an agency's legal boundaries.

A judge or court with a strict interpretation of legal boundaries may rely on a strict reading of the plain meaning of the statute or invoke the nondelegation doctrine rather than rely on an agency interpretation to prevent the agency from acting outside of its delegated authority. Some judges may incorporate these ideas and beliefs in their opinions. For example, even where Chief Judge Bell gave some weight to the agencies' interpretations, he emphasized the importance of the court's role in ensuring an agency does not exceed its statutory authority.[195]

192. Breaking down which judges were in each panel, as well as how each judge voted is outside the scope of this Article but would make for an interesting and potentially revealing research project.

193. Data taken from Appendix Table 1.

194. Liberty Nursing Ctr., Inc. v. Dep't of Health and Mental Hygiene, 330 Md. 433, 624 A.2d 941 (1993); Medstar Health v. Md. Health Care Comm'n, 376 Md. 1, 827 A.2d 83 (2003).

195. *See* Adventist Health Care Inc. v. Md. Health Care Comm'n, 392 Md. 103, 117 n. 12, 896 A.2d 320, 329 n. 12 (2006).

Looking at Table 3 and Appendix Table 1, it is possible that the preferences of particular judges (or panels of judges) may influence what standard of review is used in a case involving agency statutory interpretation. The COA has described its approach to deference in the following terms: "[d]eference to the interpretation of the agency[] does not mean acquiescence or abdication of our construction responsibility."[196] Despite the deference, "it is always within our prerogative to determine whether an agency's conclusions of law are correct.""[197] Ultimately, how judges exercise that prerogative is within their discretion.

The Maryland APA permits the court to substitute its judgment for that of the agency's when the agency has made an incorrect legal conclusion.[198] As a result, judges may vary on their views of how much discretion the court has to determine whether a question of statutory interpretation exceeds the statutory authority of the agency. Judges promoting a strict construction of State Government Article, Sections 10-122 and 10-125 of the Maryland Code may make a court more likely to apply the de novo standard when reviewing an agency interpretation, especially if the underlying statute is broad.[199]

D. *What the Findings Reveal for Agencies, Challengers, and the Courts*

Although the sample size of Appendix Table 1 is too small to have statistical significance, a qualitative analysis of the data shows several interesting trends. First, agencies have a high "win"-rate when the courts review agencies' interpretations of their own regulations. Second, there appears to be no difference in agency "win"-rates between quasi-judicial and quasi-legislative contexts. Third, courts are much more likely to uphold agency interpretations when they apply *Skidmore*-like deference as opposed to reviewing de novo.

In addition to the "win"-rates, Appendix Table 1 and the cases therein show that there may be several explanations for how courts decide when to

196. *Id.* at 121, 896 A.2d at 331.

197. *Id.* (quoting Kushell v. Dep't of Nat. Res., 385 Md. 563, 576, 870 A.2d 186, 193 (2005)); MD. CODE ANN., STATE GOV'T § 10-222(h)(3)(i)–(iv) (West 2018); *see also* Claggett v. Md. Agric. Land Pres. Found., 182 Md. App. 346, 378 n. 17, 957 A.2d 1083, 1102 n. 17 (2008) ("The [agency] has not urged this Court to give any special deference to its interpretation of [the statute]. Nevertheless, there is authority in Maryland for the proposition that an agency's interpretation of the statutes it administers should, 'in recognition of the agency's expertise in the field, [be] give[n] . . . great deference unless it is in conflict with legislative intent or relevant decisional law, or is clearly erroneous, arbitrary, or unreasonable.'").

198. MD. CODE ANN., STATE GOV'T § 10-222(h)(3)(i)–(iv) (West 2018).

199. *See Medstar*, 376 Md. at 22, 827 A.2d at 96.

review a case de novo. Courts may be concerned with an overbroad delegation of power, they may select the standard based on desired outcome, they may base the decision on the relevance of agency expertise, or the de novo standard may be more likely when particular judges are in the majority.

These findings may be useful for agencies, challengers, and the courts. First, agencies defending their statutory interpretations should be aware that their interpretations are more likely to be upheld when the courts apply *Skidmore* deference. Parties challenging agency interpretations should be aware of this likelihood and either argue for the court to review the case de novo or frame the agency's interpretation as unpersuasive and therefore less likely to be upheld even if the court gives weight to the agency interpretation.

Courts should take a closer look at how the appellate courts inconsistently apply deference. The COA should issue guidance to clarify how the courts review agency statutory interpretation and when the de novo standard applies, if at all. The inconclusive trends for how courts select the standard of review may be frustrating for agencies, regulated parties, and practitioners. The different standards may cause a loss of confidence in the judiciary if it appears the court is selecting the standard of review in an arbitrary way.[200] Maryland courts should be clear about how they apply the standards so that affected parties have notice and can better predict how the courts will treat questions of agency statutory interpretation.

