

# The Implications of *Loper Bright* for Bureaucratic Human Capital

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## **Abstract**

While the Supreme Court's ruling in *Loper Bright* has immediate implications for administrative rulemaking, it may also have deleterious consequences for bureaucratic human capital. We argue constrained discretion and increased uncertainty may make bureaucrats less likely to remain in government and develop expertise. We assess the short-term effects of *Loper Bright* on with a priming experiment conducted with state-level bureaucrats. While we find no evidence of immediate effects of *Loper Bright* on turnover intention or willingness to invest in expertise, human capital may erode as bureaucrats internalize how *Loper Bright* hampers their ability to perform their jobs in the long-term.

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When the US Supreme Court issued its ruling in *Loper Bright Enterprises v. Raimondo* in June 2024, many political elites, scholars, and the media pointed to its practical implications for the federal rulemaking process.<sup>1</sup> Before the decision in *Loper Bright*, the Supreme Court’s ruling in *Chevron v. National Resources Defense Council* had shaped U.S. administrative law for forty years. In *Chevron*, the Supreme Court decided that judges would defer to agencies’ “reasonable” interpretations of ambiguous statutes—a practice commonly referred to as “*Chevron* deference.” Many people expect that the removal of this deference will curtail agencies’ ability to promulgate rules and will lead to legal challenges for many existing rules, thereby creating substantial uncertainty for federal regulation.

Several scholars and practitioners have also called attention to the potential for *Loper Bright* to have direct consequences for agency employees themselves—the human capital upon which agencies rely to fulfill their missions. Indeed, because this deference has been in place for forty years, almost all the bureaucrats currently working for the federal government have only ever worked in a system where judges provided broad deference to bureaucrats and have heavily relied on *Chevron* in formulating and implementing rules.<sup>2</sup> Speculating on how the Court would ultimately rule earlier in 2024,

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<sup>1</sup> E.g., Comer, James. “Comer Calls on Federal Agencies to Rein in Regulatory Overreach in Wake of Supreme Court Decision,” *House Committee on Oversight and Accountability*, July 10, 2024, <https://oversight.house.gov/release/comer-calls-on-federal-agencies-to-rein-in-regulatory-overreach-in-wake-of-supreme-court-decision%E2%99%BC/>; Liptak, Adam. “Justices Limit Power of Federal Agencies, Imperiling an Array of Regulations.” *The New York Times*, June 28, 2024, <https://www.nytimes.com/2024/06/28/us/supreme-court-chevron-ruling.html>; Walker, Christopher J. “What *Loper Bright Enterprises v. Raimondo* Means for the Future of *Chevron* Deference.” *Yale Journal on Regulation*, June 28, 2024, <https://www.yalejreg.com/nc/what-loper-bright-enterprises-v-raimondo-means-for-the-future-of-chevron-deference/>.

<sup>2</sup> In his survey of federal workers, Walker (2015) finds that those involved in agency rule drafting list *Chevron* as the interpretive tool they use most commonly in the drafting process.

partners at Morgan Lewis predicted that “agency morale may be undermined” if *Chevron* were overturned because “regulators’ expertise and decisions [would be] second-guessed and criticized.”<sup>3</sup> Former federal agency employees expressed similar concerns after the Court’s ruling that the end of *Chevron* deference will make civil servants feel “undervalued... [because] the level of expertise and intelligence that you bring... is not a priority.”<sup>4</sup> These sentiments echoed those expressed by legal scholars in the years prior to the overturning of *Chevron*, such as Craig Green’s warning that if the Court fundamentally altered *Chevron* deference, “the quality and morale of government servants will be diminished” (Green 2021: 697).<sup>5</sup> Overall, these and other voices suggest that *Loper Bright* may degrade the human capital of bureaucratic agencies.

We outline how the Court’s elimination of *Chevron* deference may harm the human capital of the bureaucracy. *Chevron* deference provided important discretion to civil servants that motivated them to enter and stay in public service and develop expertise in their roles (Gailmard and Patty 2012). However, *Loper Bright* may change the incentive structure for civil servants such that they become less likely to remain in their roles and invest in developing expertise. Specifically, *Loper Bright* brings three potential downsides.

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<sup>3</sup> “US Supreme Court Hears Oral Arguments in Challenge to Chevron Deference.” *Morgan Lewis*, January 24, 2024, <https://www.morganlewis.com/blogs/asprescribed/2024/01/us-supreme-court-hears-oral-arguments-in-challenge-to-chevron-deference>.

<sup>4</sup> “So Long, Chevron.” *Civics 101: A Podcast*, August 20, 2024, <https://www.civics101podcast.org/civics-101-episodes/chevron>. See also: Orme-Zavaleta, Jennifer and Carter, Jacob. “Beyond Regulations - How Chevron will Impact Agency Science.” *SciLight*, July 5, 2024, <https://scilight.substack.com/p/beyond-regulations-how-chevron-will>.

<sup>5</sup> Separately, in speculating on a proposed alteration to *Chevron* deference made by Justice Antonin Scalia that would require agency leaders to ratify actions taken by subordinates in their agencies (*United States v. Mead (2001), dissenting*), David Barron and future Supreme Court Justice Elena Kagan suggest that leaders would be hard-pressed to reject the actions of subordinates because they “may think that a reversal will lead to a decline in the moral and loyalty of employees” (2001: 259).

First, removing Chevron alters the institutional design of administrative agencies by stripping bureaucrats of interpretive discretion. By reducing this discretion, the ruling may discourage skilled civil servants from pursuing careers in the bureaucracy. Second, the decision risks exacerbating politicization within the bureaucracy. The *Loper Bright* decision may make it harder for bureaucrats to make decisions based on their expertise rather than political pressure, which could make civil service much less attractive. Finally, *Loper Bright* heightens the uncertainty surrounding agency authority by opening bureaucratic decisions to greater judicial review and legal challenges. This increased ambiguity may deter civil servants from investing in long-term expertise, as the prospect of their decisions being overturned discourages commitment to specialized knowledge. Together these three factors could lead to a less skilled and less motivated bureaucracy, ultimately undermining the institutional capacity of government agencies to deliver effective services and implement policy.

We also provide results from a survey experiment of state bureaucrats fielded just before the *Loper Bright* decision was announced that considers how the potential reversal of *Chevron* deference affects turnover intention and willingness to invest in expertise. While the Court wrote its ruling in *Loper Bright* to apply only to the federal government, such that state agencies were not directly affected in the near-term, the scope of the ruling was not known when the survey was fielded and *Loper Bright* may still impact state-level bureaucrats because state courts often draw on federal rulings for guidance and the ruling will likely inspire state-level activists to challenge deference standards in the states. While we find no evidence that the prospect of ending *Chevron* deference prompts bureaucrats

to express interest in leaving their jobs or expending less effort on acquiring expertise in the short-term, we discuss in our conclusion why *Loper Bright* may still exact long-term costs on government agencies' stocks of human capital.

