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FEDERAL AGENCIES

US Supreme Court Overrules *Chevron* Deference to Agencies in *Loper Bright* and *Relentless*

By Roman Martinez and Alex Siemers

On June 28th, the US Supreme Court handed down its decisions in *Loper Bright Enterprises v. Raimondo* and *Relentless v. Department of Commerce*, overruling the *Chevron* doctrine and holding that under the Administrative Procedure Act (APA), courts must exercise their independent judgment when interpreting federal statutes implicating federal agencies and deciding whether an agency has acted within its statutory authority.

The Court reasoned that because the APA's text is clear that agency interpretations of statutes are *not* entitled to deference, courts cannot defer to an agency's interpretation simply because a statute is ambiguous. The Court concluded that *Chevron* was wrongly decided, unworkable, and destructive of reliance interests. And because the *stare decisis* factors cut against retaining *Chevron*, the Court overruled the doctrine.

This decision is a landmark holding of administrative law that will help recalibrate the balance of power between agencies and courts. Its implications likely will be felt across virtually all federal agencies, and will make it harder for those agencies to adopt regulatory programs that exceed the authority conferred on them by Congress. The decision also potentially can be used to challenge existing agency regulatory programs. It may also undermine the related doctrine of *Auer* deference, under which courts defer to agency interpretations of their own regulations.

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Background

In 1984, the Supreme Court decided *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* *Chevron* held that courts must defer to reasonable agency interpretations of ambiguous statutes, based on a presumption that Congress deliberately delegated interpretive power to agencies. *Chevron* mandated a two-step process of interpretation, as follows: At step one, the court uses the traditional tools of statutory construction to determine whether Congress clearly addressed the issue, or whether the statute is silent or ambiguous. If the statute is ambiguous, then step two kicks in and the court evaluates whether the agency's interpretation is "reasonable." If so, then the court defers to the agency. Subsequent decisions have tinkered with *Chevron* (by adding a step zero) or cabined its reach (by restricting it to non-major questions). Others make clear that *Chevron* requires deference even when a court has adopted a different interpretation of the statute in question.

Lower courts have cited *Chevron* in thousands of cases and applied the *Chevron* doctrine to a wide variety of statutes administered by federal agencies. Both *Relentless* and *Loper Bright* involve one such statute: the Magnuson-Stevens Act (MSA), which regulates commercial fishing in the United States. The MSA allows the government to require commercial fishermen to carry federal observers on their vessels to collect data necessary for the conservation and management of fisheries. Here, the relevant agency (National Marine Fisheries Service, or NMFS) passed a rule in the Atlantic herring fishery, requiring fishing vessels to pay for these observers, in addition to carrying them.

Local New England fishermen challenged the rule, arguing that it exceeded NMFS' authority under

the MSA, which does not shift the costs of federal observers to commercial fishermen except in certain specified circumstances not at issue in NMFS' new program. The lower courts in both cases applied the *Chevron* deference framework and upheld NMFS' cost-shifting program as a reasonable construction of the MSA. The Supreme Court ultimately granted *certiorari* in both cases to determine whether the *Chevron* doctrine should be overruled or clarified, and they were both argued in January 2024.

The Decision

The Supreme Court, in a 6-3 decision authored by Chief Justice Roberts, overruled the *Chevron* doctrine. The Court held that courts “must exercise their independent judgment in deciding whether an agency has acted within its statutory authority” and “may not defer to an agency interpretation of the law simply because a statute is ambiguous.”

The Court began by discussing Article III of the Constitution, which assigns the federal judiciary the responsibility and power to adjudicate cases and controversies and envisions that the “interpretation of the laws” is “the proper and peculiar province of the courts.” The Court also surveyed history to confirm the importance of courts exercising their independent judgment when it comes to statutory interpretation. The Court acknowledged that independent judgment included according “due respect” to agency interpretation—especially if it was both contemporaneous with the statute’s enactment and consistent over time—but distinguished this from binding deference under *Chevron*.

