PUBLICATION

Chevron Deference Discarded: SCOTUS Decision in Fisheries Cases Leaves Administrative Law Reeling

Authors: Thomas H. Barnard, Marisa Rosen Dorough, McKenna S. Cloud
June 28, 2024

This morning, the Supreme Court of the United States (SCOTUS) issued its highly-anticipated ruling in a pair of cases challenging the long-standing *Chevron* doctrine. Foreshadowed by decisions in recent years criticizing *Chevron*, it was widely expected that SCOTUS would use its rulings in *Loper Bright Enterprises v. Raimondo* and *Relentless, Inc. v. Department of Commerce* to diminish, if not entirely discard, *Chevron's* precedent of judicial deference to agencies. SCOTUS took decisive action, overruling *Chevron* and potentially changing the way courts will review federal agency-related litigation for many years to come.

What's the Big Deal?

For 40 years, *Chevron* symbolized the legal principle that judges should defer to a federal agency's reasonable interpretation of an ambiguous statute. This approach has reflected a preference for an agency's subject matter experts, rather than a randomly drawn judge, to make significant policy-making decisions. *Chevron* detractors have argued that such deference gave the agencies too much power without an adequate check on agency overreach and created unpredictability as new administrations give rise to different interpretations and evolving regulatory enforcement. Either way, one of the most cited cases in American law is now history.

Key Takeaways from Today's Ruling

In a 6-3 vote, the Supreme Court overruled the four-decade-old *Chevron* framework. Now, courts will no longer defer to an agency's interpretation of a statute just because it is ambiguous, and courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority. The majority opinion, authored by Chief Justice John Roberts, provided several rationales for this overhaul.

- The majority reasoned that the framers, under Article III of the U.S. Constitution, intended for the judiciary, not the executive branch, to interpret ambiguous federal statutes. To support this position, the majority cited a long line of cases that predate *Chevron*.

- The majority determined that *Chevron* deference is contrary to the federal Administrative Procedures Act, which mandates "the reviewing court" — not the agency —"shall decide all relevant questions of law" and "interpret . . . statutory provisions." *See* 5 U.S.C. § 706.

- The majority determined that Congress' silence in the face of statutory ambiguity does not amount to a presumption that Congress intended to defer to agency interpretation. Rather, the more appropriate presumption is that Congress expects courts to interpret statutes, while giving due respect for agencies' views.

- The majority was unpersuaded by the argument that agencies should be given interpretive deference because they have subject matter expertise that courts lack. The Court further held that if Congress wishes to confer discretionary authority on agencies, it may expressly do so. However, when a statute is ambiguous and Congress has not spoken, the courts are tasked with deciding the best interpretation of the statutory ambiguity. The majority also noted that *Chevron* inappropriately allowed

agencies to change positions as often as they wished, creating inconsistency and unreliability for industry actors.

- Overruling *Chevron*, the majority promised, will not disrupt the thousands of prior cases that relied on the *Chevron* framework; rather, the new decision will only impact cases moving forward.

The concurring opinions, penned by Justices Clarence Thomas and Neil Gorsuch, agreed with the majority's holding to overrule *Chevron* but focused their reasoning mainly on separation of powers and stare decisis.

Justice Elena Kagan wrote the dissent, which was joined by Justices Sonia Sotomayor and Ketanji Brown Jackson. The dissent vehemently disagreed with overruling *Chevron*, the rationale primarily being:

- Congress would prefer for agencies, not courts, to interpret statutory ambiguities because agencies have subject matter expertise.
- Under the doctrine of stare decisis, *Chevron* is authoritative precedent which should not be overruled unless there is a particularly special justification for doing so, which the dissent contended there is not.

The dissent also noted that overturning *Chevron* will result in uncertainty in the regulatory landscape, disrupt settled expectations, and raise new doubts about agency interpretations, as courts will now be the interpretive decision-makers.

Implications for Business Operations

Overruling *Chevron* restores the pre-*Chevron* standard, that is, allowing the judiciary to consider the agency's interpretation of an ambiguous statute without deferring to it, and enabling the judge to fashion his or her own reasonable interpretation of the statute at issue. Practically, this may impact ongoing and future litigation as litigants openly challenge agency statutory interpretation, and government attorneys will be expected to justify an agency's interpretation based on traditional methods of statutory interpretation. In the end, courts may agree with the agency's interpretation of a particular statute, but that will be because of effective persuasion, not presumptive deference.

That could mean several implications for the way businesses operate, including:

- **Legal Attacks**: With agency interpretations to be viewed as persuasive (at best) but not binding, businesses might find courts more receptive to their or their competitors' challenges against agency actions. This can be expected to lead to increased litigation against agencies.

- **Forum Shopping**: Businesses might strategically seek out jurisdictions with seemingly favorable judges to challenge agency interpretations, influencing where and how they litigate regulatory disputes. For instance, plaintiffs challenging agency actions may file suit within the purview of the U.S. Court of Appeals for the Fifth Circuit, as that jurisdiction is comprised of more Republican-appointed judges and thought to be a more conservative circuit.

- **Educating Your Judge**: While our federal judges are often called upon to come up to speed quickly on complicated factual issues, litigants should prioritize their efforts to educate their judge on the particular subject matter of the disputed regulation, including top-quality briefing, comprehensive records, and well-qualified testifying experts.

- **Regulatory Compliance**: Agencies may become more cautious in issuing new regulations or making significant policy reversals, leading to a more stable but potentially slower regulatory environment.

Additionally, businesses may have more discretion to make judgment calls as to whether to comply with certain rules, regulations, and guidance because they believe a court may overturn or decline to enforce them. Similarly, businesses may be more reluctant to self-disclose possible violations of rules, regulations, and guidance if courts are less likely to defer to such authority.

What You Should Focus on Now

Given today's ruling, it is crucial to reassess your strategies and priorities related to federal regulations. You can get started by considering these areas:

- **Identify Governing Federal Agencies**: Understand which federal agencies have regulatory authority over your business operations. This may extend beyond your specific industry to include departments like the Department of Labor, the Department of Health and Human Services, and the Department of the Treasury.

- **Review Current and Threatened Litigation**: Assess ongoing or potential legal disputes involving federal regulations. Consult with legal counsel to determine if these regulations or the arguments supporting them are vulnerable to challenge under the new legal landscape.

- **Evaluate Business Opportunities**: Consider how the change in the law might benefit your business or industry. If you are currently burdened by restrictive agency interpretations, have been denied permits or authorizations, or find yourself at a competitive disadvantage based on agency action, this shift could provide new avenues for legal recourse.

- **Engage with Industry Groups**: Stay informed and be proactive by engaging with industry-specific lobbying groups. These organizations can offer valuable insights and support as the regulatory environment evolves.

Baker Donelson attorneys advise clients across innumerable industries, each of which face unique regulatory concerns. Our colleagues in health care, disaster recovery, labor and employment, and other areas have been monitoring these nation-wide developments, are authoring industry-specific guidance, and available to consult on business-specific opportunities.