### **Background: Practical Implications and Judicial Interpretation of Deference for Civil Servants**

Civil servants choose to enter government employment for a variety of reasons. As with any form of employment, civil servants seek pecuniary rewards, such as salary and benefits, that enable them to maintain their standard of living. For many individuals, serving the public through their employment provides an intrinsic benefit in and of itself and motivates them to work for the government (e.g., Houston 2000; Perry and Wise 1990). Relatedly, and importantly for the present paper, some public employees also derive satisfaction from influencing the course of public policy in ways that bring policy outcomes closer to their own preferences (Gailmard and Patty 2012). Those civil servants who place high value on their ability to influence policy—what Gailmard and Patty (2012) refer to as “zealots”—are highly motivated to serve in government and acquire expertise when they expect to have sufficient discretion over policy to be able to apply their expertise to policy formulation and implementation. When bureaucratic institutions are designed to provide this discretion, the ratio of zealots to slackers—civil servants who do not value influence over policy and therefore do not invest in expertise—increases. With more bureaucrats investing in expertise and working hard in the jobs, the performance of the bureaucracy

improves (Andersen and Moynihan 2016; Bednar 2024; Carpenter 2001; Gailmard and Patty 2012; Stephenson 2019).<sup>6</sup>

Reflecting on how the American bureaucracy has many design elements that promote discretion to agencies, Gailmard and Patty highlight *Chevron v. National Resource Defense Council* 467 U.S. 837 (1984) as a “signal example of [judicial] deference” (2012: 69). In *Chevron*, which concerned how the Environmental Protection Agency interpreted what constitutes a “source” of air pollution under the Clean Air Act, the Court ruled that ambiguity in congressional statutes can constitute implicit delegation to agencies to interpret those statutes and that such interpretations are lawful so long as they are “permissible” or “reasonable.” In elucidating its reasoning, the Court highlighted the importance of agency expertise, writing that while “judges are not experts” in the policy areas agencies regulate, it is reasonable to assume that Congress expects agency officials “with great expertise and charged with responsibility for administering [a] provision” to be most well-equipped to interpret ambiguous language (467 U.S. 837, 865 (1984)). The practical effect of *Chevron* was to expand and solidify the scope of discretion courts afforded to federal agencies when formulating and implementing policies through the rulemaking process, thus making those institutions more conducive to the recruitment and retention of zealots motivated to invest in expertise. Beyond the federal level, *Chevron*

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<sup>6</sup> More broadly, Gailmard and Patty (2012) argue that zealots compose a larger proportion of the bureaucratic workforce when their expectation that they will be able to influence policy is high and highlight two institutional design features that increase that expectation: discretion and civil service protections. Because *Chevron* deference and its reversal only affects discretion, we limit our focus to that design feature in the present manuscript. However, other potential changes to the design of American bureaucratic institutions that would affect civil service protections, such as Donald Trump’s proposed Schedule F that would reclassify many federal employees such that they would no longer enjoy the same employment security, could also discourage zealots from public service (Moynihan 2022).

deference or a similar standard prevails in half of US states and the District of Columbia, affording agencies in those states similar institutional design benefits.<sup>7</sup>

*Chevron* deference prevailed as the legal standard for federal agencies until June 2024, when the Supreme Court overturned this precedent in *Loper Bright v. Raimondo* 603 U.S. \_\_\_\_ 16 (2024). In the Court’s majority opinion, Chief Justice John Roberts argues that under the Administrative Procedure Act Congress did not intend that courts defer to agency interpretation of statutes, but rather “incorporates the traditional understanding of the judicial function, under which courts must exercise independent judgment in determining the meaning of statutory provisions” (603 U.S. \_\_\_\_ 16 (2024)). In practice, the Court’s decision in *Loper Bright* had at least two important implications for federal civil servants. First, in overturning *Chevron* and asserting that judges need not defer to agency interpretations of ambiguous statutes, the Court reduced the degree of discretion bureaucrats. Moving forward, civil servants cannot expect their interpretations of statutes and subsequent actions to stand on their own, but rather must anticipate that judges can exercise broader *ex post* review. Second, the Court injected substantial uncertainty into the federal rulemaking process by not explicitly elucidating a new standard for review of agency actions in *Loper Bright*. Consequently, public officials and legal scholars have expressed confusion and alarm as to how agencies and stakeholders should navigate the legal landscape in light of *Loper Bright*; while some speculate that agencies should now expect *Skidmore* deference, whereby agencies’ interpretations receive deference from

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<sup>7</sup> Kinsella, Martha and Lerude, Benjamin. “Judicial Deference to Agency Expertise in the States.” *State Court Report*, October 26, 2023, <https://statecourtreport.org/our-work/analysis-opinion/judicial-deference-agency-expertise-states>.

judges according to the persuasiveness of their reasoning and analysis, others suggest that the Court has made agency interpretations subject to *de novo* review, or provide no deference whatsoever to agency interpretations.<sup>8</sup> Ultimately, how *Loper Bright* reframes the degree of discretion agencies enjoy will not become clear until a new judicial consensus emerges through future litigation. In the meantime, bureaucrats will need to grapple with both the loss of broad discretion they enjoyed under *Chevron* and the uncertainty about *what* degree of discretion they now possess.

### **Potential Effects of *Loper Bright* on Bureaucratic Human Capital**

How the Court’s reversal of *Chevron* deference will ultimately affect federal civil servants is an open question; not only do we lack a counterfactual for comparison, but never before has a single judicial ruling substantially constrained bureaucratic discretion as did *Loper Bright*. However, in recognizing the key changes *Loper Bright* effectuates for federal agencies—decreased discretion and increased uncertainty—we can draw on existing scholarship that focuses on similar institutional features in other settings and use those conclusions to speculate about the likely consequences of *Loper Bright* for bureaucratic human capital. In the following subsections, we use prior research on three subjects in political science and public administration—institutional design, politicization, and uncertainty—to formulate expectations for how *Loper Bright* may affect bureaucratic human capital going forward.

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<sup>8</sup> Deacon, Daniel. “Loper Bright, Skidmore, and the Gravitational Pull of Past Agency Interpretations.” *Yale Journal on Regulation*, June 30, 2024, <https://www.yalejreg.com/nc/loper-bright-skidmore-and-the-gravitational-pull-of-past-agency-interpretations/>; Walker, Christopher J. “What Loper Bright Enterprises v. Raimondo Means for the Future of Chevron Deference.” *Yale Journal on Regulation*, June 28, 2024, <https://www.yalejreg.com/nc/what-loper-bright-enterprises-v-raimondo-means-for-the-future-of-chevron-deference/>.



