



A recent ruling by the U.S. Supreme Court could challenge the rule setting powers of federal agencies, potentially affecting environmental or safety regulations.

By Lowell Randel

In June 2024, the Supreme Court of the United States (SCOTUS) issued a ruling that could have wide ranging impacts on federal regulations. In the case of *Loper Bright Enterprises v. Raimondo* (*Loper*), a majority of justices ruled to overturn the decades-long precedent of Chevron deference.

The Chevron doctrine was adopted by SCOTUS in 1984 and required federal courts to defer to a federal agency's reasonable interpretation of ambiguous statutory provisions. The ruling gave federal agencies much greater latitude in developing regulations and has been the subject of much debate and litigation over the years.

The Chevron doctrine involved a two-step analysis by the courts. First, the courts would determine whether Congress directly addressed the specific issue before the court in statute. If the court found that the statute was ambiguous or didn't speak to the issue, then the court would proceed to step two. This required the court to defer to the agency's interpretation if it was found to be reasonable.

For 40 years, courts applied the Chevron doctrine, and for much of that time, deference was the likely outcome. However, in recent years SCOTUS has been showing less inclination to rule in favor of deference, signaling a

move away from Chevron and foreshadowing the recent ruling in *Loper*.

By a 6-3 margin, SCOTUS found that the precedent of Chevron deference "has proved to be fundamentally misguided." The court in *Loper* disagreed with the presumption that statutory ambiguity indicates Congress has implicitly delegated the authority to interpret the law to the implementing agency. The majority found that Chevron is inconsistent with the Administrative Procedure Act, which directs courts to decide legal questions by applying their own judgement. It is the responsibility of the courts to decide whether the law means what the agency says.

Writing for the majority, Chief Justice Roberts stated, "Chevron was a judicial invention that required judges to disregard their statutory duties." Justice Thomas concurred, stating that Chevron "improperly strips courts of judicial power by simultaneously increasing the power of executive agencies."

The minority opinion was heavily critical of the decision, arguing that deference to agencies is appropriate given their subject matter expertise, and that Congress is not in a position to perfectly construct statutes with all of the necessary details. In her dissent, Justice Kagan wrote "A longstanding precedent at the crux of administrative governance thus falls victim to a bald assertion of judicial authority ... Congress knows that it does not – in fact cannot – write perfectly complete regulatory statutes."

Changing Judicial Analysis

The *Loper* ruling means that courts will no longer automatically defer to agency interpretations. Instead, courts will apply a more rigorous textual analysis of statutes independently without defaulting to the agency's viewpoint. Courts will still provide some level of deference to agency decisions in rulemaking, but the calculations will be different.

The impacts of the *Loper* decision are already evident in the courts. For example, there is currently a legal challenge to a Federal Trade Commission (FTC) rule that places severe restrictions on the ability to establish non-compete agreements. The recently finalized rule has been challenged and a lower court in Texas has cited the *Loper* case in expressing doubts that the FTC rule is consis-

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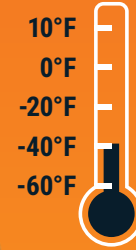
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tent with the Administrative Procedure Act without the benefit of Chevron deference.

Given the *Loper* decision, lower courts will now begin to change the way they look at questions related to regulatory authority. It also opens the door for more lawsuits to challenge regulations created by agencies that were relying on Chevron deference to justify the way they constructed rules.

Environmental regulations based on older statutes could be an active area for future legal challenges. For example, the Biden Administration has relied heavily on the Clean Air Act to regulate vehicle and power plant emissions and the Clean Water Act to regulate water pollution. EPA efforts to regulate per- and polyfluoroalkyl substances, known as “forever chemicals,” could be at risk of challenge. It is unclear if legal challenges to recent rule changes to the Risk Management Program will be among the regulations tested post-Chevron.

The full extent of impacts to existing regulations is hard to predict at this stage. However, the ruling is expected to lead to increased litigation as businesses and other stakeholders challenge regulatory interpretations. It is important to note that the court

clarified in the decision that the thousands of previous cases applying Chevron deference will not be affected.

Impacts on Future Agency Rulemaking

Another immediate impact of reversing Chevron deference will be how agencies develop new rules and proceed with rulemakings already in the pipeline. It is expected that the ruling will change how agencies approach rule construction, and the way they justify decisions based on statutory authority.

GCCA and coalition partners have recently sent a letter to the White House requesting a pause in rulemaking activity to review the impacts of the *Loper* decision on rules being considered.

In addition, a group of House committee leaders have written to the Biden Administration highlighting concerns over decades of expansive agency authority enabled by Chevron deference, which they argue has often exceeded the legislative intent envisioned by Congress. The committee members emphasize the need for a thorough review of existing and proposed regulations under the new legal framework established by *Loper*.

Renewed Focus on Legislative Construction

In recent years, Congress has tended to delegate many policy details to agencies when drafting legislation. In a post-Chevron environment, Congress will need to provide more detailed and specific language when constructing statutory authority for agencies. This could place a strain on Congressional resources and expertise to ensure legislation provides the necessary direction to agencies. Bills could become longer and more complex to accommodate in-depth policy needs. Given the closely divided and partisan dynamics in the U.S. House and Senate, finding consensus on more detailed legislative language could prove challenging.

GCCA will closely monitor legal developments in the wake of the *Loper* decision as well as actively work with agencies and Congress on rulemakings and legislation in a post-Chevron world. 🌐

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