

# Deference to U.S. Administrative Agencies: Current Debates

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# Three Categories of Deference

- Fact
  - Arbitrary and Capricious
  - Substantial Evidence
  
- Discretion
  - Arbitrary and Capricious
  
- Law
  - *Skidmore* (consistency, thoroughness, validity of reasoning, etc.)
  - *Chevron* (defer to reasonable agency interpretation of “ambiguity” or gap)
  - *Auer* (defer to reasonable agency interpretation of ambiguous *regulation*)

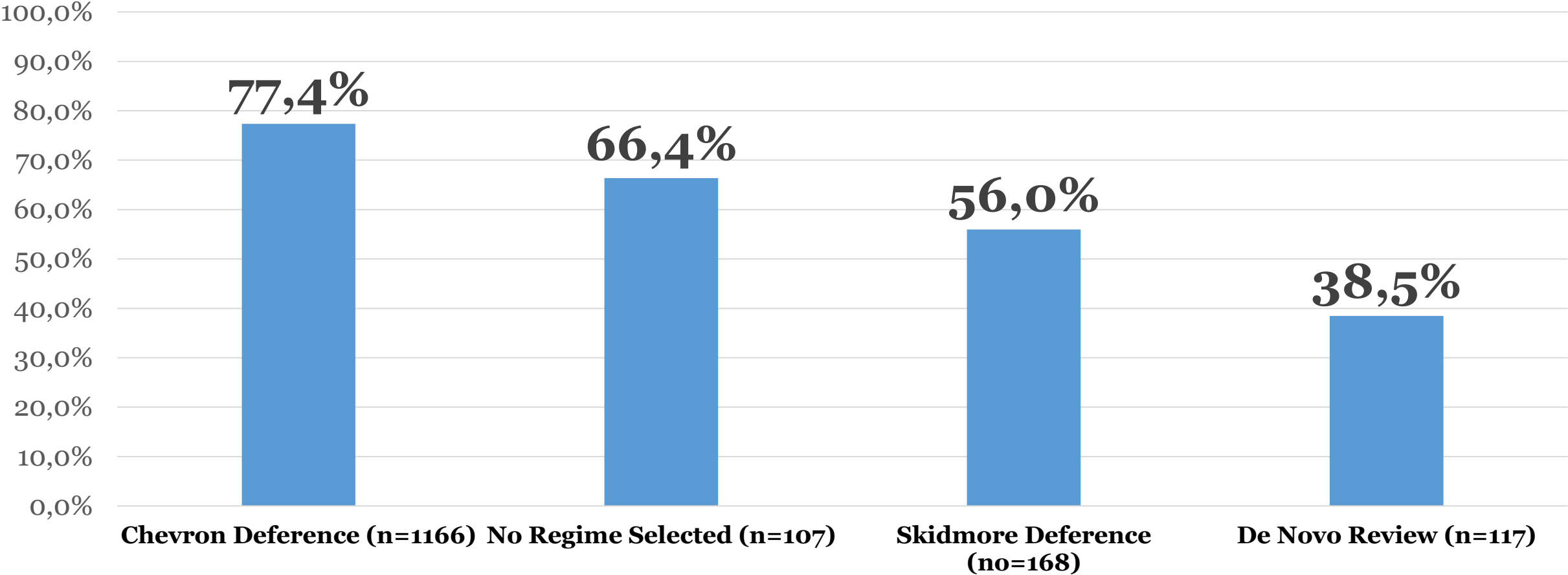
# Deference to Discretionary Decisions

- What are “discretionary” decisions?
- How intense should judicial review be? “Hard look?” or “Soft glance?”

# Deference to Legal Interpretations

- Do standards of review matter?

# Agency-Win Rates by Deference Standard (n=1558)



# Deference to Legal Interpretations

- Do standards of review matter?
- Why give agencies interpretive primacy?
  - Delegation from legislature? Permissible? If so, when does it exist?
  - Democratic accountability (compared to whom?)
  - Expertise
  - Uniformity

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  - Expertise
  - Uniformity
- What if they are in tension?

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- Is a more searching inquiry for ***expertise*** the best answer because it creates a slightly smaller, but more legitimate, domain for agency advantage?



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- Is a more searching inquiry for ***expertise*** the best answer because it creates a slightly smaller, but more legitimate, domain for agency advantage?
- *Why expertise?*
  - *Signals delegation*
  - *Raison d'être of agencies*