

Key Takeaways from Realty Rendezvous Panel Discussion on “What the Death of *Chevron* Means for Real Estate & Hospitality”

News

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As part of the firm’s annual Realty Rendezvous event, Jenner & Block lawyers participated in a panel titled “What the Death of *Chevron* Means for Real Estate & Hospitality,” in which they examined the overturning of the 40-year-old *Chevron* doctrine and the significant uncertainty it injected into the regulatory landscape.

Lindsay Harrison, Co-Chair of the Real Estate and Hospitality Practice at Jenner & Block moderated the panel and was joined by panelists Ian Gershengorn, Co-Chair of the Appellate and Supreme Court Practice; Betsy Henthorne, Partner in the Specialized Litigation and Arbitration and Government Controversies and Public Policy Litigation Practices; Annie Kastanek, Co-Chair of the Appellate and Supreme Court Practice; Adam Unikowsky, Partner in the Appellate and Supreme Court Practice.

The Supreme Court

Before diving into administrative law, panelists discussed the Supreme Court more broadly and provided an overview of what to expect at the Court this term. They noted the smaller number—so far—of blockbuster cases this term compared to recent terms, and mentioned some high-profile cases, such as *US v. Skrametti*, regarding transgender medical care, and *Garland v. VanDerStok*, regarding the regulation of weapons parts kits that can be used to make untraceable weapons sometimes known as “ghost guns.” Panelists also discussed the presidential transition, including the anticipated nomination of John Sauer to be Solicitor General, the government’s lawyer before the Supreme Court.

The Fall of *Chevron*

The administrative law discussion began with an overview of *Chevron* deference, under which courts deferred to federal agencies’ reasonable interpretations of ambiguous statutes, before turning to last term’s *Loper Bright* decision overturning *Chevron*.

Panelists discussed two schools of thought regarding what will happen post-*Chevron*: On one hand, the Supreme Court has not decided a case under *Chevron* in almost a decade and government

agencies have been decreasing their reliance on it as well. On the other hand, lower courts were still using *Chevron* quite a bit.

Panelists further noted that a move away from nationwide regulation by the federal government may make state-level regulation more important, and more salient for the real estate and hospitality industries. While deregulation is often understood as good for business, instability and a patchwork of state regulations may cut in the other direction.

The Rise of the Major Questions Doctrine and Other Developments in Administrative Law

Panelists also discussed the Major Questions doctrine, under which agencies must have clear congressional authorization to take actions with major economic or political implications, and highlighted the Supreme Court's recent decisions in *SEC v. Jarkesy*, which limited agencies' ability to bring enforcement proceedings, and *Corner Post v. Federal Reserve*, which extended the time to challenge agency actions in some circumstances. Finally, panelists discussed the long-dormant non-delegation doctrine and its anticipated resurgence.

Though it remains to be seen precisely how these decisions will shape American law and federal regulations, panelists observed that we are in the midst of a major deregulatory era, driven in part by a Supreme Court that is skeptical of agency regulation. Businesses of all kinds can expect less ambitious rulemaking at the federal level and some uncertainty over whether longstanding rules will face—and survive—challenges in this new landscape.

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