End of an Era: The Supreme Court Reverses *Chevron*

Client Alerts

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At the tail end of the 2023–24 term, the Supreme Court issued its long-awaited decisions in *Loper Bright Enterprises v. Raimondo* and *Relentless v. Department of Commerce*—reversing the 40-year-old *Chevron* doctrine.

Background

The Court's 1984 decision in *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, established a foundational doctrine where courts should defer to reasonable agency interpretations of acts of Congress. *Chevron* set forth a two-step analysis. First, a court must ascertain "whether Congress has directly spoken to the precise question at issue." If it has, then that is the end of the inquiry, and the court must follow the intent of Congress. Second, if the court finds the text of the statute silent or ambiguous as to the specific issue at hand, the court must defer to a reasonable agency interpretation.

Two cases this term concerned challenges to a rule issued by the National Marine Fisheries Service, which required commercial fishing companies to pay the costs of government-mandated observers who monitor compliance with fishery management plans. Both the D.C. Circuit and the First Circuit upheld the rule under *Chevron* as a reasonable interpretation of the Magnuson-Stevens Act.

The Supreme Court granted certiorari limited to a single question: Whether to overrule *Chevron* or at least clarify that statutory silence concerning controversial powers expressly but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency.

Loper Bright Enterprises/Relentless

In a 6-3 decision[1] authored by the Chief Justice, the Court ended the 40-year tenure of *Chevron*.

The Court first emphasized the Framers' vision that the final "interpretation of the laws" would be "the proper and peculiar province of the courts." Accordingly, the Framers structured the Constitution to allow judges to exercise their judgment independent of influence from the political branches. And in *Marbury v. Madison*, the Court embraced the Framers' understanding of the judicial function.

Congress opted to codify, in the Administrative Procedure Act, "the unremarkable, yet elemental proposition"—dating back to *Marbury*—that courts must decide "all relevant questions of law" by applying their own judgment. In the majority's view, *Chevron*—and in particular, *Chevron*'s presumption that statutory ambiguities are implicit delegations to agencies—cannot be squared with the APA.

Agencies have no special competence in resolving ambiguities in statutes, according to the majority. And the Framers anticipated and expected that courts would confront—and resolve—statutory ambiguities by exercising their own independent legal judgment. While an agency's specific expertise may be informative, the agency's interpretation of a statute cannot bind an Article III court.

Impacts of Chevron's reversal on agencies and executive departments

The Court's decision will likely have sweeping effects in several key areas, each of which involves critical new agency rules promulgated by the Biden Administration. These rules—which already are subject to scrutiny and will face significant court challenges—may be further vulnerable in the absence of *Chevron*.

Energy and the environment

- *Environmental Protection Agency* –
  - Power plant rules under the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act addressing greenhouse gas emissions from fossil fuel-fired power plants
  - Regulation of cross-state air pollution
- *Federal Energy Regulatory Commission* – rule reforming how to plan and pay for the build-out of the nation's electricity transmission network
- *Department of the Treasury* – rules on who can qualify for tax credits under the Inflation Reduction Act

Financial and economic oversight

- *Securities and Exchange Commission* –
  - Efforts to regulate cryptocurrency through enforcement actions rather than rulemaking
  - Rule requiring disclosures by public companies related to climate-related risks
- *Federal Trade Commission* – rule banning noncompete agreements nationwide

Communications

- *Federal Communications Commission* – rule restoring "net neutrality" standard and reclassifying broadband internet access service as a common carrier service

Chevron's reversal continues broader trends in administrative law

The reversal of *Chevron,* in conjunction with other major Court decisions, will likely place significant constraints on Executive Branch lawmaking and will inject significant uncertainty into the regulatory landscape.

West Virginia v. EPA

- The Court struck down the EPA's Clean Power Plan rule, which adopted a "best system of emission reduction" for existing coal-fired power plants that included a requirement that such facilities reduce their own electricity production or subsidize increased clean generation.

- In doing so, the Court adopted the "major questions doctrine"—a substantive canon that bars agencies from resolving questions of "vast economic and political significance" without a clear authorization from Congress.

Corner Post, Inc. v. Board of Governors of the Federal Reserve System (decision to be released Monday)

- *Corner Post* concerns a challenge to a Federal Reserve cap on "swipe" fees, which merchants nationwide pay banks to process debit card transactions.

- This case was filed ten years after the Fed's cap took effect, long after the statute of limitations lapsed. The challenger argued nevertheless that its claim should not be time-barred because it sued soon after the regulation first applied to the challenger and caused it harm.

- The result of *Corner Post*—in conjunction with *Loper Bright Enterprises/Relentless*—could be a substantial increase in litigation challenging federal regulations dating back decades.

- *Jenner & Block will release an update to this alert after the Court issues that decision.*

This article is available in the Jenner & Block Japan Newsletter. / この記事はJenner & Blockニュースレターに掲載されています。

Footnotes

[1] Because Justice Jackson was recused from *Loper Bright*, the *Relentless* decision (which included Justice Jackson) was 6-3 and the *Loper Bright* decision (which excluded Justice Jackson) was 6-2.

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