## *Institutional Design*

*Loper Bright* is fundamentally a change to the institutional arrangements governing the bureaucratic rulemaking process, and thus studies that consider how institutional design elements affect the degree of discretion afforded to civil servants influence human capital can inform expectations about the implications of the reversal of *Chevron*.

Gailmard and Patty (2012) develop a formal model that concludes that institutional features that enhance discretion will incentivize zealots to remain in public service and to invest in developing expertise. The negative version of their argument suggests that if an institution is structured to constrain discretion, zealots will be less likely to stay in the bureaucracy and cultivate expertise, leaving a higher proportion of slackers who will exert less effort and perform lower-quality work. Carpenter's theory of bureaucratic autonomy produces related expectations; as increased autonomy afforded by political principals creates conditions conducive to the development and retention of expertise, the erosion of autonomy disincentivizes civil servants with those skills from entering and remaining in the bureaucracy (2002: 29; see also Carpenter and Krause 2012).

Other recent research provides considerable evidence for the direct relationship between the degree of discretion institutions provide civil servants and those bureaucrats' likelihood of turnover. For instance, several studies focusing on civil servants' perceptions of their discretion and influence over policymaking. Kim and Fernandez (2017) draw on a survey of US federal government employees to demonstrate that civil servants who report higher levels of empowerment—of which discretion is a key component—are more satisfied with their jobs and less likely consider leaving. Similarly, drawing on a survey of

Texas state government employees, Moynihan and Landuyt (2008) report that those who express higher levels of empowerment are more likely to remain in their jobs (see also Kang et al. 2022).

Research also shows a strong relationship between discretion and the development of expertise. Andersen and Moynihan (2016) find in a field experiment that when Danish school principals were given more discretion over how to implement a co-teaching grant program, they were more likely to acquire expertise by seeking out information about the performance of their school and other schools. Additionally, Stephenson (2007) develops a formal model showing that, under certain conditions, agencies and their employees can be disincentivized from developing expertise if their political principals increase the enactment cost agencies must bear to make policy, such as increasing the level of judicial scrutiny agencies must satisfy. Taken together, this extant work suggests that by increasing the constraints on agency discretion, the reversal of *Chevron* deference may make bureaucrats more likely to leave public service and less likely to invest in expertise.

### *Politicization*

Beyond shaping and altering the institutional structure of the bureaucracy, principals can also reduce bureaucratic discretion through attempts to politicize the context of those institutions by enhancing the degree of influence those principals and their subordinates can exercise over career civil servants (Moe 1985). Principals can use various means to try to politicize bureaucracies including appointing political allies to leadership positions in agencies, changing policies to facilitate intervention in agency decision-making processes by principals and their appointees, and creating environments

in which bureaucrats alter their behavior in anticipation of that intervention (Limbocker et al. 2022). Through all of these mechanisms, political principals' goal is to shift discretion away from career civil servants and to themselves and their subordinates.

Much of the scholarship on politicization focuses on how changes in the partisan or ideological character of principals influences turnover and interest in acquiring expertise among civil servants. For instance, Bolton et al. (2021) find that when presidential transitions occur, federal bureaucrats are more likely to leave their jobs, especially if their agencies are ideologically misaligned with the incoming president and therefore most likely to be targeted for politicization efforts (see also Doherty et al. 2019). Relatedly, Cameron and de Figueiredo (2020) argue with a formal model that when presidents shift policymaking discretion away from bureaucrats by actively intervening in administrative policymaking, then shifts in control of the White House between ideologically extreme presidents will lead zealots—especially moderate zealots—to be more likely to resign their positions to avoid implementing policies they oppose, subsequently leaving larger proportions of slackers exerting lower levels of effort in the workforce.

Other work on the effect of politicization on bureaucratic behavior utilizes bureaucrats' personal perceptions of their relationships with their principals. For example, Richardson (2019) uses a survey of senior federal civil servants to demonstrate that bureaucrats are more likely to intend to leave their jobs and less likely to invest effort in acquiring expertise if they perceive that political appointees have more influence over agency decision-making than career civil servants (see also Bertelli and Lewis 2012). Relatedly, in the European context, Kim et al. (2022) find that when bureaucrats perceive

that political principals do not respect their technical expertise, they express lower levels of job satisfaction and organizational commitment—both of which are antecedents to turnover and lower levels of effort exerted.

Much of this previous work on politicization focuses on actions by principals in the executive and legislative branches, which at first glance may make its connection to the context of judicial reversal of *Chevron* deference look tenuous. However, findings from scholarship on politicization is relevant to the current context because *Loper Bright* augments the ability of judges, who are formal principals of bureaucrats, to constrain the discretion over policies and actions exercised by agencies, and bureaucrats' anticipation of that more prominent judicial intervention may disincentivize them from expending effort or encourage them to leave their agencies. Therefore, this work suggests that empowering judges to exert greater influence over agencies may have deleterious implications for bureaucratic human capital.

### *Uncertainty*

The Supreme Court's ruling in *Loper Bright* also overturned a standard central to the administrative policymaking process that had been in effect for 40 years without explicitly replacing it with an alternative standard. Further, even if the Court elucidates a new standard of deference in a future case, the new standard will likely make bureaucrats more uncertain about whether their decisions will withstand judicial scrutiny than they did under *Chevron*. For example, some have suggested that the new standard will be based on the

decision in *Skidmore v. Swift & Co.*,<sup>9</sup> which only recognizes agency interpretations as “a body of experience and informed judgments to which courts and litigants may properly resort for guidance” and allows judges to determine “the weight of such a judgment in a particular case” (323 U.S. 134, 140 (1944)). Consequently, under *Skidmore* deference, bureaucrats would face uncertainty concerning whether the actions they take when making a given policy would garner “weight” from judges reviewing it in the future.<sup>10</sup>

Like changes to institutional design and politicization, extant research suggests that higher levels of uncertainty are harmful for the civil service by leading bureaucrats to play-it-safe and be less innovative. For instance, when the duties and responsibilities of a civil servant’s job are ambiguous, such that she “does not know what [she] has the authority to decide, what [she] is expected to accomplish, and how [she] will be judged, [she] will hesitate to make decisions... be dissatisfied with [her] role... and will thus perform less effectively” (Rizzo et al. 1970: 151). Given the new ambiguity in how their decisions will be treated, bureaucrats will be much less likely to adopt innovative approaches or make discretionary judgements if they expect they will simply be overturned. This will lead them to be cautious and sometimes not act even when it is an urgent matter and the courts will not be prepared to immediately render guidance on what should be done.

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<sup>9</sup> Deacon, Daniel. “Loper Bright, Skidmore, and the Gravitational Pull of Past Agency Interpretations.” *Yale Journal on Regulation*, June 30, 2024, <https://www.yalejreg.com/nc/loper-bright-skidmore-and-the-gravitational-pull-of-past-agency-interpretations/>.

