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Congress, Let Bicycles Back In

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Congress, Let Bicycles Back In

The Wilderness Act of 1964 protects certain federal lands in the United States, called “wilderness areas,” from human habitation and development. When the Wilderness Act was first passed, nonmotorized bicycle travel was allowed in wilderness areas. However, in 1984, the United States Forest Service altered its interpretation of the statutory text of the Wilderness Act and banned nonmotorized bicycle travel in wilderness areas. Seeking to reverse the Forest Service’s blanket-ban on bicycles in wilderness areas, bicycle activists sought a legislative remedy.

In March of 2017, House Federal Lands Subcommittee Chairman Tom McClintock introduced House Bill 1349 to the United States House of Representatives. H.R. 1349 proposes to amend the Wilderness Act by allowing the use of nonmotorized bicycles, among other forms of nonmotorized transport, in wilderness areas. On December 13, 2017, the House Committee on Natural Resources passed H.R. 1349 and reported the bill to the House floor for consideration.

This Note argues that federal agencies have misinterpreted the text of the Wilderness Act and urges members of Congress to vote in favor of H.R. 1349.

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INTRODUCTION

It is a moment not easily forgotten. Trepidation fills your mind as you lift your feet off the ground. A hand pushes you gently on the back as you tentatively begin to pedal. The sound of tires rolling across the ground begins to fill your eardrums. As the wind ripples against your clothing you suddenly realize no one is behind you anymore. Fear turns to excitement as a grin spreads across your face. Shouts of encouragement echo behind you and fade. You are doing it. You are finally riding a bike.

Bicycles have been a part of the human experience since 1817.¹ From its inception, the bicycle has been utilized and enjoyed in many forms. Children on bicycles race to the ballpark on hot summer days, adults clad in suits and ties pedal to work in the predawn light, and professional athletes strafe through the streets seeking glory. Recently in the bicycle’s storied history, a new form of bicycle riding has been born—mountain biking.² Mountain biking gained popularity in the 1970s when long-haired teenagers began racing down mountain roads on clunky beach cruisers.³ Since that time, what started as an outlandish hobby for the few has turned into an enormously popular outdoor activity for people

1. Frank J. Berto, *Bicycle*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/technology/bicycle> (last visited Jan. 21, 2019).

2. *Mountain Biking History*, MARIN MUSEUM BICYCLING, <https://mmbhof.org/mtn-bike-hall-of-fame/history> (last visited Jan. 21, 2019).

3. *Id.*

around the world.⁴ In the United States alone, over 50 million people mountain bike.⁵ However, despite the popularity of mountain biking among outdoor enthusiasts, mountain bikes are not welcome everywhere.⁶ The culprit? A federal agency's interpretation of the Wilderness Act of 1964 (Wilderness Act).⁷

The Wilderness Act protects areas of federal land in the United States from development and human habitation so as to preserve for the American people an "enduring resource of wilderness" where there are "outstanding opportunities for solitude or a primitive and unconfined type of recreation."⁸ When the Wilderness Act was passed by Congress in 1964, approximately 9.1 million acres of federal land were designated as wilderness areas.⁹ Since that time, the amount of land designated as wilderness areas has exploded.¹⁰ Currently, over 109 million acres of land are designated as wilderness areas, which translates to roughly 5% of the total land mass of the United States.¹¹

The text of the Wilderness Act prohibits the "use of motor vehicles, motorized equipment or motorboats . . . landing of aircraft . . . [or] other form of mechanical transport" in wilderness areas.¹² From 1964 to 1977, bicycles were not considered a prohibited form of "mechanical transport" and were allowed in wilderness areas.¹³ However, when mountain biking became popular in Marin County, California, during the 1970s, certain environmental groups, such as the Sierra Club, began concerted efforts to abolish

4. Peter Frick-Wright, *Hikers vs. Mountain Bikers: Don't Tread on Me*, OREGONIAN (Oct. 28, 2011), http://www.oregonlive.com/outdoors/index.ssf/2011/10/hikers_vs_mountain_bikers_dont.html.

5. *Id.*

6. Vernon Felton, *Sucker Punched*, BIKE MAG., Dec. 1, 2015, at 76.

7. *Id.*

8. 16 U.S.C. § 1131(a), (c) (2012).

9. Howard Zahniser: *Author of the Wilderness Act*, WILDERNESS CONNECT, <http://www.wilderness.net/NWPS/zahniser> (last visited Jan. 21, 2019).

10. Benjamin Spillman, *Congress Could Dump Wilderness Mountain Bike Ban*, USA TODAY (Mar. 9, 2017, 10:31 PM) <https://www.usatoday.com/story/news/nation-now/2017/03/09/congress-could-dump-wilderness-mountain-bike-ban/98989842>.

11. *Id.*

12. 16 U.S.C. § 1133(c) (emphasis added).

13. Theodore J. Stroll, *Congress's Intent in Banning Mechanical Transport in the Wilderness Act of 1964*, 12 PENN ST. ENVTL. L. REV. 459, 464–65 (2004).

mountain biking in wilderness areas.¹⁴ In response to pressure from these environmental organizations, in 1977 and 1984 the U.S. Forest Service (Forest Service) issued a regulation that stated bicycles were a form of “mechanical transport” intended to be banned from wilderness areas by the Wilderness Act.¹⁵ Since that time, mountain bikers and other wilderness area users have been engaged in a heated debate over whether the 1984 Forest Service regulation correctly interpreted the statutory text of the Wilderness Act.¹⁶

In 2016, Senators Orrin Hatch and Mike Lee introduced Senate Bill 3205 (S. 3205) to Congress.¹⁷ Entitled the “Human-Powered Travel in Wilderness Areas Act,” S. 3205 proposed that the Wilderness Act be amended to state that “‘mechanical transport’ *does not include any form of human-powered travel*, regardless of whether the travel is mechanically assisted, in which the sole propulsive power source is one or more persons.”¹⁸ Notwithstanding this definition of mechanical transport, S. 3205 gave each federal agency charged with the management of wilderness areas the power to determine what forms of nonmotorized, mechanical transport could be allowed in each wilderness area.¹⁹

Environmental groups vehemently opposed S. 3205.²⁰ They thought that the language of S. 3205 was too broad and could be used to justify the seizure of public land and the exploitation of wilderness areas.²¹ Additionally, many questioned the true intentions of Hatch and Lee, neither of whom was known as an environmental activist.²² Commenting on the bill, Michael Carrol, a director of the Wilderness Society, a national environmental group, said: “We think the bill is a fundamental attack on one of our bedrock conservation laws—it’s championed by two of the most anti-

14. Felton, *supra* note 6, at 78.

15. *Id.*

16. *See id.*

17. Spillman, *supra* note 10.

18. Human-Powered Travel in Wilderness Areas Act, S. 3205, 114th Cong. § 3(a) (2015) (emphasis added).

19. *Id.*

20. Kirk Johnson, *Bill Opening Wilderness Areas to Bikes Also Opens Debate*, N.Y. TIMES (Aug. 19, 2016), <https://www.nytimes.com/2016/08/20/us/bill-opening-wilderness-areas-to-bikes-also-opens-debate.html>; Spillman, *supra* note 10.

21. Johnson, *supra* note 20.

22. *Id.*

environmental members of the Senate, and it has language that is really designed to drive a wedge between the recreation community and conservationists.”²³ In response to these and other attacks, spokespersons for Lee and Hatch attempted to assuage public opinion by stating that the goal of S. 3205 was simply to “open up more public lands for enjoyment by Americans.”²⁴ Unfortunately for mountain bikers, not everyone was convinced.²⁵

Discouraged but not defeated, mountain bikers continued to fight for access to trails in wilderness areas.²⁶ In 2017, due to the efforts of a mountain biking organization called the Sustainable Trails Coalition, another bill, House Bill 1349 (H.R. 1349), was submitted to Congress on March 3, 2017.²⁷ Sponsored by Representative Tom McClintock, the chairman of the House Subcommittee on Federal Lands, H.R. 1349 more specifically outlines what should not be considered “mechanical transport” according to the Wilderness Act.²⁸ Rather than calling for “mechanical transport” to not include “any form of human-powered travel,” H.R. 1349 seeks to amend the Wilderness Act by adding the following to section 4(c) of the statutory text: “Allowable uses. Each agency administering any area designated as wilderness may allow the use of motorized wheelchairs, non-motorized wheelchairs, non-motorized bicycles, non-motorized strollers, wheelbarrows, non-motorized survey wheels, non-motorized measuring wheels, or non-motorized game carts within any wilderness area.”²⁹ Mountain bikers hope that the narrower scope of H.R. 1349 compared to S. 3205 will aid in the legislation’s success.³⁰ Likewise, mountain bikers also anticipate that Representative McClintock’s position as chairman of the House Subcommittee on Federal Lands (the committee that has jurisdiction over U.S. public lands) will discourage members of Congress from second-guessing the intentions of H.R. 1349.³¹ On

