

Chevron Deference Overruled by Supreme Court

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On Friday, June 28th the Supreme Court voted in *Loper Bright Enterprises v. Raimondo*, 603 U.S. ____ (2024), to overrule *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), in a 6-3 decision. Chief Justice Roberts wrote the majority opinion, which was joined by Justices Thomas, Alito, Gorsuch, Kavanaugh, and Barrett.

Where congressional intent to interpret a statute administered by a federal agency is unclear, *Chevron* afforded deference to the administering agency's interpretation of the statute so long as the agency interpretation is based on a "permissible construction" of the statute. *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984). The majority ruling returns the judiciary to the doctrine of "Skidmore deference," which requires courts to "respect" the experience and informed judgment of an agency's interpretation, rather than defer to it. *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1994).

Loper consolidated the appeal of two cases—one from the D.C. Circuit and one from the First Circuit—challenging the authority of the National Marine Fisheries Service (NMFS) to require fishing vessels to pay for observers required by the NMFS to collect data aboard the vessels.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) permits the NMFS to require that certain fishing vessels carry observers to collect data to be used to conserve and manage fish within the United States' exclusive economic zone (a zone covering 200 nautical miles beyond the U.S. territorial sea). The MSA describes three categories of fishing vessels which must cover the cost of the observers but is silent as to whether domestic vessels fishing in the Atlantic herring zone must pay for the observers. The NMFS promulgated a rule which, in effect, required domestic vessels fishing in the Atlantic herring zone to pay for observer coverage on approximately 50 percent of the trips for which an observer is required. In separate actions, petitioners, businesses operating domestic fishing vessels in the Atlantic herring zone, challenged the NMFS rule on the basis that the MSA does not authorize the NMFS to require that petitioners pay for the observers. The First Circuit and D.C. Circuit both applied the *Chevron* doctrine and upheld the NMFS rule despite its lack of explicit statutory authorization. The Supreme Court granted certiorari in both cases to decide whether *Chevron* should be overruled or clarified.

Chief Justice Roberts stated that the framers of the Constitution envisioned that the final interpretation of ambiguities in the law would belong to the courts. Roberts stated that courts were structured to be free from political pressures and thus able to exercise impartial judgment.

Chief Justice Roberts next examined the text and legislative history of the Administrative Procedure Act (APA), 5 U.S.C. § 551, and found that the APA required courts to independently interpret the meaning of statutes administered by agencies. Under the APA, an agency's interpretation of the statute it administers is persuasive at best—except for expressly delegated authority to the contrary. Chief Justice Roberts then stated that the deference afforded agencies in *Chevron* cannot be reconciled with the APA because courts are required under *Chevron* to ignore when they would have reached a conflicting interpretation.

Chief Justice Roberts concluded by finding that *stare decisis* was not a bar to overruling *Chevron* because *Chevron* was flawed from the outset and unworkable in application, as different judges might disagree as to whether a statute is ambiguous or not. Chief Justice Roberts also stated that *Chevron* undermines reliance interests by permitting an agency to change positions on statutory interpretation as much as it likes.

Justice Kagan wrote for the dissent and was joined by Justices Jackson and Sotomayor. Justice Kagan argued that *Chevron* deference stood for the presumption that Congress would prefer that the agency it created to administer a statute interpret that statute's inevitable gaps instead of the courts. This presumption exists because the agencies possess expert information on the complex topics related to the statutes they administer that the courts lack. Resolving ambiguities are also often a question of policy, rather than law, that a single judge is not equipped to decide.

Justice Kagan argued that *Chevron* is consistent with the APA because that statute mandates only that courts decide relevant questions of law, but does not mandate a *de novo* standard of review, and courts are still deciding questions of law when they defer to the agency's reading of it.

Justice Kagan finally argued in favor of respecting 40-year-old precedent that had been relied upon by thousands of cases and by the administrative state. She stated that *Chevron* is entitled to particularly strong protections under *stare decisis* because it could have been overturned by Congress at any time if it were incorrect, yet Congress left it unchanged for 40 years. Moreover, Justice Kagan stated that *Skidmore* deference is not clearer in application than *Chevron* deference, and lower courts will still be left to decide what it means to "respect" an agency's expertise.

The majority decision makes clear that the *Skidmore* deference is still good law, but it is unclear how it will be applied in practice after 40 years of *Chevron* deference. One thing that is certain is that we should expect to see far more challenges to agency rulemaking in the near future.

If you have any questions, please reach out to **Eric Hyla** at ehyla@vedderprice.com, **Brian McCalmon** at bmccalmon@vedderprice.com or the Vedder Price attorney with whom you normally work.

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