



SUPREME COURT OVERTURNS LONGSTANDING CHEVRON DEFERENCE DOCTRINE

July 19, 2024

On June 28, the U.S. Supreme Court, in a landscape-altering decision, upended over 40 years of precedent in its decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. ____ (2024). In a 6-3 split, the Supreme Court overturned the longstanding Chevron Deference Doctrine. While it is still unclear how the *Loper* decision will affect the legal landscape, we know that it will have profound implications for federal agencies and those subject to federal regulation. So, what was the now-overturned Chevron Deference Doctrine, what was the Supreme Court's reasoning in *Loper* and what may happen next?

What Was the Chevron Deference Doctrine?

"Chevron deference," a term coined in the landmark case *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, is the doctrine of judicial deference given to administrative action. 468 U.S. 837 (1984). In *Chevron*, the Supreme Court set forth a two-step legal test to determine when courts should defer to the agency's answer or interpretation of an ambiguous question under federal law.

Step one: the court asks, "whether Congress has directly spoken to the precise question at issue." If the meaning of the statute is "unambiguously expressed," then "that is the end of the matter" because the agency and court must adhere to that.

Step two: "if the statute is silent or ambiguous with respect to the specific issue," the court then asks, "whether the agency's answer is based on a permissible construction of the statute." If it is, the court must defer to the agency.

In other words, the Supreme Court held that judicial deference to a federal agency's expertise is appropriate where the agency's answer was not unreasonable, so long as Congress had not spoken

directly to the precise issue at question. *Id.* When a statute was silent or ambiguous with respect to the specific issue, the question for the court was whether the agency's action was based on a permissible construction of the statute. For a construction to be deemed permissible, the agency's interpretation of an ambiguous statute had to be "reasonable." In determining whether an interpretation was reasonable, courts looked to a multitude of factors including the age of the administrative interpretation and the congressional action or inaction in response to that interpretation at issue.

Loper Bright Enterprises v. Raimondo

The Supreme Court overturned the Chevron Deference Doctrine in *Loper* finding that "[t]he Administrative Procedure Act (APA) requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous; Chevron is overruled."

In *Loper*, the plaintiffs challenged the National Marine Fisheries Service's mandate requiring the herring industry to pay for the costs, estimated at \$710 per day, associated with carrying observers on board their vessels to collect data about their catches and monitor for overfishing. While the program was in effect, the agency reimbursed fishermen for the costs of the observers.

After two federal courts of appeals denied the fishing companies' challenges to the rules, the Supreme Court weighed in on the issue. In the Supreme Court's majority opinion, Chief Justice Roberts explained that Chevron deference is inconsistent with the APA. The APA sets out the procedures federal agencies must follow, as well as instructions for courts to review actions by those agencies. Specifically, Chief Justice Roberts noted that the APA directs courts to "decide legal questions by applying their own judgment," and therefore, "makes clear that agency interpretations of statutes — like agency interpretations of the Constitution — are not entitled to deference."

According to the Supreme Court, there is a "best reading" of each statute. It is the "one the court, after applying all relevant interpretative tools, concludes is best." The Supreme Court concluded that there was one exception — when "a particular statute delegates authority to an agency consistent with constitutional limits," but even then "courts must respect the delegation, while ensuring that the agency acts within it."

The Supreme Court concluded that Chevron deference was an erroneous judicial invention that should not be protected by precedent. The Supreme Court explained, however, that its overruling of Chevron deference does not apply retroactively, meaning that cases decided in reliance on the overruled test, remain good law entitled to statutory precedent.

In his opinion, Chief Justice Roberts rejected the idea that agencies are better suited than courts to determine the meaning of ambiguities in federal laws — even when those ambiguities involve technical or scientific questions that fall within an agency's area of expertise. Roberts stated that, "Congress expects courts to handle technical statutory questions" and courts also have the benefit of briefing from the parties and "friends of the court."



Roberts, however, did not dispense with agency expertise completely, allowing courts to consider an agency's interpretation of an ambiguous law when it falls within the agency's purview, a doctrine known as Skidmore deference.

Now What?

Loper is poised to significantly re-shape the legal and regulatory landscape in all levels of government, though the exact contours of those changes will not be apparent for some time.

Loper provides an avenue for those seeking to challenge regulations they believe are unreasonable or inconsistent with congressional intent. Regulations are often, and notoriously, unclear on issues important to their implementation and enforcement. After *Loper*, absent interpretive authority clearly and lawfully delegated to the agency, parties challenging an agency's regulatory interpretation will no longer have to overcome automatic deference to it. Instead, opponents will attempt to persuade the court of the "best reading" of the statute.

Beyond the text of *Loper*, and the obvious impact it has on the federal judiciary's power relative to that of agencies, *Loper* puts pressure on and shifts the burden to Congress. If Congress is weary about the judiciary's new role in interpreting its mandates, it must enact clearer, more specific statutes, as federal agencies may be more reluctant to take regulatory action that could be subject to more frequent and potent challenges.

Corner Post* Case Allows *Loper* Challenges to Pre-*Loper* Regulations Applied Post-*Loper

Loper's companion case, *Corner Post, Inc. v. Bd. of Governors of Fed. Rsv. Sys.*, 144 S. Ct. 2440 (2024), will add to the influx of cases challenging agency action. In *Corner Post*, the court held that APA suits do not accrue against the six-year statute of limitations until the plaintiff suffers an injury due to final agency action. Prior to *Corner Post*, most Circuits held that accrual would begin at the time of final agency action. Now, individuals can bring suits against longstanding agency actions if their injury occurs within the six-year statute of limitations. *Corner Post* effectively allows a *Loper* challenge to any pre-*Loper* regulation once it is applied to a party post-*Loper*. So, while *Loper* is not retroactive, it does apply to pre-existing regulations every time they are applied going forward, which makes *Loper* retroactive, at least in a limited sense.

More to Come

The ripple effects created by *Loper* and *Corner Post* will be felt for a long time. Highly regulated areas of law such as health care, food and drug, environmental, tax, securities privacy and more, are all now game for *Loper* challenges by the parties those regulations adversely impact.

Please contact Ross Williams, Brandon Stephens or your usual Bell Nunnally attorney if you have questions about how the *Loper* decision could affect you or your business.

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