23. *Id.*

24. *Id.*

25. See Spillman, *supra* note 10.

26. *Id.*

27. SUSTAINABLE TRAILS COALITION, <http://www.sustainabletrailscoalition.org/#home> (last visited Jan. 21, 2019).

28. See *id.*

29. H.R. 1349, 115th Cong. (as amended Dec. 13, 2017).

30. Spillman *supra* note 10.

31. See *id.*

December 13, 2017, the House Committee on Natural Resources passed H.R. 1349 and submitted the bill to the House floor for consideration.³²

In light of these circumstances, this Note will provide a detailed analysis of the background of the Wilderness Act, the regulations that have affected the Wilderness Act since its passing, and the various arguments for and against mountain bikes being allowed in wilderness areas. Part I of this Note discusses the background of the Wilderness Act and the Forest Service's varying historical interpretations of the term "mechanical transport"; Part II applies a *Chevron* doctrine analysis to the statutory text of the Wilderness Act; and Part III discusses relevant policy arguments for and against mountain bikes in wilderness areas. Ultimately, this Note concludes that the statutory text of the Wilderness Act has been improperly interpreted since 1984 and that mountain bikes should be allowed in wilderness areas due to the textual ambiguity of the term "mechanical transport," the legislative history of the Wilderness Act, the text of a statute Congress passed in 1980, and outstanding policy concerns. Thus, members of Congress should vote to pass H.R. 1349.

I. THE BIRTH AND TEXT OF THE WILDERNESS ACT

Howard Zahniser, a writer and dedicated conservationist, was the original author of the Wilderness Act.³³ Before penning the Wilderness Act, Zahniser was concerned that there was no national system in place to establish, protect, and manage wilderness areas.³⁴ At the time, wilderness areas were designated and managed by various federal agencies.³⁵ Zahniser feared that these agencies' inconsistent and sometimes lax management plans for wilderness areas—combined with the ease in which wilderness areas could be undesignated and eliminated by federal agency

32. Press Release, Tom McClintock, Congressman, Fourth Dist. Cal. (Dec. 13, 2017), <https://mcclintock.house.gov/newsroom/press-releases/hr-1349-restoring-the-original-intent-of-the-wilderness-act-to-allow>.

33. *Howard Zahniser: Author of the Wilderness Act*, *supra* note 9.

34. *Id.*

35. *Id.*

department leaders—put wilderness areas at severe risk.³⁶ In an effort to garner greater protection and standardize a management plan for wilderness areas, Zahniser sought the protection of Congress.³⁷ Speaking on his desire to preserve wilderness areas, Zahniser said:

[I]n the present phase of our civilization we have a profound, a fundamental need for areas of wilderness—a need that is not only recreational and spiritual but also educational and scientific, and withal essential to a true understanding of ourselves, our culture, our own natures, and our place in all nature.³⁸

Eight years after writing his first draft, Zahniser's dream came to fruition in the form of the Wilderness Act of 1964.³⁹

The purpose of the Wilderness Act is outlined in 16 U.S.C. § 1131(a), which states:

In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions . . . it is hereby declared to be the policy of the Congress to secure for the American people . . . the benefits of an enduring resource of wilderness. For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as "wilderness areas", and these shall be administered for the *use and enjoyment of the American people* in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas⁴⁰

The Wilderness Act later describes a wilderness area as follows:

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man An area of wilderness is further defined to mean . . . an area of undeveloped Federal land retaining its primeval character and influence, *without permanent improvements* or human

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. 16 U.S.C. § 1131(a) (2012) (emphasis added).

habitation . . . which . . . generally appears to have been affected primarily by the forces of nature, *with the imprint of man's work substantially unnoticeable* . . . [and] *has outstanding opportunities for solitude or a primitive and unconfined type of recreation* . . .⁴¹

In order to preserve the “undeveloped” and “untrammeled” nature of wilderness areas, the Act further provides that “there shall be no commercial enterprise and no permanent road within any wilderness area” and that “there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.”⁴²

*A. The Forest Service's Differing Interpretations
of “Mechanical Transport”*

Wilderness areas are protected and managed by four federal agencies – the Forest Service, the National Park Service, the Bureau of Land Management, and the U.S. Fish & Wildlife Service.⁴³ Two years after the Wilderness Act was passed, the Forest Service produced its first interpretation regarding what it considered to be “mechanical transport” for the purposes of the Wilderness Act, stating: “Mechanical transport, as herein used, shall include any contrivance which travels over ground, snow, or water on wheels, tracks, skids, or by floatation and is *propelled by a nonliving power source* contained or carried on or within the device.”⁴⁴ Thus, under the Forest Service’s first interpretation of the Wilderness Act, bicycles were presumably allowed in wilderness areas because bicycles are human-powered (a bike is propelled forward when its occupant pushes a pedal in a circular motion).⁴⁵

Unfortunately for mountain bikers, the Forest Service’s interpretation of what constituted “mechanical transport” would soon change.⁴⁶ In the mid-1960s, a group of “hippie daredevils” from Marin County, California, began racing bicycles down the

41. *Id.* § 1131(c) (emphasis added).

42. *Id.* § 1133(c).

43. Stroll, *supra* note 13, at 463.

44. 36 CFR § 293.6(a) (2018) (formerly 36 CFR § 251.75) (emphasis added).

45. Stroll, *supra* note 13, at 464.

46. *Id.*

steep roads of Mount Tamalpais.⁴⁷ Known informally as the Larkspur Canyon Gang, this group of youths would modify one-speed coaster brake “clunker bikes” and race against each other on the weekends.⁴⁸ The Larkspur Canyon Gang members were not what most people would consider upstanding citizens.⁴⁹ Weekend races were a place where high school students “went to party.”⁵⁰ Groups of teenagers would load up their cars and head to the mountains to smoke marijuana, drink beer, and race bicycles.⁵¹ Inspired by the Larkspur Canyon Gang, other mountain biking groups sprang up around California.⁵² By 1976, the first large-scale, organized mountain bike race had developed: the Repack Race.⁵³ Following the Repack Race, mountain biking started to become more popular, and in 1979 the first mass-produced mountain bikes were sold to the public.⁵⁴

Environmentalists’ reaction to the dope-smoking, long-haired mountain bike racers from Marin County was not positive.⁵⁵ The Sierra Club and the Wilderness Society moved swiftly to convince the Forest Service that mountain bikes should be considered a banned form of “mechanical transport” in wilderness areas.⁵⁶ After years of anti-mountain bike lobbying, the two organizations scored a significant victory in 1977 by convincing the Forest Service to abandon its original definition of “mechanical transport.” The original definition—which considered any contrivance propelled by a living source to be an acceptable form of mechanical transport in wilderness areas—was replaced by a more stringent definition that specifically prohibited “[p]ossessing or using a hang glider or bicycle” in wilderness areas.⁵⁷ Four years later, the Forest Service

47. Ben Marks, *The Hippie Daredevils Who Were Just Crazy Enough to Invent Mountain Biking*, COLLECTORS WKLY. (Sept. 9, 2014), <https://www.collectorsweekly.com/articles/the-hippie-daredevils-who-were-just-crazy-enough-to-invent-mountain-biking>.

48. *Id.*

49. *See id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. Felton, *supra* note 6, at 78.

56. *Id.*; Stroll, *supra* note 13, at 464.

57. Stroll, *supra* note 13, at 464; Felton, *supra* note 6, at 78.

passed another regulation that allowed Forest Service authorities to use individual discretion in permitting or denying the use of bicycles in wilderness areas.⁵⁸ However, in 1984, the Forest Service reaffirmed the 1977 no-bicycles regulation.⁵⁹ Following the example of the Forest Service, other agencies charged with managing wilderness areas also banned bicycles from wilderness areas.⁶⁰

Since 1984, internal Forest Service policy has defined “mechanical transport” as “[a]ny contrivance for moving people or material in or over land, water, or air, having moving parts, that provides a mechanical advantage to the user, and that is powered by a living or nonliving power source.”⁶¹ While bicycles are banned under this definition of mechanical transport, the Forest Service does allow for “skis, snowshoes, rafts, canoes, sleds, travois, or similar primitive devices without moving parts” to be used in wilderness areas.⁶²

II. THE *CHEVRON* DOCTRINE

A. *Precursor Requirement*

The question of whether the Forest Service’s 1984 regulation is a correct interpretation of the statutory text of the Wilderness Act can be resolved by following the guidance set forth in the landmark case, *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*⁶³ The direction of the U.S. Supreme Court in *Chevron* is commonly known as the “*Chevron* doctrine” and consists of various steps.