<sup>10</sup> That *Skidmore* deference will replace *Chevron* deference is but one of many theories posited since the Court issued its decision in *Loper Bright*. For instance, Adrian Vermeule argues that the ruling merely relabels “*Chevron* deference” as “*Loper Bright* delegation” and that the degree of deference afforded agencies by the judiciary will not meaningfully change (Vermeule, Adrian. “Chevron By Any Other Name.” *The New Digest*, June 28, 2024, <https://thenewdigest.substack.com/p/chevron-by-any-other-name>). However, that perspectives of legal scholars concerning the impact of *Loper Bright* on the degree of deference agencies should expect underscores the increased uncertainty the Court’s ruling effectuates for bureaucrats.

Further, *Loper Bright* creates uncertainty about the scope of civil servants' policymaking authority and the standards for judicial review when they exercise that authority, which can subsequently erode bureaucrats' job satisfaction and interest in continuing their employment and exerting effort (Green and Rossler, 2019; Hassan 2013). Relatedly, when an agency's goals or policy objectives are ambiguous, the agency's productivity and work quality can decline (Chun and Rainey 2005), and its employees can experience higher levels of role ambiguity (Davis and Stazyk 2015; Pandey and Wright 2006) and face fewer incentives to invest in expertise (Gilad 2015). *Loper Bright* could also increase goal ambiguity if agencies may now be uncertain whether they have the legal authority to pursue standing goals if doing so would require them to interpret ambiguous statutes. This may cause stress as they know have to balance concerns about legal compliance with a desire to implement effective policies. Thus, by increasing uncertainty in the administrative policymaking environment, the Court's reversal of *Chevron* may increase turnover rates and depress bureaucrats' willingness to invest in expertise.

### **Near-Term Effects of the Reversal of *Chevron*: Results from an Experiment of State Bureaucrats**

While extant research suggests that *Loper Bright's* reversal of *Chevron* will degrade the human capital of the federal bureaucracy, the unprecedented nature of the associated institutional change makes it difficult to predict what the magnitude of this change will be. Additionally, because the reversal of *Chevron* affects the entire federal government simultaneously, it will be difficult to isolate a causal effect of the Court's decision on changes in civil servants' turnover rates and levels of effort exerted from other institutional

and environmental factors present simultaneously, such as proximity to a presidential election which lead to a switch in which party controls government.

Anticipating these inferential challenges, we embedded a pre-registered priming experiment on a survey of bureaucrats fielded just before the Court issued its ruling in *Loper Bright* to assess whether the potential reversal of *Chevron* would influence their outlook on their jobs. While this experiment can provide insight only on near-term effects prompted by the *prospective* reversal of *Chevron*, it enables us to isolate a causal effect if one exists. If our experiment finds a detectable negative effect of that pending reversal on bureaucrats' attitudes towards their careers, it would serve as an early warning of long-term effects.

### *Research Design*

We embedded our priming experiment in a survey of bureaucrats in 9 US states fielded between May 31 and June 26, 2024.<sup>11</sup> Of the 9 states sampled, 5 maintained *Chevron* or Chevron-like deference standards when the survey was fielded (Connecticut, Illinois, New Hampshire, Oregon, and Vermont), while the other 4 provided for a more limited degree of deference (North Carolina) or afforded agency interpretation of state statutes no judicial deference (Florida, Indiana, and Nebraska).<sup>12</sup> While *Loper Bright* as

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<sup>11</sup> Our pre-registration documentation is available through the Open Science Framework ([https://osf.io/rpqtw/?view\\_only=21d9dc3afccb4736acf45569886ecc9b](https://osf.io/rpqtw/?view_only=21d9dc3afccb4736acf45569886ecc9b)). Please see the Supplemental Information for details about our sampling procedure, response rate, and sample demographic characteristics.

<sup>12</sup> Kinsella, Martha and Lerude, Benjamin. "Judicial Deference to Agency Expertise in the States." *State Court Report*, October 26, 2023, <https://statecourtreport.org/our-work/analysis-opinion/judicial-deference-agency-expertise-states>. Subsequent to the publication of this *State Court Report* analysis but before we fielded our survey, the legislatures in Indiana and Nebraska passed new laws repealing requirements that state courts afford agency interpretations of statutes any deference (Canaparo, GianCarlo and Sampson, Caleb. "Chevron in the States: Where is Deference Still in Effect, and How Can States Eliminate It?" *The Federalist Society*, October 3, 2024, <https://fedsoc.org/commentary/fedsoc-blog/chevron-in-the-states-where-is->

written applies only to federal agencies, what the Court would rule and the scope of governmental entities to which it would apply was not known until the majority opinion was issued on June 28; thus, the priming experiment prompts state bureaucrats to consider a feasible scenario in which a *Chevron* reversal could affect them in the near future. Additionally, even though *Loper Bright* ultimately applied only to federal agencies, the majority opinion’s legal reasoning is “likely to apply” to the deference standards in many states and state-level legal challenges seeking to limit deference to agencies are “almost guaranteed.”<sup>13</sup> Thus, while the Court’s decision did not have immediate direct implications for those working for state agencies, it raises the specter that it may extend to state-level deference standards in the future and makes the reactions of state bureaucrats to the prospective reversal of *Chevron* relevant to understanding the consequences of *Loper Bright* on bureaucratic human capital.

Approximately 1,200 respondents in the 5 states with *Chevron* or *Chevron*-like deference participated in the module in which our priming experiment was embedded. In this module, respondents were randomly assigned to be asked the following question to prime considerations of the potential reversal of *Chevron*, to which they could respond “yes” or “no”:

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[deference-still-in-effect-and-how-can-states-eliminate-it](#)). Our main analyses exclude respondents from Florida, Indiana, Nebraska, and North Carolina. We present the results obtained when including respondents from all states, which are substantively similar to those presented below, in Supplemental Information Section C.

<sup>13</sup> Rollo, Marc, Dennen, Charles, and Tyrrell. “Impact of the ‘Loper Bright’ Decision on New Jersey State Deference.” *New Jersey Law Journal*. August 8, 2024, <https://www.law.com/njlawjournal/2024/08/08/impact-of-the-loper-bright-decision-on-new-jersey-state-deference/>. Indeed, when the US Supreme Court issued its ruling in *Loper Bright*, the Hawaii Supreme Court was considering a case challenging the state’s own *Chevron*-like deference standard. Its ruling in *Rosehill v. Hawai’i* 154 HI \_\_\_\_ (2024), the court upheld the state’s level of deference for bureaucrats’ interpretations of ambiguous statutes.



The Supreme Court is expected to issue a ruling this year that would eliminate the *Chevron* doctrine, which would make it so that courts will no longer defer to government agencies when interpreting how ambiguous laws are implemented. Have you heard much about this potential change?