The Court then turned to the APA’s text, which states that “the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.”¹ It held that the APA codifies the “elemental proposition” reflected by judicial practice dating back to *Marbury v. Madison*: “that courts decide legal questions by applying their own judgment.” Thus, “the text of the APA means what it says”: That “agency

interpretations of statutes—like agency interpretations of the Constitution—are *not* entitled to deference.”

The Court made clear that in exercising their independent judgment, courts may still “seek aid” from implementing agencies, such that an agency interpretation may be entitled to some “respect” under *Skidmore v. Swift & Co.*, which reasoned that agency interpretations may have “power to persuade” even if “lacking power to control.” In particular, an agency interpretation “may be especially useful” if it was “issued contemporaneously with the statute” and has “remained consistent over time.” And if an agency interpretation “rests on factual premises within the agency’s expertise,” it may be “especially informative.”

The Court also recognized that the best reading of some statutes “may well be that the agency is authorized to exercise a degree of discretion” with respect to policy judgments (as distinct from legal interpretation). In particular, it noted that some statutes expressly delegate authority to define a particular term, and that others either empower an agency to “prescribe rules to ‘fill up the details’ of a statutory scheme” or allow agencies to regulate with flexibility by using terms like “appropriate” or “reasonable.”

When the best reading of the statute is that it delegates discretionary policymaking authority to an agency, the Court explained, the role of a reviewing court is to interpret the statute, recognize constitutional delegations, and ensure the agency has engaged in reasoned decisionmaking under the APA’s arbitrary-and-capricious standard of review.

The Court explained that *Chevron* deference “cannot be squared with the APA,” because it requires ignoring a court’s independent judgment, mechanically affording deference to inconsistent or second-best agency interpretations. The Court rejected *Chevron*’s presumption that statutory ambiguities are implicit delegations to agencies, noting that the presumption does not “approximate reality.”

The Court also rejected the government’s defenses of *Chevron* based on agency expertise, the importance of uniformity in legal interpretation, and

agency authority over policymaking. As to expertise, the Court noted that Congress expects courts to handle technical statutory questions, and that they do so with help from the parties' briefing in any particular case. So, if a technical question rests on "factual premises within the agency's expertise," the agency's interpretation "may be especially informative," even if it is not legally binding.

As to uniformity, the Court reasoned that there are inconsistencies in how judges apply *Chevron* and that "there is little value in imposing a uniform interpretation of a statute if that interpretation is wrong." As to policymaking, the Court concluded that the "view that interpretation of ambiguous statutory provisions amounts to policymaking ... rests on a profound misconception of the judicial role." The "resolution of statutory ambiguities involves legal interpretation," and "does not suddenly become policymaking just because a court has an agency to fall back on."

Finally, the Court held that *stare decisis* does not require upholding *Chevron*. The Court noted that *Chevron* has always "been a rule in search of a justification," with its flaws apparent from the start. The Court also reasoned that experience has shown *Chevron* to be unworkable, both because of the difficulty in defining what is ambiguous and because of the Court's own attempts to refine the doctrine through new threshold questions or additional exceptions. The Court found that *Chevron* "affirmatively destroys" reliance interests because an ambiguity becomes a license for an agency to change positions as much as it likes. The Court therefore concluded that overruling *Chevron* was appropriate.

The Court ultimately emphasized that its ruling did not "call into question prior cases that relied on the *Chevron* framework." It clarified that the "holdings of those cases that specific agency actions are lawful ... are still subject to statutory *stare decisis* despite our change in interpretive methodology." Furthermore, the fact that an earlier decision relied on *Chevron* is "not enough to justify overruling a statutory precedent" on its own.

The Court did not address whether the NMFS rule is within the authority granted to the agency by

the MSA. So, on remand, the lower courts will be tasked with interpreting the MSA without relying on *Chevron*.