The precursor requirement to a *Chevron* doctrine analysis is determining whether or not Congress intended to delegate its legislative authority to a federal agency.⁶⁴ Two principal factors are considered as part of this analysis: (1) whether a federal agency interpretation has the force of law and (2) whether it is reasonable based on the statutory text that Congress intended to defer

58. Stroll, *supra* note 13, at 464.

59. *Id.* at 464–65.

60. *See id.* at 465.

61. *Id.*; U.S. DEP’T OF AGRIC. FOREST SERV., FOREST SERVICE MANUAL § 2320.5(3) (amended 2007), <https://www.fs.fed.us/dirindexhome/fsm/2300/2320.doc> [hereinafter FOREST SERVICE MANUAL].

62. FOREST SERVICE MANUAL, *supra*, note 61, §2320.5(3).

63. *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

64. *United States v. Mead Corp.*, 533 U.S. 218, 218 (2001).

authority to a federal agency.⁶⁵ Both of these factors will be applied to the current case and analyzed in turn.

First, the Forest Service's 1984 regulation that banned bicycles from wilderness areas has the force of law. Typically, informal opinion letters or brochures produced by federal agencies do not have the force of law because they lack public input and are not required to follow procedural formalities before being published.⁶⁶ In contrast, a regulation published by a federal agency in the Code of Federal Agencies has the force of law.⁶⁷ Consequently, because the Forest Service's 1984 ban of bicycles in wilderness areas was set forth in a regulation, the Forest Service's interpretation of "mechanical transport" has the force of law.

Second, the statutory text of the Wilderness Act is unclear as to whether Congress intended to delegate its legislative authority to the Forest Service and the other federal agencies that manage wilderness areas.⁶⁸ The Wilderness Act gives federal agencies three principal powers in relation to wilderness areas.⁶⁹ First, section 3(b) of the Wilderness Act allows for the Secretary of Agriculture (the head of the Forest Service and other agencies) to submit recommendations for the designation of new wilderness areas to the President of the United States.⁷⁰ The President can then, in his or her discretion, submit those recommendations to Congress for congressional approval.⁷¹ Second, section 3(c) of the Wilderness Act permits the Secretary of Agriculture and the Secretary of the Interior to propose modifications or adjustments of the boundaries of wilderness areas to the President who can then submit those recommendations to Congress.⁷² Third, section 2(b) of the Wilderness Act states: "the area shall continue to be managed by the Department and agency having jurisdiction immediately before its

65. *Id.* at 219.

66. *See id.* at 218.

67. *Id.* at 219.

68. 16 U.S.C. §§ 1131-1136 (2012).

69. *Id.*

70. *Id.* § 1132(b).

71. *Id.*

72. *Id.* § 1132(e).

inclusion in the National Wilderness Preservation System unless provided by Act of Congress.”⁷³

The first two powers given to federal agencies by the Wilderness Act, the power to propose new wilderness area designations and modifications to existing wilderness area boundaries, clearly do not give the Forest Service the legislative authority of Congress.⁷⁴ The creation of a new wilderness area or the modification of an existing wilderness area boundary must be approved by Congress and cannot be exacted by a federal agency acting alone.⁷⁵ However, whether or not the third power given to federal agencies over wilderness areas—the power to “manage” wilderness areas—gives the Forest Service and other federal agencies the legislative authority of Congress in wilderness areas is a more difficult question.⁷⁶

The Forest Service and the other federal agencies that have jurisdiction over wilderness areas have a good argument that to properly “manage” wilderness areas, federal agencies must have the power to pass new rules and regulations in order to adapt to new threats and exigencies in wilderness areas. For example, if a federal agency has traditionally allowed campfires in a wilderness area, but that wilderness area is currently experiencing a state of severe drought and is susceptible to wildfire, the federal agency that manages that wilderness area should be able to publish specific rules that ban campfires until the drought is over. Requiring each agency to obtain the approval of Congress before passing such a rule or regulation could result in an overly burdensome system that handicaps the effectiveness of federal agencies in preserving wilderness areas. Conversely, mountain bikers can argue that the power given to federal agencies to “manage” wilderness areas does not give federal agencies the right to pass regulations that effectively have the same amount of power as an act of Congress. If federal agencies need to consult Congress before wilderness areas can be designated or modified, then it logically follows that federal agencies need the approval of Congress before federal agencies can pass regulations that affect who and what can access wilderness

73. *Id.* § 1131(b).

74. *See id.* § 1132(b), (e).

75. *Id.*

76. *See id.* § 1131(b).

areas. While both arguments have merit, it is likely that Congress anticipated that federal agencies would pass rules and regulations in order to effectively manage wilderness areas. Thus, the precursor requirement of the *Chevron* doctrine is arguably satisfied.

*B. Has Congress Addressed the Question at Issue
in a Clear and Unambiguous Way?*

The next step of the *Chevron* doctrine is to determine whether Congress has spoken to the question at issue in a clear and unambiguous way.⁷⁷ To properly determine whether Congress intended to disallow bicycles in wilderness areas, it is necessary to employ traditional tools of statutory construction.⁷⁸ For the purpose of this determination, several such tools will be utilized, including dictionary definitions of the term “mechanical transport,” semantic canons, and the legislative history of the Wilderness Act.

1. Dictionary definitions

As stated previously, the main point of controversy between mountain bikers and other wilderness area users arises from section 4(c) of the Wilderness Act, which states:

[T]here shall be no commercial enterprise and no permanent road within any wilderness area designated by this [Act] . . . [and] there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, *no other form of mechanical transport*, and no structure or installation within any such area.⁷⁹

Mountain bikers argue that Congress did not intend for bicycles to be considered a prohibited “form of mechanical transport,” while opponents of bicycles in wilderness areas believe bicycles are properly prohibited under the same clause.⁸⁰

The Merriam-Webster dictionary (Merriam-Webster) defines the word “mechanical” as “of or relating to machinery,” “machine” as an “assemblage of parts that transmit forces, motion, and energy

77. *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842–43 (1984).

78. *Id.* at 843 n.9.

79. 16 U.S.C. § 1133(c) (emphasis added).

80. See Stroll, *supra* note 13, at 459–60.

one to another in a predetermined manner,” and “transport” as “to convey from one place to another.”⁸¹ Combining these definitions, “mechanical transport” can thus be approximately defined as an assemblage of parts that transmit force and energy to one another to convey a person or thing from one place to another.⁸² Under this definition of “mechanical transport,” bicycles would be banned from wilderness areas. Bicycles are composed of various parts that accommodate the transfer of power from a cyclist’s legs to the chain of the bicycle, which causes the back wheel of the bicycle to turn.⁸³ Due to this transfer of power, a bicycle conveys a cyclist from one place to another.⁸⁴

Based on this combined dictionary definition of “mechanical transport,” the Forest Service has a strong argument that bicycles should not be allowed in wilderness areas according to the statutory text of the Wilderness Act. However, because alpine skis, rowboats, rafts, climbing equipment, sleds, and snowshoes are allowed in wilderness areas, it is unlikely that Congress intended for “mechanical transport” to be defined as outlined above.⁸⁵ As an example, like bikes, alpine skis are composed of an “assemblage of parts” (skis, bindings, boots, poles) that accommodate the transfer of power from a skier’s legs to his skis.⁸⁶ When a skier moves his leg forward while traveling uphill, the ski binding responds to the movement by lifting up and propelling the ski forward in a predictable manner.⁸⁷ The skis are thus conveying the skier “from one place to another.”⁸⁸ A similar analysis can be applied to the other permitted activities in Wilderness areas listed above.

81. *Mechanical*, MERRIAM-WEBSTER ONLINE DICTIONARY, <https://www.merriam-webster.com/dictionary/mechanical> (last visited Jan. 21, 2019); *Machine*, MERRIAM-WEBSTER ONLINE DICTIONARY, <https://www.merriam-webster.com/dictionary/machine> (last visited Jan. 21, 2019); *Transport*, MERRIAM-WEBSTER ONLINE DICTIONARY, <https://www.merriam-webster.com/dictionary/transport> (last visited Jan. 21, 2019).

82. See MERRIAM-WEBSTER, *supra* note 81, for the definitions of “Mechanical,” “Machine,” and “Transport.”

83. Chris Woodford, *The Science of Bicycles*, EXPLAIN THAT STUFF!, <http://www.explainthatstuff.com/bicycles.html> (last updated May 27, 2018).