Following this priming question, respondents were asked two questions about their outlooks on their jobs in the following year. First, we measure respondents' turnover intention by asking them to indicate on an eleven-point scale how likely it is that they will be working for their state's government by the end of 2025. Second, we measure respondents' planned investment in developing expertise by asking respondents to indicate on a five-point scale the degree of effort they will exert on developing expertise in their subject area in 2025 relative to 2023.

Given our foregoing theoretical discussion, we pre-registered two expectations concerning how increasing the salience of *Chevron* in respondents' minds would affect their turnover intention or planned investment in expertise. First, we expect that respondents primed to think about the reversal of *Chevron* would prompt respondents to express a higher likelihood of leaving government service and less interest in acquiring expertise. Second, because bureaucrats who appreciate their ability to influence public policy place more value on discretion (Gailmard and Patty 2012), we expect the negative effect of our *Chevron* prime to be larger among respondents with higher levels of public service motivation (PSM), which has been proposed and used as a measure of bureaucrats' zealotry in previous work (e.g., Gailmard 2010; Gailmard and Patty

2012; Yu 2023). To test this second expectation, we measured respondents' PSM using the five-question battery in Wright et al. (2013) and interact PSM with our treatment indicator. While this experimental design does not enable us to discern the relative importance of the three theoretical perspectives we posit above—institutional design, politicization, and uncertainty—it does allow us to evaluate the veracity of the common expectations of those perspectives—that priming the reversal of *Chevron* deference makes bureaucrats less willing to remain in their jobs and to invest effort in acquiring expertise.

### *Results*

We use linear regression to assess the effect of our *Chevron* prime on respondents' turnover intention and expected investment in expertise. We present the results of our main analyses in Table 1. Columns 1 and 2 show null effects for our *Chevron* treatment on turnover intention. The average treatment effect presented in column 1 is negative, as expected, but is close to zero (-0.01). Differently, the coefficients in column 2 suggest that the prime made respondents *more* likely to remain working for the state government and that this positive effect lessened as respondents' PSM increases, but the conditional average treatment effect of our *Chevron* prime and PSM is not statistically distinguishable from zero.

[INSERT TABLE 1 HERE]

We also observe that the *Chevron* priming had a null average treatment effect for investing in expertise with a positive but substantively small coefficient (0.03) in column 3. Differently, turning to our assessment of the conditional average treatment effect of our

*Chevron* prime and respondents' PSM, we observe a statistically distinguishable effect consistent with respondents in the treatment condition expressing *more*, rather than *less*, willingness to expend effort on developing expertise than those in the control condition as PSM increases. However, as we discuss in Supplemental Information Section C, the data underlying our model is not compatible with the classic linear interaction effect assumption, and, when we reanalyze the data with alternative estimation strategies, such as a binning estimator, this interactive effect is no longer statistically distinguishable (Hainmueller et al. 2019). Taken together, the results from our experiment provide no evidence that reversing *Chevron* discretion harms bureaucrats' willingness to continue in public service or invest in acquiring expertise in the short-term.

## **Conclusion**

Though much of the attention paid to the reversal of *Chevron* has focused on its implications for the federal regulatory process, the Supreme Court's decision to narrow bureaucrats' discretion and inject uncertainty into the process is likely to have negative implications for bureaucrats themselves. *Chevron* deference had been in place for forty years, meaning that almost everyone working in federal agencies has only ever worked under the prior system. As civil servants experience a constrained and opaque ability to make an implement policy and an increased number of legal challenges to existing or proposed rules, they may question whether their jobs provide them sufficient discretion to motivate them to develop expertise in their policy areas and even whether continuing in their positions provides greater utility than a move to the private sector. While our priming experiment yielded null results, it may be that respondents did not fully comprehend how

different the regulatory environment may work once *Chevron* was reversed, and that once constrained discretion and increased uncertainty become a reality they might internalize these negative changes more strongly. As the federal bureaucracy moves into a post-*Chevron* world and agencies in states with *Chevron*- or *Chevron*-like deference face challenges to their deference standards, the adverse effects on bureaucratic human capital we draw from related extant scholarship may begin to manifest. We encourage scholars to continue to monitor civil servants' turnover patterns, willingness to invest in expertise, and related workplace behaviors and perceptions as the post-*Chevron* regime takes form and bureaucrats learn about its ramifications for their jobs first-hand.

Understanding the effects of *Loper Bright* on the behavior of individual bureaucrats is ultimately important because of the potential implications for bureaucratic capacity. In order to perform the vital government functions assigned to them, from managing air traffic to maintaining the safety of the food supply and delivering unemployment benefits, government agencies need qualified and motivated individuals working for them (Stephenson 2019). Given that a main draw of working in the bureaucracy is the prospect of influencing the policymaking process to manifest one's own vision of the "best" or their "most preferred" policy (Gailmard and Patty 2012), limiting discretion through *Loper Bright* poses threats to bureaucratic capacity by demotivating current employees from exerting effort and developing expertise, making private sector options relatively more attractive for current employees, and hampering recruitment efforts by limiting the job benefits associated with proximity to the policymaking process—all implications which can erode bureaucratic capacity. Should the reversal of *Chevron* ultimately prove to not only make

administrative policymaking unworkably burdensome, but also erode agencies' ability to cultivate the capacity they need to fulfill their charges, lawmakers will need to consider ways to augment bureaucrats' discretion or pecuniary benefits that enable agencies to recruit, retain, and motivate their employees.

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**Table 1: Effect of Chevron Treatment on Turnover Intention and Investment in Expertise**

	(1)	(2)	(3)	(4)
	Likelihood of Remaining in Job		Effort Invested in Expertise	
Intercept	8.55 *	7.46 *	3.22 *	2.37 *
	(0.11)	(0.60)	(0.04)	(0.21)
<i>Chevron</i> Treatment	-0.01	0.87	0.03	-0.66 *
	(0.15)	(0.85)	(0.05)	(0.30)
Public Service Motivation		0.27 *		0.21 *
		(0.15)		(0.05)
<i>Chevron</i> Treatment: Public Service Motivation		-0.22		0.16 *
		(0.21)		(0.07)
Num. obs.	1232	1225	1228	1222

Models are estimated with ordinary least squares regression. \* denotes statistical significance at the  $p < 0.05$  level (one-tailed). The dependent variable for the first and second models is respondents' likelihood of remaining in the employ of their state's government by the end of 2025 as indicated on an eleven-point scale, and the dependent variable for the third and fourth models is respondents' intended level of effort they will exert on developing expertise in 2025 relative to 2023 as expressed on a five-point scale. These analyses include only respondents from the five states in the sample with *Chevron* or *Chevron*-like deference standards as of May 2024.

