

# PUBLICATION

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## Anticipating SCOTUS Ruling on *Chevron* Deference – What to Know and Five Ways to Prepare

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For decades, federal agencies have enjoyed significant deference from the courts regarding their interpretations of rules and regulations, a principle known as "*Chevron* deference" after the 1984 United States Supreme Court decision in *Chevron v. National Resources Defense Council*. In short, *Chevron* and its progeny establish that courts give deference to an administrative agency's interpretation of a statute so long as the interpretation is (i) issued by the agency charged with administering that statute; (ii) is generally rational or reasonable; and (iii) is given in a form that would have the force of law, such as an adjudication or formal notice-and-comment rulemaking. Now this long-standing doctrine is under intense scrutiny as the Supreme Court of the United States considers two pivotal cases<sup>1</sup> that could dismantle or limit it. With rulings expected this summer, the Court's decisions could open the door for businesses and industries to challenge federal regulations more effectively. The impact on regulated industries could be profound, depending largely on the specific direction the Court takes, and there are actions that organizations can take now to prepare for the ruling.

### What Led Us Here?

Recently, the Supreme Court heard arguments in two cases that put the future of the *Chevron* deference doctrine on the chopping block. In both cases, petitioners are challenging a National Marine Fisheries Service regulation requiring commercial fishing boat owners to pay for an onboard observer for compliance purposes. About 70 interested non-parties filed amicus briefs for these cases, with the majority urging that *Chevron* deference be overturned or, at the very least, clarified. The core argument is that *Chevron* deference violates the Constitutional principles of separation of powers and due process by allowing executive branch agencies to enact presumptively controlling rules and regulations, including non-appropriated fees, thereby usurping legislative authority.

### Possible Outcomes

The Court's decisions could fall into one of the following categories:

- Overturning *Chevron* deference, but not the *Chevron* decision;
- Clarifying that legislative silence does not trigger the use of *Chevron* deference;
- Clarifying that *Chevron* deference does not permit a federal agency to enact rules or regulations that create non-appropriated funding (as in user fees); or
- Overturning the *Chevron* decision and creating a new deference test.

## Regulatory Areas to Watch

The reach of the *Chevron* doctrine is as vast as the reach of federal regulations. Any industry subject to federal regulations could be impacted by the Supreme Court's decision.

Among the entities and regulatory areas that may be impacted are the following:

- Bureau of Alcohol, Tobacco, Firearms and Explosives;
- Clean Air Act;
- Consumer Financial Protection Bureau;
- Department of Agriculture;
- Department of Education;
- Department of Health and Human Services;
- Department of Labor;
- Environmental Protection Agency;
- Fair Labor Standards Act;
- Federal Communications Commission;
- Federal Energy Regulatory Commission;
- Immigration laws;
- Internal Revenue Service;
- National Labor Relations Board;
- National Marine Fisheries Service;
- Occupational Safety and Health Administration;
- Office of the Comptroller of the Currency;
- Public Company Accounting Oversight Board; and
- Securities and Exchange Commission.

## How Should You Prepare?

1. **Stay Informed:** Ensure you understand how the Supreme Court's decisions on *Chevron* deference might impact your organization and industry. The rulings expected this summer could alter how federal regulations are interpreted and enforced.
2. **Assess the Potential Impact:** Identify which federal regulations you are currently complying with that might be subject to change. Key areas include, but are not limited to, environmental laws, labor regulations, and financial oversight.
3. **Engage Legal Counsel:** Consult with counsel to develop a strategy for potential regulatory challenges. This includes understanding new compliance requirements or exploring opportunities to challenge existing regulations that may no longer hold under the new legal framework.
4. **Advocate in Collaboration:** Consider joining industry groups or coalitions that are actively engaging in discussions about regulatory reforms. Collaborate with peers to advocate and petition for favorable public policy and legislative outcomes.
5. **Educate and Train:** Ensure that your compliance teams are educated on the potential changes and are prepared to adapt quickly. Training programs should be updated to reflect new regulatory landscapes and enforcement strategies.

Baker Donelson has deep experience in all of the above areas and with federal rules and regulations. Our attorneys are available to advise you regardless of how the Court may rule. If you have questions about how your organization can navigate preparing for the Supreme Court's ruling, please reach out to [Thomas H.](#)

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<sup>1</sup> *Loper Bright Enterprises v. Gina Raimondo, No. 22-451 and Relentless, Inc. v. United States Department of Commerce, No. 22-1219.*