84. *Id.*

85. FOREST SERVICE MANUAL, *supra* note 61, § 2320.5(3).

86. See Jennifer Davis, *The Skinny on Skinning*, SKI MAG. (Mar. 9, 2010), <https://www.skimag.com/gear/skins>.

87. *Id.*

88. *Transport*, MERRIAM-WEBSTER, *supra* note 81; see Davis, *supra* note 86.

Consequently, because other activities that are permitted in wilderness areas also satisfy the Merriam-Webster definition of “mechanical transport,” it is unlikely that Congress intended for “mechanical transport” to have such a broad definition.

In contrast to the Merriam-Webster definition of “mechanical transport,” the Collins English dictionary defines “mechanical” as “relating to machines and engines and the way they work,” “machine” as a “piece of equipment which uses electricity or an engine in order to do a particular kind of work,” and “transport” as “to carry from one place to another.”⁸⁹ Combining these definitions results in “mechanical transport” being approximately defined as a piece of equipment that uses electricity or an engine to carry a person or thing from one place to another.⁹⁰ Under this dictionary definition, the Wilderness Act would not prohibit bicycles from wilderness areas. Bicycles are not powered by electricity or a motor; instead, bicycles are human-powered.⁹¹ Thus, under either the Merriam-Webster definition or Collins English dictionary definition of “mechanical transport,” it is unlikely that Congress intended for bicycles to be considered “mechanical transport.”

2. Semantic canons

Given that there are varying dictionary definitions of “mechanical transport,” semantic canons can be used to help ascertain whether Congress intended to ban bicycles from wilderness areas. One such canon is the canon of *noscitur a sociis*, which is the concept that a word’s meaning can be clarified, and often narrowed, by the words around it.⁹² Put simply, a word is often known by the company it keeps.⁹³ Applying this canon to the

89. *Mechanical*, COLLINS ENG. ONLINE DICTIONARY, <https://www.collinsdictionary.com/us/dictionary/english/mechanical> (last visited Jan. 21, 2019); *Machine*, COLLINS ENG. ONLINE DICTIONARY, <https://www.collinsdictionary.com/us/dictionary/english/machine> (last visited Jan. 21, 2019); *Transport*, COLLINS ENG. ONLINE DICTIONARY, <https://www.collinsdictionary.com/us/dictionary/english/transport> (last visited Jan. 21, 2019).

90. See COLLINS, *supra* note 89, for the definitions of “Mechanical,” “Machine,” and “Transport.”

91. See Woodford, *supra* note 83.

92. See *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995).

93. *Id.*

phrase “mechanical transport” assists in shedding light on a plausible interpretation of mechanical transport.

First, immediately preceding the prohibition of “other forms of mechanical transport” in section 4(c) of the Wilderness Act is the following: “there shall be . . . no use of motor vehicles, motorized equipment or motorboats, [and] no landing of aircraft.”⁹⁴ Motor vehicles, motorboats, motorized equipment and aircraft all have two things in common: they all have nonliving power sources (motors), and because they have motors they are all loud. As an example, jet aircraft produce sounds that measure between 120 and 140 decibels; similarly, outboard motorboats can produce sound levels of 80 to 100 decibels.⁹⁵ Given that one of the reasons the Wilderness Act was passed was to provide “outstanding opportunities for solitude” it is easy to understand why Congress did not want loud modes of transport, such as those described in the previous sentence, disrupting the experience of wilderness area users and native wildlife.⁹⁶ Under the canon of *noscitur a sociis*, because the prohibited activities in wilderness areas immediately preceding “other forms of mechanical transport” are all activities that involve motors and noise, it would follow that “other forms of mechanical transport” should also be forms of activities that are accompanied by motors and noise. Because bicycles are not powered by motors and are relatively silent,⁹⁷ under the *noscitur a sociis* canon bicycles would not be considered “mechanical transport” for the purposes of the Wilderness Act.

Second, the Wilderness Act repeatedly states that the purpose of the act is to preserve the “natural condition” of wilderness areas and prevent the modification of those areas.⁹⁸ To facilitate that goal, Congress specifically prohibited the construction of any “commercial enterprise,” “permanent road,” “temporary road,” and other

94. 16 U.S.C. § 1133(c) (2012).

95. Melissa Mayer, *What Is the Decibel Level of a Jet Plane?*, SCIENCING, <https://sciencing.com/decibel-level-jet-plane-5375252.html> (last updated May 9, 2018); see Marie Zhuikov, *Noise Pollution in Ears of Beholder*, MINN. SEA GRANT (June 1998), http://www.seagrant.umn.edu/newsletter/1998/06/noise_pollution_in_ears_of_beholder.html.

96. See sources cited *supra* note 95.

97. MICHAEL QUINN & GREG CHERNOFF, MIISTAKIS INST., MOUNTAIN BIKING: A REVIEW OF THE ECOLOGICAL EFFECTS 20 (2010), <https://www.lib.washington.edu/msd/norestriction/b67566091.pdf>.

98. 16 U.S.C. § 1131(a).

“structure[s] or installation[s] within any such area” in the same paragraph where “other forms of mechanical transport” are prohibited.⁹⁹ Again applying the canon of *noscitur a sociis*, when considering “mechanical transport” in light of these restrictions on building infrastructure and altering the landscape of wilderness areas, “mechanical transport” can be understood to be a catch-all phrase meant to include any other form of transportation that requires wilderness areas to be significantly altered and scarred by manmade roads and buildings. Cars and other motorized vehicles cannot travel well, or cannot travel at all, on single-track hiking trails and require roads to be built in order to function properly. Cars and other motor vehicles also require fuel to run, and with the absence of a “commercial enterprise” such as a gas station, motor vehicles can stay operational for only so long. Similarly, a runway is necessary to operate an airplane on land. Thus, when considering the other modes of transport specifically banned by Congress that require the building of infrastructure, in conjunction with Congress’s desire to keep wilderness areas in their “primeval character” with the “imprint of man’s work substantially unnoticed,” it is plausible that “mechanical transport” was never meant to include bicycles.¹⁰⁰ Mountain bikes do not require temporary or permanent roads to operate effectively, they require no refueling stations, and due to the narrow profile of mountain bike tires, mountain bikes can operate effectively on even the narrowest of dirt trails.

To counter these *noscitur a sociis* interpretations of “mechanical transport,” opponents of bicycles in wilderness areas can utilize the canon of “presumption against surplus language.” The canon of presumption against surplus language suggests that statutes should not be read in a way that would render statutory language redundant or otherwise superfluous.¹⁰¹ Analyzing “mechanical transport” under the structure of this canon, opponents of bicycles in wilderness areas can argue that if Congress intended for “mechanical transport” to ban the same kind of transport as the other forms of transport (motor vehicles, airplanes, etc.) banned by section 4(c) of the Wilderness Act, then Congress would not have

99. *Id.* § 1133(c).

100. *Id.* § 1131(c).

101. *See United States v. Menasche*, 348 U.S. 528, 538–39 (1955).

included “other forms of mechanical transport” in the statute as such an inclusion would be redundant.¹⁰²

Although both canonical interpretations of “other forms of mechanical transport” have merit, the *noscitur a sociis* canon interpretation of “mechanical transport” is likely the stronger argument. In both writing and speech, people often use terms that are redundant and ultimately encapsulate the same concept.¹⁰³ Furthermore, if “other forms of mechanical transport” were not a catch-all phrase meant to be interpreted as forms of transport that are not human powered and require the building of roads and infrastructure, then skis, rafts, and the other transportation methods that involve mechanical parts and are currently allowed in wilderness areas would also be banned from wilderness areas.¹⁰⁴ Given that all the other banned modes of transport in the Wilderness Act have motors and require landscapes to be significantly altered in order to function properly, it is likely that the *noscitur a sociis* interpretation of “other forms of mechanical transport” is the superior interpretation.

3. *Legislative history*

While both the dictionary definitions and the semantic canons discussed above result in a probable interpretation of what Congress meant to prohibit in wilderness areas, these textual analyses still leave room for ambiguity. Having established that an ambiguity still exists after applying textual analyses to the phrase “other forms of mechanical transport,” an analysis of the legislative history of the Wilderness Act is appropriate to determine whether Congress meant to ban bicycles from wilderness areas.¹⁰⁵ Several examples from the legislative history of the Wilderness Act help resolve the ambiguity of what Congress considered to be prohibited “forms of mechanical transport” in wilderness areas.

In the first version of the Wilderness Act (which did not become law), Congress prohibited the “use of motor vehicles, motorized

102. 16 U.S.C. § 1133(c).

103. See Richard Nordquist, *What Is Redundancy*, THOUGHT CO., <https://www.thoughtco.com/redundancy-grammar-and-words-1692029> (last updated May 8, 2017).