## Supplemental Information

### **Section A: Preregistration**

We preregistered our experimental design through the Open Science Framework on May 18, 2024 ([https://osf.io/rpqtw/?view\\_only=21d9dc3afccb4736acf45569886ecc9b](https://osf.io/rpqtw/?view_only=21d9dc3afccb4736acf45569886ecc9b)). As we analyzed our survey responses, we made two deviations from our preregistered design concerning which states we include in the analysis, which we describe in detail here.

1. The survey in which this experiment was embedded was sent to bureaucrats in nine states: Connecticut, Florida, Illinois, Indiana, Nebraska, New Hampshire, North Carolina, Oregon, and Vermont. Because Florida repealed judicial deference to agency interpretations of statutes by ballot initiative in 2018, we preregistered that we would only utilize data from the remaining eight states. However, after the survey was fielded, we learned that the standards of judicial deference to agency interpretations of statutes in North Carolina are markedly lower than a *Chevron* or *Chevron*-like standard and that judicial deference to agency interpretations in Indiana and Nebraska had been reversed by the states' legislatures shortly before we fielded the survey.<sup>15,16</sup> Because bureaucrats in those states consequently would have no expectation that the level of deference they experience would change if the Supreme

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<sup>15</sup> Kinsella, Martha and Lerude, Benjamin. "Judicial Deference to Agency Expertise in the States." *State Court Report*, October 26, 2023, <https://statecourtreport.org/our-work/analysis-opinion/judicial-deference-agency-expertise-states>.

<sup>16</sup> Subsequent to the publication of this *State Court Report* analysis but before we fielded our survey, the legislatures in Indiana and Nebraska passed new laws repealing requirements that state courts afford agency interpretations of statutes any deference (Canaparo, GianCarlo and Sampson, Caleb. "*Chevron* in the States: Where is Deference Still in Effect, and How Can States Eliminate It?" *The Federalist Society*, October 3, 2024, <https://fedsoc.org/commentary/fedsoc-blog/chevron-in-the-states-where-is-deference-still-in-effect-and-how-can-states-eliminate-it>).

Court reversed *Chevron*, they should also be excluded from the analysis, and we have implemented that exclusion criterion for our analysis in the main paper.

We provide the analysis for the full sample (minus Florida, which we preregistered that we would not include) in Supplemental Information Section C.1; the substantive results when using this full sample are largely consistent with those obtained with the constrained sample with the exception of the interaction effect detected in the main analysis concerning respondents' willingness to invest in acquiring expertise (but see Supplemental Information Section C.2).

2. In our preregistration, we planned to randomly sample 25% of the email addresses we obtained from state employee directories. We chose this approach to balance both power considerations for all of the modules on the survey while not overburdening public employees.<sup>17</sup> The size of our random sample anticipated a response rate of between 5% and 10%, as reported in recent studies utilizing survey experiments with other elite populations (e.g., e.g., Furnas and LaPira 2024; Miller 2022), which would have yielded us approximately 2,172 to 4,345 responses (excluding respondents from Florida). However, 24 hours after distributing email

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<sup>17</sup> Starting with the initial sample of 253,344 emails across the nine states, we considered two factors that would inform our expected response rate: 1) the expected turnover of state employees between the time the emails were collected in 2023 and the survey was fielded in 2024 and 2) observed response rates in other recent samples of political elites. First, based on reported turnover rates of states in our sample, we expected approximately 16% of employees in our sample to no longer be employed by their state rendering their email address invalid. Second, examining recent survey experiments of political elites, such as congressional staff and federal lobbyists, we anticipated a response rate of between 5% and 10% (e.g., Furnas and LaPira 2024; Miller 2022). Given these factors, we expected to collect approximately 2,600 to 5,200 responses.

invitations to the random sample, we observed a response rate of lower than 1%, which prompted concern that we would not obtain enough responses to conduct sufficiently powered analyses.<sup>18</sup> Accordingly, we decided to send email invitations to all state government employees for which we collected email addresses.

## **Section B: Survey Protocol**

### *Section B.1: Sampling Procedure*

The sampling frame for the survey in which the *Chevron* priming experiment was embedded was all state government employees in the following eight states whose email addresses were posted publicly in the employee directories of those states: Connecticut, Illinois, Indiana, Nebraska, New Hampshire, North Carolina, Oregon, and Vermont.<sup>19, 20</sup> In the first half of 2023, one of the authors and student research assistants collected the emails from the directories of these states and formatted them into comma-separated files.

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<sup>18</sup> While it is difficult to understand systematic reasons for non-response, anecdotally we believe state government employees are not as responsive as other recently studied elite populations because they have been trained to be cautious when opening and interacting with emails sent from unfamiliar sources. Many potential respondents emailed the author who facilitated survey distribution asking for confirmation and/or evidence that the survey invitation was legitimate, and officials from the information technology (IT) offices of several state agencies called the author to assess whether the emails were associated with a cybersecurity risk. Additionally, several potential respondents informed the author that the policies set forth by their IT offices prevented them from participating, and others indicated that their IT offices send similar messages to “test” the employees’ compliance with agency policies. Separately, several potential respondents also told the author that their agency barred employees from completing outside surveys or participating in academic research unless the activities were pre-approved by the agency head.

<sup>19</sup> The survey was also distributed to state government employees in Florida, but we excluded respondents from Florida in our preregistered design (see Supplemental Information Section A).

<sup>20</sup> In late 2021, one of the authors surveyed the employee directories of all fifty states to determine whether the state posted publicly the email addresses of its employees publicly. At that time, 25 states provided such information publicly. From those 25 states, one of the authors selected a subset of states where it was most feasible to collect the email addresses given the formatting of each state’s directory and such that the subset would be representative across important state-level characteristics, such as geographic location and partisanship.

The total number of unique email addresses collected from these eight states is 173,794. Initial email invitations were sent to all unique email addresses between May 31 and June 3, 2024, and reminder emails were sent to all respondents that had not yet completed the survey on June 11 and June 18, 2024. Response collection ceased at the end of the day on June 26, 2024, at which point 2,434 respondents had provided an answer to at least one of the two outcome questions in the *Chevron* priming experiment. Subtracting from the 23,134 emails which were returned as undeliverable, the response rate for this module is approximately 1.6% ( $\frac{2434}{150660}$ ).

After responding to a series of pre-treatment questions, respondents were randomly assigned to be in one of two conditions for our *Chevron* priming experiment. Those in the “treatment” condition were presented with a short prompt about the Supreme Court’s expected reversal of *Chevron* deference and what the implications might be for employees in state governments (see Section B.2 for full wording). After reviewing this prompt, respondents in the treatment condition were asked to answer our two outcome questions concerning their likelihood of remaining in state government in 2025 and the effort they expect to invest in acquiring expertise in 2025 relative to 2023. Meanwhile, those in the “control” condition were not provided with a prompt before seeing the two outcome questions.

