

## Supreme Court Halts 40 Years of Deference to Administrative Agencies

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The U.S. Supreme Court on June 28 [vacated and remanded two circuit court rulings](#), ending the *Chevron* doctrine, the decades-old judicial framework that mandated judicial deference to an executive branch agency's interpretation of the federal statutes that it administers.<sup>1</sup> In a 6-3 decision in *Loper Bright Enterprises v. Raimondo*, Chief Justice John Roberts delivered the majority opinion that overruled the *Chevron* doctrine because it violated the Administrative Procedure Act of 1946 (APA) and the constitutional separation of powers.

### History of *Chevron* Doctrine and Agency Deference

The court's decision in *Chevron U.S.A. v. Natural Resources Defense Council*<sup>2</sup> created the two-step judicial framework that courts were required to use when interpreting statutes administered by federal agencies. The *Chevron* doctrine's first step required courts to determine whether Congress directly spoke on the issue. If so, that ended the inquiry. If not, the second step required a reviewing court to defer to the agency's permissible interpretation of the statute.<sup>3</sup> Thus, when Congress was silent, or a statutory provision was ambiguous and the agency offered a permissible interpretation, the court was required to afford deference to the agency's interpretation.

Before the Supreme Court's decision in *Chevron*, courts recognized some value in the executive branch's interpretation of its own statutes and afforded such interpretations "due respect."<sup>4</sup> Such respect was appropriate when the agency's interpretation "was issued roughly contemporaneously with enactment of the statute and remained consistent over time."<sup>5</sup> "Respect," though, was just that. The views of the Executive Branch could inform the judgment of the Judiciary, but did not supersede it."<sup>6</sup> The *Chevron* doctrine considerably altered "the traditional tools of statutory construction," including independently examining each statute to determine its meaning, for the next four decades.<sup>7</sup>

<sup>1</sup> *Loper Bright Enterprises v. Raimondo*, 603 U.S. [ ] (2024) (consolidated with *Relentless v. Department of Commerce*).

<sup>2</sup> *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

<sup>3</sup> *Chevron*, at 843.

<sup>4</sup> *Loper Bright Enterprises*, at 25.

<sup>5</sup> *Loper Bright Enterprises*, at 8.

<sup>6</sup> *Loper Bright Enterprises*, at 9.

<sup>7</sup> *Loper Bright Enterprises*, at 18-19.

## The Matters Before the Supreme Court

The Supreme Court reviewed two circuit court decisions that relied on the *Chevron* doctrine's two-step framework to interpret the Magnuson-Stevens Fishery Conservation and Management Act (MSA), a statute administered by the National Marine Fisheries Service (NMFS) pursuant to delegated authority from the U.S. Department of Commerce. Congress enacted the MSA, which required, among other things, that fishery management plans include various conservation measures.<sup>8</sup> In each case, the petitioners challenged a rule promulgated by the NMFS requiring Atlantic herring fishermen to pay for observers to "collect data" for conservation and management purposes. The MSA did not address whether Atlantic herring fishermen may be required to bear the costs associated with any observers that a management plan may mandate. Applying *Chevron*, the circuit courts found that the MSA was silent as to fees and, accordingly, afforded the NMFS deference to its interpretation of the MSA.

The petitioners argued that such deference was inappropriate as the *Chevron* doctrine violated Section 706 of the APA,<sup>9</sup> which requires a "reviewing court [to] decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action."<sup>10</sup> The court granted certiorari to address whether the *Chevron* doctrine should be overruled or clarified.<sup>11</sup>

## *Chevron* Is Overruled as It Contravenes the APA

The court overruled *Chevron* and held that statutory ambiguities are not "implicit delegations" to agencies but that courts must exercise independent judgment when deciding whether an agency has acted within its statutory authority.<sup>12</sup> Relying on the APA, the statute enacted for the purpose of reviewing agency action, the court found no provision that required courts to afford federal agencies deference in interpreting federal statutes. Rather, Section 706 of the APA provides, in part, that the "reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action."<sup>13</sup> The APA affords deference only to factual determinations made by agencies so long as they are not arbitrary.<sup>14</sup> Critically, neither *Chevron* nor any cases applying *Chevron* ever looked to the language of the APA.<sup>15</sup> The court ruled that the discrepancy between Section 706 of the APA and *Chevron*'s deference requirement could not be reconciled.<sup>16</sup>