104. FOREST SERVICE MANUAL, *supra* note 61, § 2320.5(3).

105. See *Patterson v. Shumate*, 504 U.S. 753, 761 (1992).

equipment, or motorboats, or landing of aircraft, []or any other mechanical transport *or delivery of person or supplies . . .*”¹⁰⁶ With the addition of “delivery of person or supplies” to the commas that offset “mechanical transport,” Congress’s understanding of what it considered to be a prohibited form of “mechanical transport” in wilderness areas becomes clearer.¹⁰⁷ A person that is “delivered” somewhere does not go from point A to point B on his or her own power but rather is passively conveyed from one place to another.¹⁰⁸ As an example of this concept in regular speech, a person would not say “Ivy was delivered to work by her bicycle.” Instead, one would say “Ivy rode her bicycle to work.” Conversely, if one is passively transported from one place to another, the use of the word “deliver” is proper.¹⁰⁹ As an example, consider the following sentence: “Ivy and the other criminals were *delivered* by bus to the state penitentiary.” Although the language of the bill was later changed from “nor any other mechanical transport or delivery of person or supplies” to “no other form of mechanical transport” the change was explained to the House Committee on Interior and Insular Affairs by a member of Congress as being “solely for the purpose of clarification. The substance and intent of the substitute language are the same.”¹¹⁰ If members of Congress considered the “substance and intent” of the substitute language to be the same, then “mechanical transport” would include passive forms of transportation that carry people from one place to another, rather than active, human-powered forms of transport such as riding a bicycle.¹¹¹

Likewise, the author of the House of Representatives bill, Representative John P. Saylor of Pennsylvania, emphasized the importance of wilderness areas promoting physical fitness.¹¹² Saylor remarked that wilderness areas “give us a chance to develop physical fitness and adventurous habits of mind.”¹¹³ To further

106. 109 CONG. REC. 21,430, 21,435 (1963) (emphasis added).

107. *Id.*

108. Stroll, *supra* note 13, at 470–71.

109. *Id.*

110. *Id.* at 471 (footnote omitted).

111. *Id.*

112. *Id.* at 469.

113. *Id.* at 470.

articulate this desire for wilderness areas to be a place where citizens could go to exercise, Representative Saylor asked to have the testimony of a senator, Senator Clinton P. Anderson, included in the congressional record when Saylor was speaking before a House subcommittee.¹¹⁴ Speaking on the purpose of the Wilderness Act, Senator Anderson stated:

Yet we must recognize and emphasize more than we have the values of wilderness recreation in providing for the health and vigor of our citizens.

“Physical fitness is the basis of all the activities of our society,” and I say this in the words of President-elect John F. Kennedy . . .

“Many of the routine physical activities which earlier Americans took for granted,” he points out, “are no longer part of our daily life. A single look at the packed parking lot of the average high school *will tell us what has happened to the traditional bike to school that helped to build young bodies*. The television set, the movies, and the [myriad] conveniences and distractions of modern life all lure our young people away from the strenuous physical activity that is the basis of fitness in youth and in later life.”¹¹⁵

Representative Saylor’s use of this quotation—an excerpt that lauds the bicycle’s ability to “build young bodies”—in his testimony to a House subcommittee on the purpose of the preserving wilderness areas helps bolster mountain bikers’ argument that bicycle riding is exactly the type of activity that Congress envisioned taking place in wilderness areas.¹¹⁶ Bicycle riding “promotes physical fitness” because it requires both lung and leg power to propel a bike forward, especially in mountainous areas.¹¹⁷ Likewise, mountain biking helps promote “adventurous habits of mind” as a cyclist who rides her bike in the mountains must leave

114. *Id.* at 469.

115. *Wilderness Preservation System: Hearings Before the Subcomm. On Pub. Lands of the Comm. On Interior & Insular Affairs, House of Representatives, 87th Cong.* 1050, 1097 (1962) (statement of Sen. Anderson, one of two Senate sponsors of the Act, sought to be placed in the record by Rep. Saylor, House author of the Wilderness Act) (emphasis added).

116. Stroll, *supra* note 13, at 470.

117. See Frank, *The Difference Between Road and Mountain Bike Power Output*, FASCAT COACHING (June 19, 2015), <https://fascatcoaching.com/tips/mountain-bike-power>.

civilization behind and ride trails that often require skill, grit, and daring.

Congress's intent to promote activities that "develop physical fitness and adventurous habits of mind" through the Wilderness Act was reiterated in a House debate over a proposed wilderness area that was being considered for the development of commercial skiing.¹¹⁸ The debate on whether commercial ski operations would be allowed in the proposed wilderness area was resolved by the following statement: "Interested persons can ski . . . now, but they must walk or ski in rather than ride. They must *also climb the slopes rather than be transported on tows*. Is not this the mark of a true outdoorsman?"¹¹⁹ Applying the same logic to mountain biking, like an alpine skier unaided by a lift, a mountain biker must also climb to the top of any trail that he desires to descend. Furthermore, although both skis and bicycles can aid a person to move more efficiently on snow or dirt, both skis and bicycles are ultimately human-powered.

Another instance in the House of Representatives' debate on the Wilderness Act also gives insight into how Congress meant for "other forms of mechanical transport" to be interpreted.¹²⁰ In section 2(c) of the Wilderness Act, a "wilderness" is defined as a place where there are "outstanding opportunities for solitude or a primitive and unconfined type of recreation."¹²¹ When the bill was being debated in the House of Representatives, one congressman asked what constituted "primitive and unconfined recreation."¹²² In response, the chairperson of the House Committee on Interior and Insular affairs responded that "it just simply means that there will not be any manmade structures about in order to embarrass [(i.e., impede)] and handicap the enjoyers of this particular area."¹²³ Because mountain bikes do not require "manmade structures" such as gas stations or roads to function properly, mountain bike use fits

118. Stroll, *supra* note 13, at 472.

119. 110 CONG. REC. 17,454-55 (1964) (statement of Rep. Goodling) (emphasis added).

120. See Stroll, *supra* note 13, at 469.

121. 16 U.S.C. § 1131(c) (2012).

122. 110 CONG. REC. 17,443 (1964).

123. *Id.*

into what members of Congress understood as the type of “unconfined recreation” meant to be enjoyed in wilderness areas.¹²⁴

Finally, both the House and Senate relied heavily on a study produced by the Outdoor Recreation Resources Review Commission (ORRRC) when passing the Wilderness Act.¹²⁵ This study remarked that management of wilderness areas should “preserve [the] primitive conditions” of wilderness areas by keeping out “roads and road-utilizing equipment.”¹²⁶ The authors of the study envisioned wilderness areas as a “refuge protected from those wanting to sightsee as a form of *motor-powered* leisure and thereby despoiling pristine land.”¹²⁷ In explaining its reasoning for banning “road utilizing equipment” and “motor-powered leisure” from wilderness areas, the ORRRC stated that “wilderness travel” should be “hard work and often uncomfortable” and require both “good physical conditioning” and a “confidence in one’s own resourcefulness.”¹²⁸ In light of these recommendations that the ORRRC submitted to Congress, mountain bikers have an excellent argument that mountain biking was never meant to be banned in wilderness areas. Mountain bikes do not fit under either of the banned equipment categories described by the ORRRC.¹²⁹ Mountain bikes are not built to operate on roads.¹³⁰ Instead, mountain bikes are built to operate on dirt trails.¹³¹ Thus, mountain bikes are not “road-utilizing equipment.”¹³² Likewise, mountain bikes are not motorized and therefore do not fall under the category of “motor-powered leisure” that the ORRRC members wanted to ban from wilderness areas.¹³³ Furthermore, mountain biking is

124. Stroll, *supra* note 13, at 469.

125. *Id.* at 474-75.

126. *Id.* at 476; OUTDOOR RECREATION RES. REVIEW COMM’N, OUTDOOR RECREATION FOR AMERICA 132 (1962) [hereinafter ORRRC REPORT].

127. Stroll, *supra* note 13, at 475 (emphasis added).

128. *Id.* at 476; see WILDLAND RESEARCH CTR., WILDERNESS AND RECREATION—A REPORT ON RESOURCES, VALUES, AND PROBLEMS 29 (1962).

129. See Stroll, *supra* note 13, at 475.

130. See *How to Choose Mountain Bikes*, REI CO-OP, <https://www.rei.com/learn/expert-advice/mountain-bike.html> (last visited Jan. 21, 2019).