IV. CONCLUSION

In exploring the "inconsistency" in Maryland courts' review of agency interpretations of the law, this Article makes two key findings. First, the real inconsistency is not how much deference agencies are given by reviewing courts in Maryland, but whether the court gives the agency any deference at all. Second, the standard of review Maryland courts apply to questions of agency interpretation affects the outcome of the case. Agencies and regulated parties can make use of this information so they can better predict how the appellate courts may treat challenges to agency statutory interpretation.

In Maryland, the deference does make a difference. To ensure that the public—especially regulated parties and those responsible for creating and enforcing regulation—do not lose confidence in the judiciary due to the inconsistency in choosing the standard of review, the COA should clarify Maryland's deference doctrine.

200. *See* Lindquist & Cross, *supra* note 163, at 4.

V. APPENDIX

Appendix Table 1: Sample of Agency Statutory Interpretation Cases in Maryland Appellate Courts 1990–2020[201]

Case	Date	Court	Opinion By	Context of Agency Interpretation	Agency Win/Lose	Deference Framework
Ideal v. Federal Murphy, 339 Md. 446	1995	COA	Chasanow	Agency regulations	win	*Auer*-like
Homes Oil Co. v. Maryland Dep't of the Env't, 135 Md. App. 442	2000	COSA	Thieme	Agency regulations	win	*Auer*-like
Md. Transp. Auth. v. King, 369 Md. 274	2001	COA	Eldridge	Agency regulations	win	*Auer*-like
Jordan Towing, Inc. v. Hebbville Auto Repair, Inc., 369 Md. 439	2002	COA	Cathell	Agency regulations	win	*Auer*-like

201. This sample of Maryland Court of Appeals and Court of Special Appeals cases from 1990 to 2020 was created by searching for Maryland cases relating to agency interpretations of the law. I ran various Boolean searches using terms including "deference", "agency interpretation", "giving weight", and "substituting judgment" on both Lexis+ and Westlaw Edge to find a representative sample of cases. This is not an exhaustive list of cases from the indicated time period.

Kim v. Md. State Bd. of Physicians, 423 Md. 523	2011	COA	Barbera	Agency regulations	win	*Auer*-like
Bd. of Liquor License Comm'rs v. Kougl, 451 Md. 507	2017	COA	Adkins	Agency regulations	win	*Auer* -like
Salisbury Univ. v. Ramses, 2020 WL 2779193	2020	COSA	Fader	Agency regulations	win	*Auer* -like
Liberty Nursing Ctr., Inc. v. DHMH, 330 Md. 433	1993	COA	Bell	Quasi-judicial	lose	de novo
Total Audio-Visual Sys. v. DOL, Licensing & Regulation, 360 Md. 387	2000	COA	Bell	Quasi-judicial	lose	de novo
Jordan Towing, Inc. v. Hebbville Auto Repair, Inc., 369 Md. 439	2002	COA	Cathell	Quasi-judicial	lose	de novo
Kushell v. Dep't of Natural Res., 385 Md. 563	2005	COA	Raker	Quasi-judicial	lose	de novo
Stachowski v. Sysco Food Servs. of Balt., Inc., 402 Md. 50	2007	COA	Raker	Quasi-judicial	lose	de novo
Marriott Emples. Fed. Credit Union v. Motor Vehicle Admin., 346 Md. 437	1997	COA	Raker	Quasi-legislative	lose	de novo
Medstar Health v. Md. Health Care Comm'n, 376 Md. 1	2002	COA	Bell	Quasi-legislative	lose	de novo

Kerpelman v. Disability Review Bd., 155 Md. App. 513	2004	COSA	Adkins	Quasi-legislative	lose	de novo
Gomez v. Jackson Hewitt, Inc., 427 Md. 128	2012	COA	Kenney	Quasi-legislative	lose	de novo
Miller v. Board of Education, 114 Md. App. 462	1997	COSA	Murphy	Quasi-judicial	win	de novo
Uninsured Employers' Fund v. Pennel, 133 Md. App. 279	2000	COSA	Thieme	Quasi-judicial	win	de novo
Md. State Bd. of Nursing v. Sesay, 224 Md. App. 432	2015	COSA	Leahy	Quasi-judicial	win	de novo
Lewis v. Gansler, 204 Md. App. 454	2012	COSA	Kehoe	Quasi-legislative	win	de novo
Green v. Church of Jesus Christ of Latter-Day Saints, 430 Md. 119	2013	COA	Barbera	Quasi-judicial	lose	de novo
Ocean City PD v. Marshall, 158 Md. App. 115	2004	COSA	Eyler	Quasi-judicial	lose	*Skidmore*-like
White v. Workers Comp, 161 Md. App. 483	2005	COSA	Alpert	Quasi-judicial	lose	*Skidmore*-like
Claggett v. Md. Agric. Land Pres. Found, 182 Md. App. 346	2008	COSA	Hollander	Quasi-judicial	lose	*Skidmore*-like
McClanahan v. Wash. Cnty. Dep't of Soc.	2015	COA	Adkins	Quasi-judicial	lose	*Skidmore*-like

