SUPREME COURT OF THE UNITED STATES

No. 05–1508

ZUNI PUBLIC SCHOOL DISTRICT NO. 89, ET AL., PETITIONERS *v.* DEPARTMENT OF EDUCATION ET AL.

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

[April 17, 2007]

JUSTICE KENNEDY, with whom JUSTICE ALITO joins, concurring.

The district courts and courts of appeals, as well as this Court, should follow the framework set forth in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), even when departure from that framework might serve purposes of exposition. When considering an administrative agency's interpretation of a statute, a court first determines "whether Congress has directly spoken to the precise question at issue." *Id.,* at 842. If so, "that is the end of the matter." *Ibid.* Only if "Congress has not directly addressed the precise question at issue" should a court consider "whether the agency's answer is based on a permissible construction of the statute." *Id.,* at 843.

In this case, the Court is correct to find that the plain language of the statute is ambiguous. It is proper, therefore, to invoke *Chevron*'s rule of deference. The opinion of the Court, however, inverts *Chevron*'s logical progression. Were the inversion to become systemic, it would create the impression that agency policy concerns, rather than the traditional tools of statutory construction, are shaping the judicial interpretation of statutes. It is our obligation to set a good example; and so, in my view, it would have been

preferable, and more faithful to *Chevron*, to arrange the opinion differently. Still, we must give deference to the author of an opinion in matters of exposition; and because the point does not affect the outcome, I join the Court's opinion.