131. See *id.*

132. See *id.*

133. See Woodford, *supra* note 83.

definitely “hard work and uncomfortable.”¹³⁴ In the words of one anonymous mountain biker, mountain biking is “[n]ot for the weak of will . . . [o]r soft of butt.”¹³⁵

In summary, the legislative history of the Wilderness Act of 1964 strongly suggests that mountain bikes should be allowed in wilderness areas. A mountain bike is not a passive form of transport that “delivers” a person from one place to another, riding a mountain bike promotes “physical fitness and adventurous habits of mind,” a mountain bike requires no manmade structures to operate properly, and a mountain bike is not a “road-utilizing” or “motor-powered” form of transport that allows a person to leisurely explore wilderness areas.¹³⁶

*C. If Congress Did Not Address the Precise Question at Issue
in a Clear and Unambiguous Way,
Is the Federal Agency’s Interpretation Reasonable?*

The final step of the *Chevron* doctrine should only be reached when it has been established through various tools of statutory interpretation that Congress has not spoken to the precise question at issue in a clear and unambiguous way.¹³⁷ The foregoing analysis based on dictionary definitions and the application of semantic canons to the phrase “mechanical transport” yields a result that favors mountain bikes being allowed in wilderness areas, but is not so decisive as to resolve the issue in a clear and unambiguous way. However, with the addition of the legislative history of the Wilderness Act to the analysis, it seems likely that a court looking at this same issue would determine that Congress clearly and unambiguously intended for mountain bikes to be allowed in wilderness areas. However, for the sake of analysis, the last step of the *Chevron* doctrine will be considered. The final step of the *Chevron* doctrine is determining whether, in light of Congress not having spoken to

134. See Graham Averill, *Touring the Czech Republic’s Emerging Trail Centers*, BIKE MAG., Nov. 1, 2017, at 53.

135. Kuala Lumpur Mountain Bike Hash (KLMBH), FACEBOOK (Feb. 22, 2016), <https://www.facebook.com/KLMBH/photos/a.208688472515630/1096507317067070/?type=3&theater>.

136. See Woodford, *supra* note 83; *How to Choose Mountain Bikes*, *supra* note 130; Averill, *supra* note 134, at 53; Stroll, *supra* note 13, at 475.

137. *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842–43 (1984).

a specific issue with sufficient clarity, a federal agency's interpretation of a statute is reasonable.¹³⁸

Opponents of mountain bikes in wilderness areas can use the dictionary definition of "mechanical transport" outlined above—wherein mechanical transport means an assemblage of parts that transmit forces and energy to one another to convey a person from one place to another—to argue that the Forest Service banning mountain bikes from wilderness areas is indeed reasonable. Opponents can also use the "presumption against surplus language" argument to opine that a bicycle should be considered a "form of mechanical transport." Finally, opponents of bicycles in wilderness areas can also argue that the legislative history of the Wilderness Act should not be given deference as a tool of statutory interpretation. The legislative process is not perfect and members of Congress sometimes do not research floor debates or testimonies given by other members of Congress before voting on a bill.¹³⁹ As a result, some legislators vote on bills based on what they think a word or phrase means, rather than taking into consideration how other members of Congress have defined a word or phrase.¹⁴⁰ Thus, some members of Congress may not have been aware that "mechanical transport" was defined as, according to the original bill introduced in the House of Representatives, a form of transport encompassing "delivery of persons or supplies[.]"¹⁴¹ Likewise, some members of Congress may not have been aware that "unconfined type of recreation" meant recreation that did not require "manmade structures," or that key sponsors of the bill took great pains to specify in the Congressional record that wilderness areas were meant to develop "physical fitness and adventurous habits of mind[.]"¹⁴² Consequently, some members of Congress might have

138. *Id.* at 843.

139. See Kenneth W. Starr, *Observations About the Use of Legislative History*, 1987 DUKE L.J., 371, 375-79 (1987).

140. See *id.*

141. 109 CONG. REC. 21,430-35 (1963).

142. 110 CONG. REC. 17,443 (1964); Stroll, *supra* note 13, at 470 (quoting *Wilderness Preservation System: Hearings Before the Subcomm. on Pub. Lands of the Comm. on Interior & Insular Affairs, House of Representatives*, 87th Cong. 1050, 1097 (1962) (statement of Sen. Anderson, one of two Senate sponsors of the Act, sought to be placed in the record by Rep. Saylor, House author of the Wilderness Act)).

thought the prohibition of “other forms of mechanical transport” in wilderness areas prohibited bicycle travel.

While all of these arguments have merit, they ultimately fail when considered in conjunction with later statutory action taken by Congress. The Wilderness Act provides that wilderness areas should be set aside for “a primitive and unconfined type of recreation[.]”¹⁴³ However, the Wilderness Act of 1964 never defined what constituted “primitive recreation.”¹⁴⁴ The ambiguity of what defined “primitive and unconfined recreation” continued until Congress passed the Rattlesnake Wilderness Act (RWA) in 1980.¹⁴⁵ In the RWA, Congress—for the first and only time—directly addressed whether bicycles were permitted in a designated wilderness area.¹⁴⁶ The RWA states that “[t]his national forest area has long been used as a wilderness . . . as a source of solitude . . . and primitive recreation, to include such activities as hiking, camping, backpacking, hunting, fishing, horse riding, and bicycling[.]”¹⁴⁷ Although the RWA was passed to specifically govern the Lola National Forest in Montana, Congress specified that the RWA was meant “to further the purposes of the Wilderness Act of 1964.”¹⁴⁸ Thus, according to the Congress of 1980, allowing bicycles in wilderness areas “further[ed] the purposes” of, and was ultimately in harmony with, the Wilderness Act of 1964 because bicycles were a permitted form of “primitive recreation.”¹⁴⁹

In light of Congress defining “bicycling” as a form of permitted “primitive recreation” in wilderness areas in 1980, it is very likely that the Forest Service banning bicycles from wilderness areas in 1984 cannot be considered “reasonable” for the purposes of the *Chevron* doctrine analysis. When faced with a decision of whether to follow Congress’s interpretation of a statute or a federal agency’s interpretation of a statute, Congress’s interpretation should always

143. 16 U.S.C. § 1131(c) (2012).

144. *Id.* §§ 1131–1136.

145. Stroll, *supra* note 13, at 478.

146. *Id.*

147. 16 U.S.C. § 460ll(a)(1) (2012) (emphasis added).

148. *Id.* § 460ll (b).

149. *Id.* § 460ll (a)(1), (b).

govern.¹⁵⁰ Members of Congress are elected by the people while members of federal agencies are not. As a result, the doctrine of “legislative supremacy” demands that a court give deference to the meaning the legislative branch has attached to a law.¹⁵¹ Consequently, it is very likely that the Forest Service’s 1984 interpretation of the Wilderness Act is unreasonable and improperly bans mountain bikes from wilderness areas.

III. POLICY CONSIDERATIONS

In addition to the textual debate over whether the prohibition of “other forms of mechanical transport” should exclude mountain bikes from wilderness areas, there are several policy considerations that are relevant to deciding whether mountain bikes should be banned from wilderness areas.

A. Environmental Impact

Opponents of mountain bikes in wilderness areas often repeat the mantra that mountain bikes will have an overtly negative environmental impact on existing trail systems.¹⁵² This viewpoint is shared by many land managers, who “frequently perceive mountain biking to be a substantial contributor to trail degradation but lack scientific studies or monitoring data to substantiate such concerns.”¹⁵³ Interestingly, despite the commonly held belief that mountain bikes would cause excessive damage to wilderness area habitats, several scientific studies suggest that mountain bikes have a similar, or lesser, environmental impact than other currently permitted trail uses in wilderness areas.¹⁵⁴

150. See Bradford R. Clark, *The Supremacy Clause as a Constraint on Federal Power*, 71 GEO. WASH. L. REV. 91, 91-92 (2003).

151. See *id.*

152. Felton, *supra* note 6, at 81.

153. Jeff Marion & Jeremy Wimpey, *Environmental Impact of Mountain Biking: Science Review and Best Practices*, in *MANAGING MOUNTAIN BIKING: IMBA’S GUIDE TO PROVIDING GREAT RIDING* (Peter Webber ed., 2007) (citations omitted), http://www.allegro-tourismus.ch/hubfs/Collections/The_Environmental_Impacts_Of_Mountain_Biking/Marion_Wimpey.pdf?t=1539327155033.

154. *Id.* at 1-7.