Servs, 445 Md. 691						
Bayly Crossing, LLC v. Consumer Prot. Div., 417 Md. 128	2010	COA	Harrell	Quasi-judicial	lose	*Skidmore*-like
United Parcel Sev. v. People's Counsel, 336 Md. 569	1994	COA	Eldridge	Quasi-legislative	lose	*Skidmore*-like
Board of Physician Quality Assur. v. Banks, 354 Md. 59	1999	COA	Eldridge	Quasi-judicial	win	*Skidmore*-like
Blakehurst Life Care Cmty/Chestnut Real Estate P'ship v. Baltimore County, 146 Md. App. 509	2002	COSA	Sharer	Quasi-judicial	win	*Skidmore*-like
Finucian v. Md. State Bd. Of Physician Qulaity Assur., 151 Md. App. 399	2003	COSA	Barbera	Quasi-judicial	win	*Skidmore*-like
Finucian v. Md. Bd. Of Physician Quality Assur, 380 Md. 577	2004	COA	Harrell	Quasi-judicial	win	*Skidmore*-like
Md. Aviation Admin v. Noland, 386 Md. 556	2005	COA	Eldridge	Quasi-judicial	win	*Skidmore*-like
Comptroller of the Treasury v. Citicorp Int'l Communs., Inc., 389 Md. 156	2005	COA	Greene	Quasi-judicial	win	*Skidmore*-like

Schwartz v. Md. Dep't of Natural Res., 385 Md. 534	2005	COA	Raker	Quasi-judicial	win	*Skidmore*-like
Adventist Health Care, Inc. v. Md. Health Care Comm'n, 392 Md. 103	2006	COA	Bell	Quasi-judicial	win	*Skidmore*-like
Grand Bel Manor Condo. v. Gancayco, 167 Md. App. 471	2006	COSA	Krauser	Quasi-judicial	win	*Skidmore*-like
Salerian v. Md. State Bd. Of Physicians, 176 Md. App. 231	2007	COSA	Krauser	Quasi-judicial	win	*Skidmore*-like
Kim v. Md. State Bd. Of Physicians, 196 Md. App. 362	2010	COSA	Eyler	Quasi-judicial	win	*Skidmore*-like
Marks v. Crim. Injuries Comp. Bd., 196 Md. App. 37	2010	COSA	Thieme	Quasi-judicial	win	*Skidmore*-like
McLaughlin v. Gill Simpson Elec., 206 Md. App. 242	2011	COSA	Watts	Quasi-judicial	win	*Skidmore*-like
Motor Vehicle Admin. v. Krafft, 452 Md. 589	2017	COA	Barbera	Quasi-judicial	win	*Skidmore*-like
Carrollton Assocs. Ltd. P'ship v. Supervisor of Assessments for Frederick County, 2017 WL 526557	2017	COSA	Nazarian	Quasi-judicial	win	*Skidmore*-like

Owusu v. Motor Vehicle Admin., 461 Md. 687	2018	COA	Hotten	Quasi-judicial	win	*Skidmore*-like
Fogle v. H&G Restaurant, 337 Md. 441	1995	COA	Murphy	Quasi-legislative	win	*Skidmore*-like
Weiner v. Maryland Ins. Admin., 337 Md. 181	1995	COA	Karwacki	Quasi-legislative	win	*Skidmore*-like
Schade v. Board of Elections, 401 Md. 1	2007	COA	Bell	Quasi-legislative	win	*Skidmore*-like
Oyzaro v. DHMH, 187 Md. App. 264	2009	COSA	Meredith	Quasi-legislative	win	*Skidmore*-like
Maryland Dep't of the Env't v. Riverkeeper, 447 Md. 88	2015	COA	Adkins	Quasi-legislative	win	*Skidmore*-like
Md. Dep't of the Env't v. County Comm'rs, 465 Md. 169	2018	COA	McDonald	Quasi-legislative	win	*Skidmore*-like
Office of People's Counsel v. Maryland PSC, 355 Md. 1	1999	COA	Bell	Quasi-legislative	win	*Skidmore*-like