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Insights

CHEVRON OVERRULED

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In a 6-3 decision, the Supreme Court overruled its long-standing *Chevron* doctrine and delivered a blow to federal agencies' regulatory authority by vesting statutory interpretation in the judiciary.

For the past 40 years, the *Chevron* doctrine instructed courts to give deference to a federal agency's interpretation of the agency's organic statute, so long as the agency's statutory interpretation was a reasonable construction of the statute. The consolidated *Loper Bright Enterprises v. Raimondo* and *Relentless, Inc. v. Department of Commerce* ("*Loper Bright*") decision, released on June 28, 2024, held that courts may no longer defer to such agency interpretations but must instead exercise their own independent judgment in determining whether the agency has acted within its authority.

At issue in *Loper Bright* was a federal rule that required herring fishermen to pay the salary of a government worker who boards a fishing vessel to monitor catches. The fishermen argued that the 1976 Magnuson-Stevens Act did not grant officials the power to create industry-funded monitoring requirements. The majority opinion, written by Chief Justice John Roberts, agreed, holding that "agencies have no special competence in resolving statutory ambiguities. Courts do."

The Court found that agency deference is inconsistent with the Administrative Procedures Act (APA), which embodies the principle first enshrined in *Marbury v. Madison* – that it is the duty of courts to "say what the law is." And *Chevron*, according to the majority, erroneously "demands … *binding* deference" to an agency's reasonable interpretation of its organic statute. Rather, courts, while not "experts in the field", are to determine the scope of regulatory authority provided by a statute.

This is not to say that *Loper Bright* requires courts to ignore agency conclusions or the records of official proceedings leading up to binding agency action. Courts may still look to an agency's interpretation for guidance, particularly if it is long-standing, well-reasoned, or where its interpretation rests on "factual premises" within the agency's area of expertise. But it appears the level of "deference" to be given will be limited to the "respectful consideration" afforded agency conclusions under the pre-*Chevron* framework embodied in *Skidmore v. Swift & Co*. In addition, *Loper Bright* appears to leave intact Congress's ability to expressly delegate authority to agencies to promulgate regulations and relevant definitions. Nonetheless, the Court will in all circumstances decide what the law means and whether an agency has acted within such delegated authority. And

under recent caselaw (*West Virginia v. EPA*), a reviewing court, in interpreting the statute, will interpret an agency's statutory authority narrowly when the agency has sought to resolve a question of "vast economic and political significance" without clear statutory authorization.

Liberal justices in the minority criticized the opinion as judicial hubris in thinking that the judiciary is better equipped to interpret regulatory laws despite lacking necessary technical and scientific expertise. Critics echo the minority's concerns and are bracing for the consequences, including the potential for the increased likelihood of successful challenges against federal regulations, more narrow and cautious regulations from agencies, and greater pressure on Congress to legislate with more specificity.

The potential for *Loper Bright* to open a floodgate of litigation may soon become reality considering the July 1, 2024 *Corner Post Inc. v. Board of Governors of the Federal Reserve System*. Split along the same ideological blocs as *Loper Bright*, *Corner Post* modifies prior caselaw interpreting the statute of limitations for APA suits. Prospective plaintiffs now have six years from the date of their first injury under a particular policy to bring suit. Together the two decisions throw potentially decades-old rules, whose legality was thought to be settled, into question, if the regulatory challenge would properly be brought under the APA.

If you have further questions regarding the impact of this ruling, contact Bryan Keyt, Maxwell Multer, Philip Karmel, Peter Hansen, Thor Ketzback, or any other member of our Energy and Environment team at BCLP.

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