1. Impact on soil

In a study conducted on trails in the Gallatin National Forest in 1994, scientists compared the tread erosion from mountain bikes, hikers, horses, and motorcycles after each had passed over a trail 100 times.¹⁵⁵ The results of the study clearly showed that horses caused greater soil degradation than any of the other trail uses.¹⁵⁶ Likewise, in a 2006 study, the erosion of trails used predominantly for mountain biking in five different ecological regions in the American Southwest was compared to other trails in the same area that received “little to no mountain biking.”¹⁵⁷ The results of the study showed that erosion and tread width on the trails that were predominantly used for mountain biking “[were] comparable or less” than on the trails that were primarily used for hiking and were “significantly less” than on the trails primarily used by equestrian enthusiasts.¹⁵⁸

In view of these studies, mountain bikers have a strong argument that because trail soil degradation due to mountain biking is “comparable or less” than the trail impact caused by hiking, it is illogical to justify the current prohibition of mountain bikes from wilderness areas on the grounds that they cause severe damage to trail systems.¹⁵⁹ If mountain bikes are banned from wilderness areas because of the damage mountain bikes cause to soil, then hiking should also be banned from wilderness areas. Following that same line of thought, if mountain biking is not allowed in wilderness areas because of the impact it has on soil, then horses should definitely not be allowed in wilderness areas as the effect horses have on soil degradation is significantly greater than the soil degradation caused by mountain bikes.¹⁶⁰

155. See John P. Wilson & Joseph P. Seney, *Erosional Impact of Hikers, Horses, Motorcycles, and Off-Road Bicycles on Mountain Trails in Montana*, 14 MOUNTAIN RES. & DEV. 77, 78-88 (1994).

156. *Id.*

157. Dave D. White et al., *A Comparative Study of Impacts to Mountain Bike Trails in Five Common Ecological Regions of the Southwestern U.S.*, J. PARK & RECREATION ADMIN., Summer 2006, at 21, 28; Marion & Wimpey, *supra* note 153, at 6.

158. White, *supra* note 157, at 21, 37.

159. *Id.* at 37.

160. *Id.*

2. *Impact on vegetation*

Mountain bikers have a similar or lesser impact on vegetation than hikers.¹⁶¹ In 2001, two scientists conducted a study in the Boyne Valley Provincial Park of Ontario that compared the effect of mountain bikers and hikers on trail vegetation.¹⁶² The researchers measured “plant density (number of stems/area), diversity (number of species present), and soil exposure (area of mineral soil exposed) before and after 500 one-way passes by bikers and hikers.”¹⁶³ The results of the study found that “the impacts of hiking and biking were not significantly different for the three indicators measured.”¹⁶⁴ Similarly, in another study conducted in Wisconsin, a researcher found that the trailside vegetation on two newly built mountain biking trails remained constant or increased after a period of two years.¹⁶⁵ The study also found that while soil compaction within the tread of the trails increased, the soil compaction on the borders of the trails remained constant.¹⁶⁶

The results of the Wisconsin study make intuitive sense. Because mountain bikes do not function well, if at all, off-trail, a mountain biker rarely ventures off a trail that she is riding. Thus, as the Wisconsin study corroborates, the vegetation and soil compaction on the borders of a trail are rarely impacted by mountain bikers.¹⁶⁷ Furthermore, because mountain bikes often cost thousands of dollars,¹⁶⁸ a mountain biker is often hesitant to leave her mountain bike on a trail to go and hike in an off-trail area because her mountain bike could easily be stolen. In contrast, while a hiker may move more swiftly on a trail than off a trail, a hiker can navigate off-trail terrain much more easily than a person riding a mountain bike. A hiker also typically carries everything he needs

161. Marion & Wimpey, *supra* note 153, at 3.

162. Eden Thurston & Richard J. Reader, *Impacts of Experimentally Applied Mountain Biking and Hiking on Vegetation and Soil of a Deciduous Forest*, 27 ENVTL. MGMT. 397, 397–98 (2001).

163. Marion & Wimpey, *supra* note 153, at 3.

164. *Id.*

165. ALAN W. BJORKMAN, WIS. DEP’T NAT. RES. BUREAU RES., OFF-ROAD BICYCLE AND HIKING TRAIL USER INTERACTIONS: A REPORT TO THE WISCONSIN NATURAL RESOURCES BOARD (1996).

166. *Id.*

167. *Id.*

168. *See Dream Builds*, BIKE MAG., Dec. 1, 2015, at 88–95.

in a backpack and does not need to leave his backpack behind in order to effectively venture off the trail. Similarly, while mountain bikers usually travel farther than hikers, hikers often stay longer and camp more often than mountain bikers in wild habitats.¹⁶⁹ As a result of camping, hikers can, and often do, cause significant off-trail vegetation damage. Finally, unlike mountain bikes, horses “eat sensitive vegetation and can spread invasive species in Wilderness through their droppings.”¹⁷⁰ In sum, mountain bikers have a strong argument that both hikers and horses have a greater impact on off-trail vegetation than mountain bikes.

3. *Impact on wildlife*

Mountain bikers disturb wildlife less than hikers.¹⁷¹ In a study done in 2001 in Canyonlands National Park, scientists observed 1029 interactions between big horn sheep and humans.¹⁷² The authors of the study found that “sheep fled 61 percent of the time from hikers, 17 percent of the time from vehicles, and 6 percent of the time from mountain bikers.”¹⁷³ The authors further found that “the stronger reaction to hikers, particularly in high use areas, *was attributed to more off-trail hiking* and direct approaches to the sheep.”¹⁷⁴ Similarly, in another study conducted in the Boise River area of Idaho, scientists found that eagles would fly away from their perches “when recreationists approached slowly or stopped to observe them, and were less alarmed when bicyclists or vehicles passed quickly at other speeds.”¹⁷⁵

The results of the Canyonlands National Park study confirm the idea presented in the previous section, namely, that hikers venture off trails more often than mountain bikers.¹⁷⁶ As a result of this increased tendency of hikers to venture off a trail, wildlife is typically

169. Stroll, *supra* note 13, at 481 (citation omitted).

170. Felton, *supra* note 6, at 81.

171. Marion & Wimpey, *supra* note 153, at 11–12.

172. Christopher M. Papouchis et al., *Responses of Desert Bighorn Sheep to Increased Human Recreation*, 65 J. WILDLIFE MGMT. 573, 577 (2001).

173. Marion & Wimpey, *supra* note 153, at 12.

174. *Id.* (emphasis added).

175. Robin Spahr, *Factors Affecting the Distribution of Bald Eagles and Effects of Human Activity on Bald Eagles Wintering Along the Boise River* (Mar. 1, 1990) (unpublished M.S. thesis, Boise State University), <http://scholarworks.boisestate.edu/td/686>.

176. Marion & Wimpey, *supra* note 153, at 12.

disturbed more by hikers than mountain bikers.¹⁷⁷ Likewise, because mountain bikers typically pass wildlife more quickly than hikers, mountain bikers usually disturb wildlife less than hikers — even when hikers do not venture off trails.¹⁷⁸

In summary, the idea that mountain bikers will have a dramatically negative impact on the ecology of wilderness area habitats is ultimately unfounded.¹⁷⁹ If mountain bikes are banned from wilderness areas because of the possible impact that mountain bikes could have on wilderness habitats, then other activities such as hiking and horseback riding should also be banned from wilderness areas.

B. Mountain Biking Has Changed Since Its Inception

As previously discussed, when the Sierra Club and other environmental agencies were lobbying the Forest Service and other federal agencies to ban mountain biking from wilderness areas in the late 1970s, mountain biking represented a counter-culture movement replete with drugs, alcohol, and shoddy equipment.¹⁸⁰ Given these circumstances, it is understandable why environmental groups had such a negative reaction to the newfangled sport of “mountain biking” and swiftly moved to have mountain bikes banned from wilderness areas.¹⁸¹ Mountain bikers were often disrespectful, raucous, and unable to stop quickly in the event of a hiker on a trail.¹⁸² However, mountain biking today is vastly different from the mountain biking that occurred on Mt. Tamaulipas over forty years ago.¹⁸³

First, mountain bike technology has advanced significantly since the 1970s.¹⁸⁴ Gone are the days when mountain bikers would burn through their brakes on the way down the mountain and be

177. See Papouchis, *supra* note 172, at 573.

178. Spahr, *supra* note 175.

179. See Marion & Wimpey, *supra* note 153 at 15.

180. Marks, *supra* note 47.

181. Felton, *supra* note 6, at 78.

182. Marks, *supra* note 47.

183. Brian Christner, *The Amazing Advancements in Mountain Bikes*, DOCKER (Apr. 12, 2015), <https://www.brianchristner.io/the-amazing-advancements-in-mountain-bikes>.