### *Section B.2: Respondent Demographic Characteristics*

The only systematic information we were able to collect about state government employees in the full sampling frame was their names, email addresses, and the states by

which they were employed.<sup>21</sup> We present information about survey responsiveness by state in Table SI.1.

For respondents who participated in our *Chevron* priming experiment, we collected information on a range of demographic characteristics pre-treatment. We provide information about the characteristics of our sample of respondents in Table SI.2.

**Table SI.1: Sampling Frame Response Rates by State**

State	# of respondents	# of employees invited to participate	Response rate
Connecticut	226	11,898	1.9%
Illinois	30	1849	1.6%
Indiana	184	26,830	0.7%
Nebraska	383	12,701	3.0%
New Hampshire	25	8972	0.3%
North Carolina	633	48,305	1.3%
Oregon	843	36,460	2.3%
Vermont	110	3,645	3.0%
<b>TOTAL</b>	<b>2,434</b>	<b>150,660</b>	<b>1.6%</b>

**Table SI.2: Respondent Demographic Characteristics**

	# (%) of respondents
<b>Gender</b>	
Male	1111 (45.6%)
Female	1263 (51.9%)
Something else/Other	28 (1.2%)
Prefer not to say	28 (1.2%)
NA	4 (0.2%)
<b>Age</b>	
18-29	129 (5.3%)
30-49	1113 (45.7%)
50-64	1023 (42.0%)
65 or older	168 (6.9%)
NA	1 (0.0%)
<b>Income</b>	

<sup>21</sup> For some states, we were also able to collect information about the agency and/or office in which they worked and the physical address of their workplace. However, this information was not provided by all states and is not presented in a uniform format across states, so we are not able to use it in assessing sample representativeness.

Less than \$25,000	20 (0.3%)
\$25,000-\$49,999	167 (6.9%)
\$50,000-\$74,999	411 (16.9%)
\$75,000-\$99,999	464 (19.1%)
\$100,000-\$199,999	1052 (43.2%)
\$200,000 or more	313 (12.9%)
NA	20 (0.8%)

**Education**

Some high school, or less	1 (0.0%)
High school graduate or GED	86 (3.5%)
Some college, no 4-year degree	352 (14.5%)
College graduate	862 (35.4%)
Post-graduate degree	1128 (46.3%)
NA	5 (0.2%)

**Race**

American Indian or Alaska Native	15 (0.6%)
American Indian or other Pacific Islander	10 (0.4%)
Asian	55 (2.3%)
Black or African American	179 (7.4%)
Native Hawaiian or Pacific Islander	5 (0.2%)
Other	137 (5.6%)
White	2017 (82.9%)
NA	16 (0.7%)

**Hispanic**

Yes	142 (5.8%)
No	2260 (92.9%)
Prefer not to say	27 (1.1%)
NA	5 (0.2%)

**Party Identification**

Strong Democrat	712 (29.3%)
Not a very strong Democrat	333 (13.7%)
Lean Democrat	290 (11.9%)
Independent	252 (10.4%)
Lean Republican	155 (6.4%)



Not a very strong Republican	196 (8.1%)
Strong Republican	263 (10.8%)
Other/NA	233 (9.6%)
<b><u>Ideology</u></b>	
Very liberal	264 (10.8%)
Liberal	605 (24.9%)
Slightly liberal	322 (13.2%)
Moderate	611 (25.1%)
Slightly conservative	186 (7.6%)
Conservative	328 (13.5%)
Very conservative	107 (4.4%)
NA	11 (0.5%)
<b><u>Years of Experience in State Government</u></b>	
Less than 5 years	581 (23.9%)
5-10 years	702 (28.8%)
11-15 years	300 (12.3%)
16-20 years	290 (11.9%)
More than 20 years	558 (22.9%)
NA	3 (0.1%)
<b><u>Job Selection Method</u></b>	
Appointed by elected official	89 (3.7%)
Hired/promoted through civil service system	1961 (80.6%)
Other	381 (15.7%)
NA	3 (0.1%)

*Section B.3: Question Wording*

[THE FOLLOWING QUESTION WAS SEEN ONLY BY TREATMENT GROUP RESPONDENTS]

Under the *Chevron* doctrine, courts at the federal level and in many states must defer to government agencies' reasonable interpretations of ambiguous statutes.

The US Supreme Court is expected to issue a ruling this year that would eliminate the *Chevron* doctrine, which would limit the ability of agencies in many states to use ambiguous statutes as the basis of their decisions.

Have you heard much about this potential change?

- Yes
- No

What is the likelihood that you will be working for the [STATE] government at the end of 2025?

[0-10 SLIDER SCALE WITH “Not at all likely” LABEL AT 0 AND “Extremely likely” LABEL AT 10]

As a government employee, you can put in extra effort to develop policy expertise in your area of specialization. How much effort do you expect to put into developing policy expertise in 2025 relative to 2023?

- A lot less effort in 2025 relative to 2023
- Somewhat less effort in 2025 relative to 2023
- The same amount of effort in 2025 relative to 2023
- Somewhat more effort in 2025 relative to 2023
- A lot more effort in 2025 relative to 2023

## Section C: Empirical Analysis

### Section C.1: Analysis with Full Sample

**Table SI.1: Effect of Chevron Treatment on Turnover Intention and Investment in Expertise (Full Sample)**

	(1)	(2)	(3)	(4)
	Likelihood of Remaining in Job		Effort Invested in Expertise	
Intercept	8.28 *	6.90 *	3.19 *	2.14 *
	(0.08)	(0.43)	(0.03)	(0.15)
<i>Chevron Treatment</i>	0.12	0.92	-0.01	-0.17
	(0.11)	(0.62)	(0.04)	(0.22)

**Table SI.1: Effect of Chevron Treatment on Turnover Intention and Investment in Expertise (Full Sample)**

	(1)	(2)	(3)	(4)
	Likelihood of Remaining in Job		Effort Invested in Expertise	
Public Service Motivation		0.35 *		0.26 *
		(0.11)		(0.04)
<i>Chevron</i> Treatment:				
Public Service Motivation		-0.20		0.03
		(0.15)		(0.05)
Num. obs.	2423	2410	2425	2413

