

# Judicial Review Under the APA: Arbitrary and Capricious Review

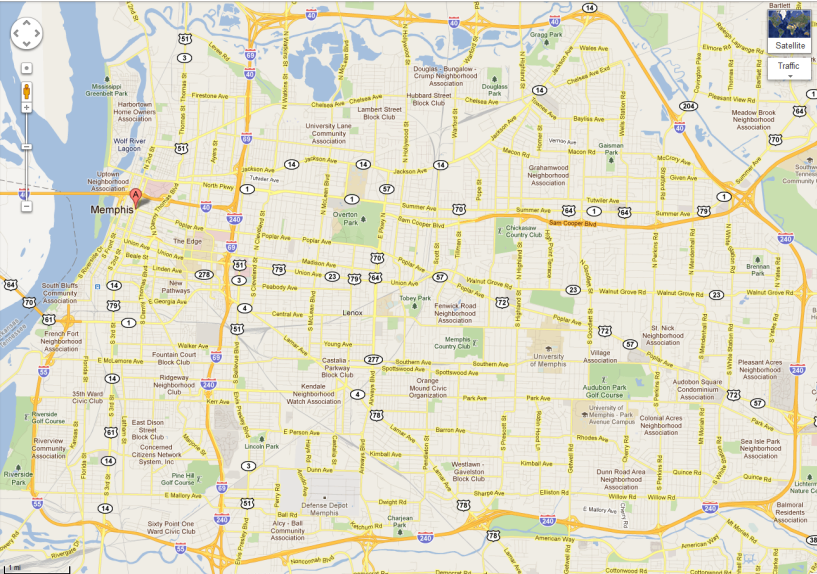
GOVPL 952: Administrative Law

Penn State Dickinson Law

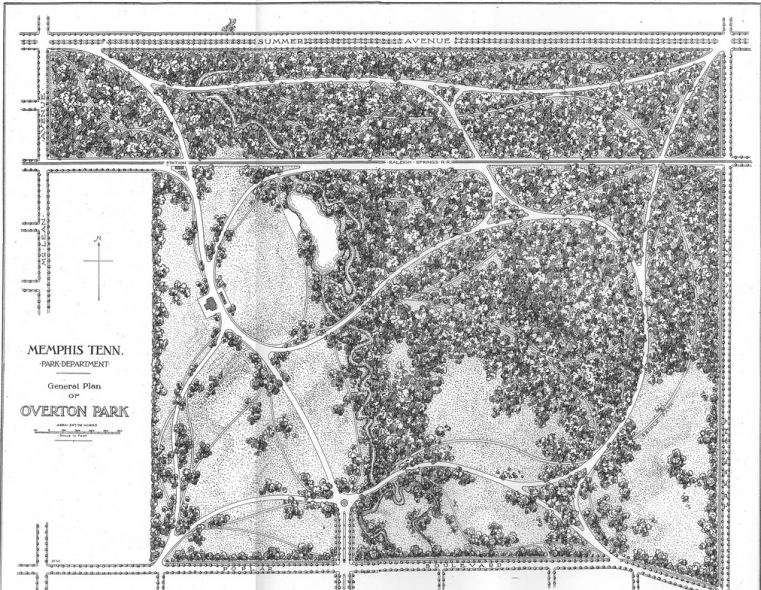
March 24, 2026



# Overton Park and Memphis



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ennState



## Overton Park: The DOT's statutory duty

§4(f) of the DOT Act and §138 of the Federal-Aid Highway Act, as amended in 1968, permit the Secretary of Transportation to approve the use of public parkland for highway construction only if:

- (1) there is no prudent and feasible alternative to using that land; and
- (2) the program or project includes all possible planning to minimize harm to the park or site resulting from the use.



