STINSON

News & Insights

Supreme Court Strikes Down Chevron

Alert
06.28.2024

By Brittany Barrientos, Aimee Davenport, Sarah Lintecum Struby & Betsy Smith

On June 28, the Supreme Court released its opinion in *Loper Bright Enterprises et. al v. Secretary of Commerce* (*Loper*), which regulatory practitioners have been anxiously awaiting to see whether the Court would allow longstanding agency deference precedent to stand. It did not. With the fall of Chevron, *Loper* represents the Court's most significant decision for environmental regulation this term. We expect the Court's decision to significantly impact this administration's regulatory agenda as well as sway the decisions of various courts in pending litigation in favor of industry.

The *Loper* case consolidates two cases both focused on *Chevron* deference, *Loper Bright Enterprises v. Secretary of Commerce* out of the D.C. Circuit Court of Appeals, and *Relentless Inc. et al. v. Secretary of Commerce* from the First Circuit Court of Appeals. Both cases hinged on *Chevron* deference, the longstanding legal doctrine that required deference to permissible agency interpretations of statutes the agencies administer. The *Chevron* doctrine arose out of a 1984 Supreme Court case, *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). It required a two-step process when courts evaluate agency rules:

1. Determine whether Congress directly spoke to the precise question at issue; and
2. If not (i.e., if the statute is silent or ambiguous on the specific issue), defer to the agency's interpretation of the statute if it is based on permissible construction of the statute.

This principle has afforded agencies wide deference over the years, though in recent years it has been called into question.

In *Loper*, the petitioners operate family businesses in the Atlantic herring fishery. They challenged a rule under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), which extends United States jurisdiction 200 nautical miles beyond the U.S. territorial sea baseline and imposes a variety of

requirements on regulated entities. Petitioners claimed relevant agencies were exceeding authority granted to them by the MSA. The lower court found that the MSA authorized the rule, but even if it did not, deference would be warranted under *Chevron*. On appeal, the D.C. Circuit Court of Appeals affirmed this holding, though it found that the statute was not wholly ambiguous, so it moved to step 2 and deferred to the agency's interpretation.

In *Relentless Inc.*, the petitioners operate a vessel in the Atlantic herring fishery. They similarly argued that the MSA was being applied broadly and beyond agency authorization. The lower court utilized *Chevron* deference in upholding the agency's position, which the First Circuit Court of Appeals affirmed, again using *Chevron* deference.

The Supreme Court took up the consolidated cases earlier this term on the limited question of whether the *Chevron* doctrine should be overruled or clarified. Today, Chief Justice John Roberts issued the Court's Opinion, in which the Court found *Chevron* should be overruled.

Specifically, the Court determined that the Administrative Procedure Act requires courts to use their independent judgment in deciding whether an agency has acted within its statutory authority, and should not defer to an agency's interpretation in the event a statute is ambiguous. The Opinion also evaluates Article III of the Constitution and the Framers' intent, both of which it determined require courts to exercise independent judgment.

Recognizing that overruling *Chevron* is likely to create significant uncertainty, the Court referenced prior doctrine, grounded in a 1944-era decision, *Skidmore v. Swift & Co.*, which allowed interpretations and opinions of relevant agencies made in pursuance of official duty and based on their specialized experience to be used as guidance, noting that the weight of such guidance is dependent upon the thoroughness of the agency's consideration, the validity of its reasoning, and its consistency with earlier and later pronouncements.

In addition, the Court appeared cognizant that *Chevron* has been the basis for hundreds of court decisions at many levels and on many issues. It explicitly held that its Opinion does not call into question cases that relied on the *Chevron* doctrine. The Court is clear that those cases, including *Chevron* itself, are lawful and are not hereby overturned despite the change in interpretative methodology.

For more information on the Supreme Court ruling, please contact Brittany Barrientos, Aimee Davenport, Andrew Davis, Quint Doan, Kristen Ellis Johnson, Kyle Foote, John McCaffrey, Betsy Smith, Sarah Lintecum Struby, Zachary Taylor, Claire Williams or the Stinson LLP contact with whom you regularly work.

CONTACTS

Brittany Barrientos

Supreme Court Strikes Down Chevron

Aimee Guzman Davenport

Betsy C. Smith

Sarah Lintecum Struby

RELATED CAPABILITIES

Energy

Environmental & Natural Resources

Mining

Transportation