184. See *id.*

unable to stop quickly to avoid colliding with a hiker.¹⁸⁵ Second, the demographic of mountain bikers has changed dramatically.¹⁸⁶ In a recent study by the Canada Tourist Commission, 55% of people who traveled to mountain bike in Canada had household income levels of greater than \$80,000 and 65–70% were 25 to 45 years old.¹⁸⁷ Because of the high prices of mountain bikes (even entry-level full suspension mountain bikes typically cost more than \$1000), mountain biking is attracting an older and more mature demographic.¹⁸⁸ Third, several studies have indicated that mountain bikers have “strong environmental values and want to protect wild places.”¹⁸⁹ In a recent study of International Mountain Bicycling Association members, the authors of the study found that

mountain bike opinion leaders are overwhelmingly biocentric in their thinking, believing that nature has intrinsic value exclusive of what it does for humans, that humans do not have the moral license to infringe on this right, and that many of our environmental problems are rooted in our societal tendency to dominate, control, and exploit nature.¹⁹⁰

Fourth, while mountain biking, like any sport, still has some participants who are uncouth by nature, the type of mountain bikers who would be attracted to mountain biking in wilderness areas are unlikely to be akin to the members of the Larkspur Canyon Gang.¹⁹¹ Speaking on this topic, Brady Robinson, an avid backcountry mountain biker, argued that “[b]ackcountry mountain bikers heading deep into wild mountains are compass-carrying, self-sufficient types, earning every mile with sweat and carrying provisions,

185. *See id.*

186. Lee Lau, *Economic Impacts of Mountain Biking Tourism*, PINKBIKE (June 28, 2014), <https://www.pinkbike.com/news/economic-impacts-of-mountain-biking-tourism-2014.html>.

187. *Id.*

188. *See id.*; *Why We Should Stop Whinging About the Price of High-End Bike Gear: The Trickle Down Effect*, DIRT MAG. (Nov. 4, 2013), <https://dirtmountainbike.com/features/stop-whinging-price-high-end-bike-gear-trickle-effect.html>.

189. Jim Hasenauer, *Mountain Bike Recreation and Designated Wilderness: A Case for Reconsideration*, NAT'L TRAILS TRAINING P'SHIP, <http://atfiles.org/resources/fedland/BikeWilderness.html> (last visited Jan. 21, 2019).

190. *Id.*

191. *See* Aaron Teasdale, *Wilderness Wars*, NAT'L GEOGRAPHIC (Sept. 21, 2016), <https://www.nationalgeographic.com/adventure/features/environment/bikers-paddlers-wilderness-conservation/>.

maps, and emergency supplies on their backs. They're more akin to hikers than the adrenaline fiends going too fast on near-town trails."¹⁹²

C. Claims that Mountain Biking Ruins the "Wilderness Experience"

Mark Eller, the former communications director for the International Mountain Bicycling Association, stated in an interview with *Bike Magazine* that many opponents of mountain bikes in wilderness areas do not try to argue that mountain biking causes more damage to trails than other activities or that mountain bikers are rude and irresponsible.¹⁹³ Instead, these opponents want mountain bikes banned from wilderness areas because they claim the sight of a mountain bike can ruin their "wilderness experience."¹⁹⁴ Speaking on this issue, Eller said: "It's not that most people believe that bikes cause more damage to their natural world, . . . it's that they feel that seeing a bike out there changes the experience of the Wilderness."¹⁹⁵ Essentially, the sight of a mountain bike can make some people feel that they are not truly in the wilderness anymore.¹⁹⁶

Such an argument, while still supporting the use of other forms of modern transportation and outdoor equipment in wilderness areas, is flawed at best and hypocritical at worst. If Congress meant for the Wilderness Act to ban all modern transportation equipment in wilderness areas then it would have never permitted skis, snowshoes, or rafts in wilderness areas. Furthermore, because humans rarely walk around naked in the wild, wilderness users will invariably be exposed to other humans that use modern equipment, backpacks, clothing, and other items that serve as reminders that they live in a modern, civilized world. Eller accurately summed up many mountain bikers' thoughts on the matter when he asked: "Well, why do *you* get to decide that the sight of me is abominable, while the sight of you is entirely appropriate in a Wilderness setting?"¹⁹⁷

192. *Id.*

193. Felton, *supra* note 6, at 81.

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

*D. The Forest Service's Ban of Mountain Biking in Wilderness Areas
Pits Conservationists Against Each Other*

The majority of mountain bikers are conservation-minded and are eager to preserve wild spaces.¹⁹⁸ However, because of the ban on mountain bikes in wilderness areas, many mountain bikers now feel like they have to oppose, rather than support, the establishment of new wilderness areas.¹⁹⁹ Commenting on this issue, Gunnar Waldman, a journalist for Teton Gravity Research said:

*This is where the crux of stupidity is for me; mountain bikers are now forced to oppose using the Wilderness designation to protect beautiful spaces, even though we ride, dig trails, and advocate for nature because we enjoy being out in it. . . . We find peace, excitement and invigoration in nature just like everyone else. . . . Yet protecting what we love shuts us out.*²⁰⁰

Pitting conservationists against other conservationists is the anti-thesis of the Wilderness Act's purpose.²⁰¹ Howard Zahniser, the Wilderness Act's original author, proposed the Wilderness Act to Congress in an effort to unify conservationists and protect wilderness areas.²⁰² Before the act was passed, Zahniser said:

Let's try to be done with a wilderness preservation program made up of a sequence of overlapping emergencies, threats and defense campaigns! Let's make a concerted effort for a positive program that will establish an enduring system of areas where we can be at peace *and not forever feel that the wilderness is a battleground.*²⁰³

CONCLUSION

After the Wilderness Act was initially passed, bicycles were allowed in wilderness areas for nearly twenty years.²⁰⁴ It is time for

198. See Gunnar Waldman, *The Fight for Mountain Bike Trail Access in 2016*, TETON GRAVITY RES. (June 14, 2016), <https://www.tetongravity.com/story/culture/the-fight-for-mountain-bike-trail-access>.

199. *Id.*

200. *Id.* (emphasis added).

201. Howard Zahniser: *Author of the Wilderness Act*, *supra* note 9.

202. *Id.*

203. *Id.* (emphasis added) (quoting Zahniser in SAN FRANCISCO: SIERRA CLUB, WILDLANDS IN OUR CIVILIZATION 51 (1964)).

204. Stroll, *supra* note 13, at 464.

bicycles to again be permitted in wilderness areas. While it may have been well intentioned, the Forest Service's 1984 regulation banning mountain bikes from wilderness areas was motivated by political pressure, rather than prudent and consistent policy, and it ultimately conflicts with the purpose, language, and legislative history of the Wilderness Act.²⁰⁵ This Note's analysis of the text and legislative history of the Wilderness Act shows that considering mountain bikes to be a prohibited form of "mechanical transport" while simultaneously allowing other human-powered, mechanically assisted forms of transport such as skis, rafts, and snowshoes in wilderness areas is nonsensical. Similarly, ignoring the fact that Congress later specifically defined "bicycling" as a form of "primitive recreation" expected to be enjoyed in a wilderness area also points to administrative unwillingness to respect congressional intent.

Rather than idly standing by in the face of this conflicted policy, members of Congress should vote to pass H.R. 1349. By passing H.R. 1349 and allowing bicycles to be readmitted to wilderness areas, members of Congress will be supporting an active, human-powered form of recreation in wilderness areas. This Note shows that mountain biking has less of an environmental impact than other activities currently allowed in wilderness areas and is consistent with the type of recreation that the 1964 Congress envisioned occurring in wilderness areas.²⁰⁶ Members of Congress will also be supporting a form of "primitive recreation" that the 1980 Congress specifically allowed in a wilderness area.²⁰⁷ Furthermore, the language of H.R. 1349 does not mandate that regulatory agencies allow mountain bikes in all wilderness areas.²⁰⁸ Instead, it states that an administering agency "may allow" mountain bikes in wilderness areas.²⁰⁹ Thus, if a certain wilderness area, or a certain trail in a wilderness area, is deemed not suitable for mountain bike travel then the administering agency responsible for that wilderness area can choose to continue to prohibit mountain bike travel.²¹⁰

205. *See id.* at 482.

206. *See id.* at 477.

207. *Id.* at 478.

208. H.R. 1349, 115th Cong. (as amended Dec. 13, 2017).

209. *Id.*

210. *Id.*

As a result, by passing H.R. 1349, members of Congress will be giving the power of choice back to regulatory agencies, rather than taking it away.

Finally, the Wilderness Act was never meant to exclude and divide outdoor recreationists on the basis of how they choose to exercise in the outdoors. One outdoor enthusiast should not be able to say to another: "Leave unless you exercise my way." Mountain bikers do not deserve to be banned from wilderness areas because their preferred physical activity is not hiking, snowshoeing, skiing, or canoeing. It is time for the intolerance among outdoor enthusiasts to end. Congress, let bicycles back in.

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