SUPREME COURT OF THE UNITED STATES

No. 98–1167

EDWARD CHRISTENSEN, ET AL., PETITIONERS *v.* HARRIS COUNTY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[May 1, 2000]

JUSTICE BREYER, with whom JUSTICE GINSBURG joins, dissenting.

JUSTICE SCALIA may well be right that the position of the Department of Labor, set forth in both brief and letter, is an "authoritative" agency view that warrants deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). *Ante*, at 2 (opinion concurring in part and concurring in judgment). But I do not object to the majority's citing *Skidmore* v. *Swift & Co.*, 323 U. S. 134 (1944), instead. And I do disagree with JUSTICE SCALIA's statement that what he calls "*Skidmore* deference" is "an anachronism." *Ante*, at 1.

Skidmore made clear that courts may pay particular attention to the views of an expert agency where they represent "specialized experience," 323 U. S., at 139, even if they do not constitute an exercise of delegated lawmaking authority. The Court held that the "rulings, interpretations and opinions of" an agency, "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." *Id.*, at 140; see also *Martin* v. *Occupational Safety and Health Review Comm'n*, 499 U. S. 144, 157 (1991). As Justice Jackson wrote for the Court, those views may possess the "power to persuade," even where they lack the

"power to control." *Skidmore*, *supra*, at 140.

Chevron made no relevant change. It simply focused upon an additional, separate legal reason for deferring to certain agency determinations, namely, that Congress had delegated to the agency the legal authority to make those determinations. See *Chevron*, *supra*, at 843–844. And, to the extent there may be circumstances in which *Chevron*-type deference is inapplicable– *e.g.*, where one has doubt that Congress actually intended to delegate interpretive authority to the agency (an "ambiguity" that *Chevron* does not presumptively leave to agency resolution)– I believe that *Skidmore* nonetheless retains legal vitality. If statutes are to serve the human purposes that called them into being, courts will have to continue to pay particular attention in appropriate cases to the experienced-based views of expert agencies.

I agree with JUSTICE STEVENS that, when "thoroughly considered and consistently observed," an agency's views, particularly in a rather technical case such as this one, "meri[t] our respect." *Ante*, at 4 (dissenting opinion). And, of course, I also agree with JUSTICE STEVENS that, for the reasons he sets forth, *ante*, at 1–4, the Labor Department's position in this matter is eminently reasonable, hence persuasive, whether one views that decision through *Chevron*'s lens, through *Skidmore*'s, or through both.