## Overton Park: pre-litigation timeline

- 1957** Surveys for I-40 begin; Citizens to Preserve Overton Park is formed; public hearings are held re: route.
- 1965** City Commission votes (9-1) to approve east-west route for I-40 through Overton Park.
- 1966** Congress enacts Federal-Aid Highway Act and also Department of Transportation Act. Both statutes require Secretary to protect parkland.
- 1967** Governor, highway commissioner favor Overton Park route; City Commission again votes 1-1 in favor.
- Feb. 1968** Federal Highway Administrator Bridwell visits Memphis
- Mar. 1968** New City Council adopts resolution stating preference that I-40 be routed elsewhere.
- Apr. 1968** After meeting with FHA head Bridwell, City Council votes 8-2 to approve Overton Park route.
- Nov. 1969** DOT Sec. Volpe approves design for highway through park in deepened trench, but not tunnel.



# The savior of Overton Park?



**Figure 1:** First Lady Lady Bird Johnson was a prominent proponent of conservation and “beautification” measures. The 1965 Highway Beautification Act was commonly called “Lady Bird’s Bill.”



## Citizens to Preserve Overton Park: what kind of agency action is at stake?

|                     | <b>formal</b>       | <b>informal</b>       |
|---------------------|---------------------|-----------------------|
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# A Citizens to Preserve Overton Park Q & A

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  - ▶ as opposed to “post hoc rationalizations” in litigation affidavits.
  - ▶ In a pinch, majority says, court can require testimony from officials – but this should be avoided (and almost always is).



## Scope of Review: APA §706

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. **The reviewing court shall -**(1) compel agency action unlawfully withheld or unreasonably delayed; and (2) **hold unlawful and set aside agency action, findings, and conclusions found to be -** (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (D) without observance of procedure required by law; (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.



# Auto Safety in the United States



Figure 2: The Chevrolet Corvair: Nice to look at, not great to be in a wreck in





# Auto Safety in the United States



State

# State Farm: timeline

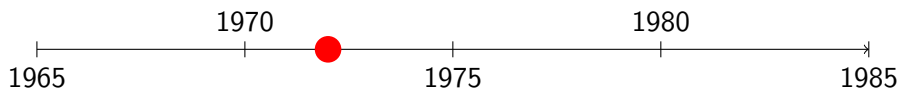


## State Farm: timeline



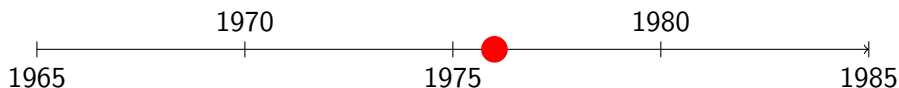
- 1969: DOT proposes standard requiring passive restraints

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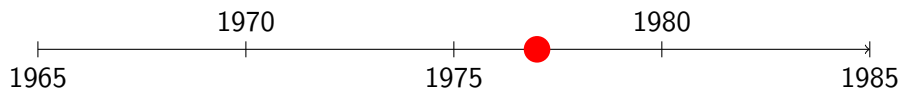
- 1972: DOT requires full passive restraints by 1975, with ignition interlocks in interim

## State Farm: timeline



- 1976: DOT suspends passive restraint requirement; proposes demonstration project

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- 1977: DOT nixes demonstration project; reinstates passive restraint requirement, to begin in 1982

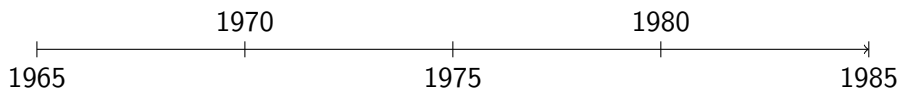


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## Describing arbitrary and capricious review