Justice Thomas wrote a concurring opinion, arguing that *Chevron* deference also violates the separation of powers because it "curbs the judicial power afforded to courts" in Article III and "simultaneously expands agencies' executive power" beyond Article II. Justice Gorsuch also wrote a concurring opinion, offering his theory about the proper application of *stare decisis* and explaining why that doctrine posed no obstacle to overruling *Chevron*.

Justice Kagan dissented, joined by Justices Sotomayor and Jackson. She argued that *Chevron* was rightly decided and that *stare decisis* favored retaining *Chevron*.

Implications

The Supreme Court's decision in *Loper Bright* has significant implications for agency rulemaking and litigation across wide areas of law and industries, especially for agencies that have relied heavily on *Chevron*.

First, the decision will require agencies to provide more compelling justifications for their rulemaking decisions, knowing that courts will closely scrutinize their interpretations and the reasoning behind them. As such, agencies may further emphasize transparency and public participation in the rulemaking process to build a stronger administrative record. Agencies may also be more hesitant to stretch statutes beyond their natural bounds. And the decision may help curtail flip-flopping by agencies in response to each new presidential administration.

Second, businesses may more frequently and effectively challenge agency overreach in court. Agencies will no longer be able to invoke *Chevron* deference to uphold regulatory programs that exceed their statutory authority, as interpreted independently by courts using traditional tools of construction. *Loper Bright* should incentivize regulated entities to bring legal challenges to new agency programs of questionable validity. It also will incentivize

similar challenges to preexisting agency interpretations, either in response to enforcement actions or in facial challenges that can still be brought under applicable statutes of limitations.²

Third, lower courts will be forced to address some of the outstanding questions about statutory interpretation in the agency context that *Loper Bright* did not conclusively resolve. For example, courts will need to think anew about how the *Skidmore* doctrine should impact the analysis, and how courts should take account of agency interpretations when exercising their own independent judgment about what statutes mean. Courts will confront potentially difficult questions about what constitutes a valid statutory delegation of policymaking (as distinct from interpretive) authority, and when and how such delegations are consistent with constitutional non-delegation principles and the separation of powers.

They will need to flesh out the details on what the Court meant when it indicated that prior Supreme Court and circuit court decisions issued under the now-defunct *Chevron* standard retain their *stare decisis* effect. The answers to these questions could shape how significant and sweeping *Loper Bright*'s impact will be in practice.

Fourth, *Loper Bright*'s APA holding could undermine the *Auer* deference doctrine, which requires courts to defer to agencies' reasonable interpretation of their own rules. In *Kisor v. Wilkie*, decided in 2019, the Court applied *stare decisis* and declined to overrule *Auer* deference. But *Loper Bright* marks a significant change in the legal landscape, and its APA holding would seem to foreclose deference to agency

interpretations of regulations for the same reasons that it forecloses agency interpretations of statutes. Courts will need to assess whether *Auer* and *Kisor* survive *Loper Bright*.

Finally, and more generally, the Supreme Court's decision in *Loper Bright* and *Relentless* signals that the Court remains deeply concerned about federal agencies overreaching and is willing to enforce constitutional and statutory limits on agency power. In recent years, the Court has repeatedly curbed agency authority in various ways. That trend appears likely to continue in the years to come.

Notes

1. 5 U.S.C. § 706.
2. On July 1, 2024, the Supreme Court issued its decision in *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, which clarified the meaning of the default statute of limitations for challenging agency action under the APA set forth in 28 U. S. C. § 2401(a). Section 2401(a) states that such cases must be brought within "six years after the right of action first accrues." 28 U. S. C. § 2401(a). In *Corner Post*, the Court held that "[a] claim accrues when the plaintiff has the right to assert it in court—and in the case of the APA, that is when the plaintiff is injured by final agency action." Most circuits had previously held that a claim challenging an agency regulation accrued when that regulation was promulgated. As a result, *Corner Post*'s interpretation of § 2401 will significantly expand the range of agency actions subject to facial challenges in court. Plaintiffs will be able to bring such challenges within six years of their own injury, even if the regulation was promulgated before then.