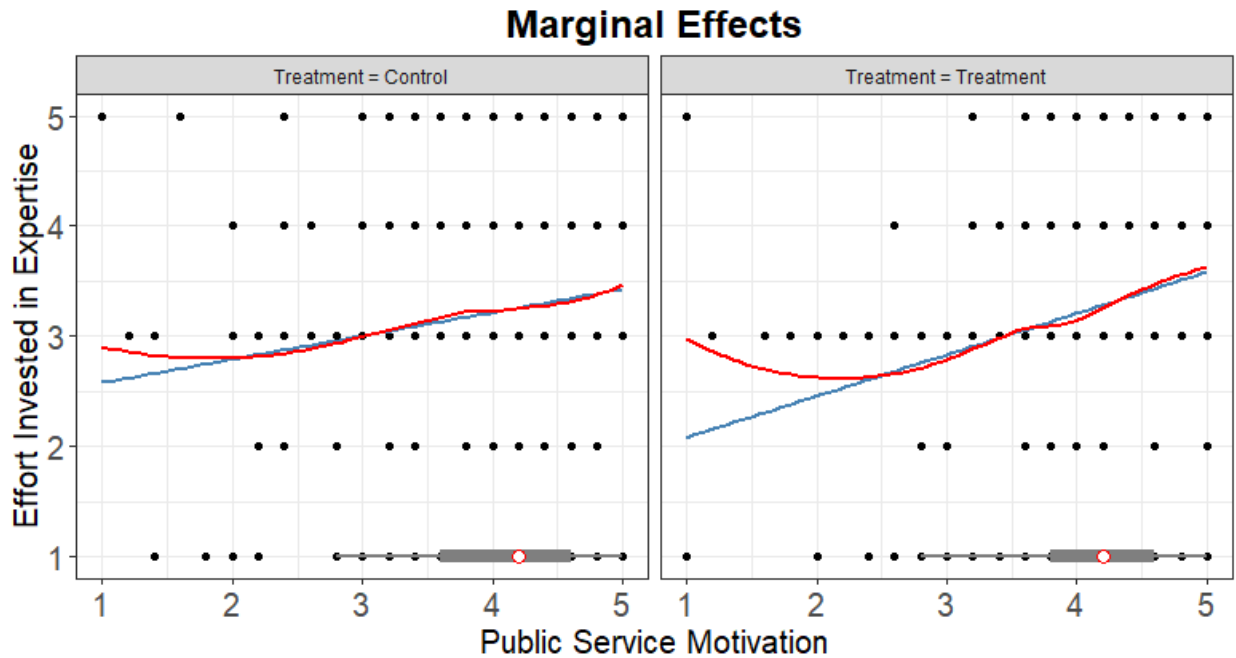
Models are estimated with ordinary least squares regression. \* denotes statistical significance at the  $p < 0.05$  level (one-tailed). The dependent variable for the first and second models is respondents' likelihood of remaining in the employ of their state's government by the end of 2025 as indicated on an eleven-point scale, and the dependent variable for the third and fourth models is respondents' intended level of effort they will exert on developing expertise in 2025 relative to 2023 as expressed on a five-point scale. These analyses include respondents from all eight states included in our preregistration documentation.

### *Section C.2: Linear Interaction Effect Assumption and Alternative Specifications*

One of the four empirical models presented in our main analysis—the interactive model in column 4 where our *Chevron* prime is interacted with respondent PSM—suggests a statistically distinguishable effect of our treatment on respondents' interest in investing more effort in acquiring expertise in 2025 relative to 2023, such that respondents in the treatment condition are more willing to invest in expertise relative to those in the control condition as PSM increases.

This interactive effect relies on a linear interactive effect (LIE) assumption, whereby we assume the effect of our moderator changes linearly and at a constant rate (Hainmueller et al. 2019). In exploring our analysis, we discovered that the distribution of the moderating variable—PSM—among respondents in our sample is decidedly left-skewed, such that most respondents express high levels of public service motivation (mean=4.03, median=4.60) and we lack common support at lower values of PSM, which can lead to LIE assumption violations. Accordingly, following Hainmueller et al. (2019), we first created Linear

Interaction Diagnostic (LID) plots to assess the linearity of the relationship between X and Y across the control and treatment conditions.<sup>22</sup> These LID plots, presented in Figure SI.1, indicate minor deviations from linearity at the lowest values of PSM.



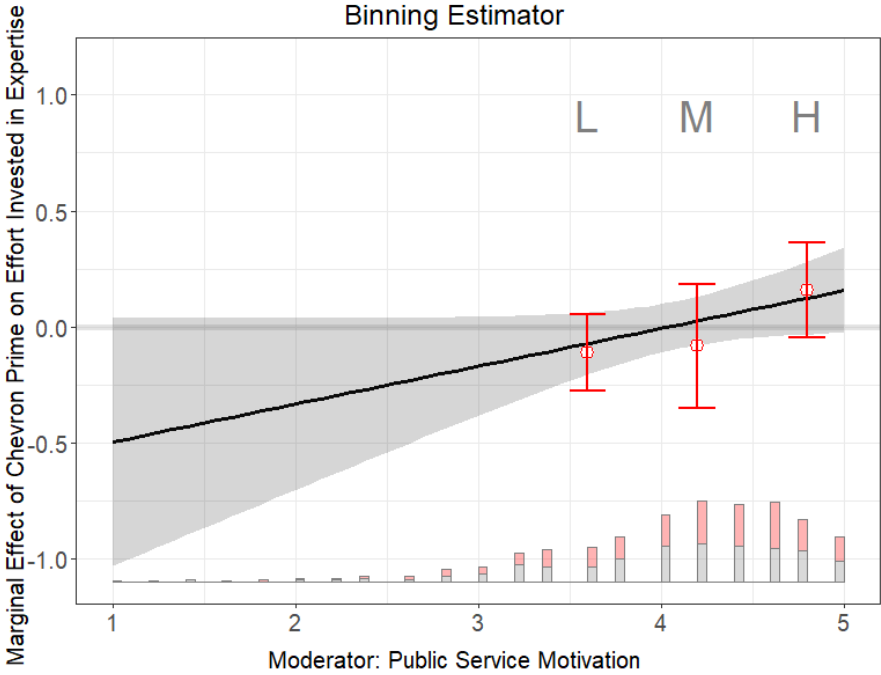
**Figure SI.1: Linear Interaction Diagnostic Plots.** These diagnostic plots correspond with the interactive model presented in column 4 of Table 1 in the main paper.

Given the known left-skewedness of PSM among our respondents, we also proceeded to use an alternative estimation strategy that relaxes the LIE assumption. Specifically, we used a binning estimator, which estimates the marginal effect of the moderator for a set number of bins. Following Hainmueller et al. (2019), we specify three bins to represent the effect of the moderator on the treatment effect at low, moderate, and high levels, and present the visual representation of the binning estimator in Figure SI.2.<sup>23</sup>

<sup>22</sup> All analyses presented in this subsection were conducted using the `interflex` package in R.

<sup>23</sup> We also re-estimated the model using a kernel estimator, which yielded results similar to those obtained with the binning estimator.

Both the histogram of PSM along the x-axis of the plot as well as the large width of the confidence interval at lower levels of PSM highlight the lack of common support across the range of our moderator. The confidence intervals for the estimated interactive effect in each of our three bins include zero, suggesting that the interactive effect we initially detected was an artifact of functional form.



**Figure SI.2: Binning Estimator.** This binning estimator plot corresponds with the interactive model presented in column 4 of Table 1 in the main paper.

**References**

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