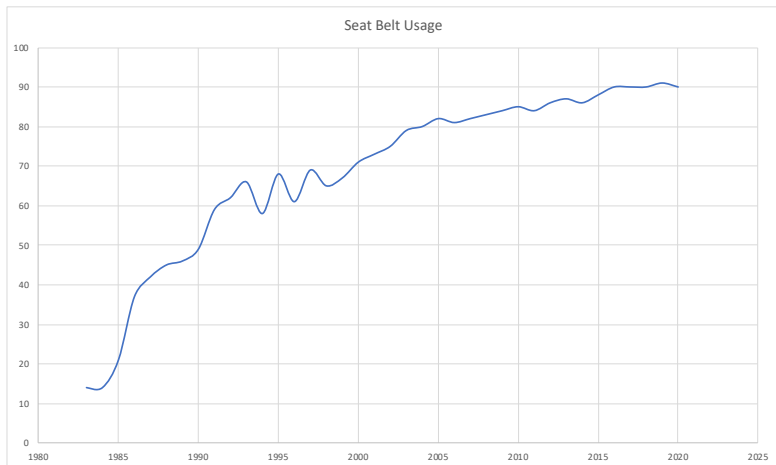
### Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.

Normally, an agency rule would be arbitrary and capricious if the agency

- (1) has relied on factors which Congress has not intended it to consider,
- (2) entirely failed to consider an important aspect of the problem,
- (3) offered an explanation for its decision that runs counter to the evidence before the agency, or
- (4) is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

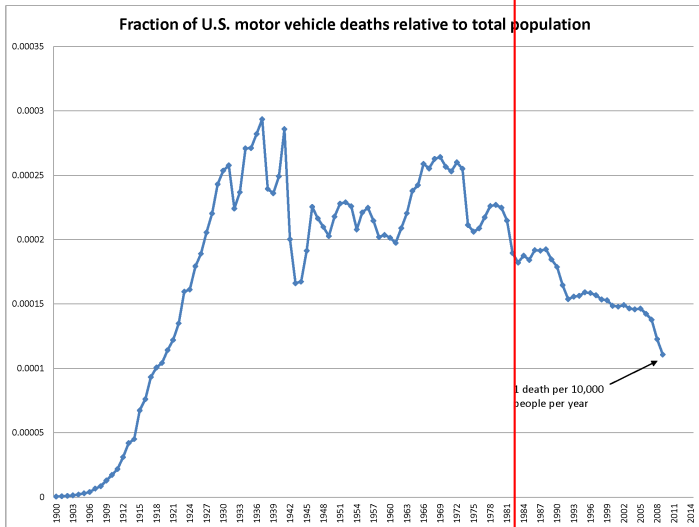


# Seatbelt Usage in United States



# Auto Safety in the United States

red line = when State Farm decided



# Auto Safety Features of the 1970s and 1980s

1 2 3 4 5



# FCC v. Fox Television Stations

background



Figure 3: Bono at the 2003 Golden Globes



# FCC v. Fox Television Stations

background

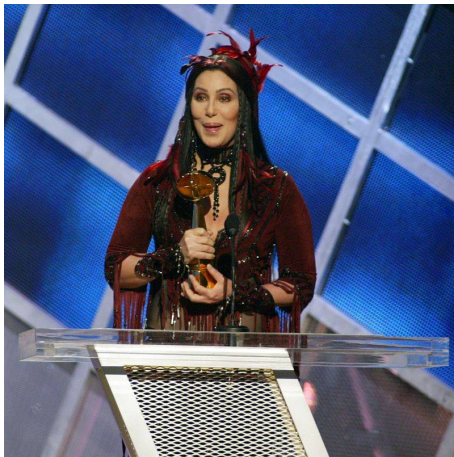


Figure 4: Cher at the 2002 Billboard Music Awards





## FCC v. Fox Television Stations: FCC's changing policy on fleeting expletives

Can you get fined for cursing on live TV?

|             | bad word used literally | bad word used figuratively |
|-------------|-------------------------|----------------------------|
| before 2004 | yes                     | <b>no</b>                  |
| after 2004  | yes                     | <b>yes</b>                 |



# FCC v. Fox Television Stations

## How courts review agency policy changes

“We find no basis in the Administrative Procedure Act or in our opinions for a requirement that all agency change be subjected to more searching review. . . . To be sure, the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it is changing position. . . . And of course the agency must show that there are good reasons for the new policy. But it need not demonstrate to a court’s satisfaction that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates.”