Stating that *Chevron* "gravely erred," the court noted that the judiciary does not lose its function under the Constitution simply because an administrative interpretation is involved.<sup>17</sup> Rather, "every statute's meaning is fixed at the time of enactment."<sup>18</sup> Agencies, unlike courts, have no particular expertise in interpreting statutory meaning or resolving ambiguous statutory language.

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<sup>8</sup> *Loper Bright Enterprises*, at 2.

<sup>9</sup> *Loper Bright Enterprises*, at 3.

<sup>10</sup> 5 U.S.C. § 706 (2021).

<sup>11</sup> *Loper Bright Enterprises*, at 7 n. 2.

<sup>12</sup> *Loper Bright Enterprises*, at 22.

<sup>13</sup> 5 U.S.C. § 706 (2021).

<sup>14</sup> 5 U.S.C. § 706(2)(A).

<sup>15</sup> *Loper Bright Enterprises*, at 21.

<sup>16</sup> *Loper Bright Enterprises*, at 18.

<sup>17</sup> *Loper Bright Enterprises*, at 23.

<sup>18</sup> *Loper Bright Enterprises*, at 22.

That function is reserved for the judiciary. And, to the extent that Congress does not agree with a court's interpretation of a federal statute, it is free to amend the statute.<sup>19</sup>

The court similarly found no merit in the government's justifications for upholding the *Chevron* doctrine: uniformity of interpretation, avoidance of judicial policymaking, and consistency of approach. First, uniformity of interpretation of an agency's statute is not a sufficient reason to keep *Chevron* when an agency's interpretation could be wrong and when *Chevron* has not been applied uniformly by courts and may not have actually contributed to uniformity.<sup>20</sup> Second, statutory interpretation is not executive branch policymaking; rather, "[c]ourts interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences."<sup>21</sup> Third, the opinion noted that courts have diluted the *Chevron* doctrine for four decades and many have avoided the two-step process altogether, leaving a mosaic of court decisions and a lack of consistency regarding the doctrine's application.<sup>22</sup>

The court also noted that the principle of stare decisis, which requires courts to conform to and preserve past court decisions, could not save *Chevron*.<sup>23</sup> The *Chevron* doctrine is explicitly contrary to the APA. Any attempt to save it through clarification would simply require strict application of the language of the APA.<sup>24</sup> In one final blow, the majority stated that "part of 'judicial humility' ... is admitting and in certain cases correcting our own mistakes, especially when those mistakes are serious. ... This is one of those cases."<sup>25</sup> The *Chevron* doctrine was a "judicial intervention that required judges to disregard their statutory duties," the answer to which is "to leave *Chevron* behind."<sup>26</sup>

#### Addressing Four Decades of *Chevron* Precedent

The court directly addressed the effect of its decision on prior court decisions based on the *Chevron* doctrine's deference to an agency's interpretation. On this point, the court explicitly ruled that its opinion would not overturn prior precedent that relied on *Chevron* and that the outcome of those cases would not be disturbed. The court explained that the holdings of those cases, including *Chevron* itself, were entitled to stare decisis despite the court's change in interpretive methodology.<sup>27</sup> In closing, the majority noted that "[m]ere reliance on *Chevron* cannot constitute a "special justification" for overruling such a holding."<sup>28</sup>

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<sup>19</sup> *Loper Bright Enterprises*, at 25.

<sup>20</sup> *Loper Bright Enterprises*, at 25.

<sup>21</sup> *Loper Bright Enterprises*, at 26.

<sup>22</sup> *Loper Bright Enterprises*, at 22-23.

<sup>23</sup> *Loper Bright Enterprises*, at 29.

<sup>24</sup> *Loper Bright Enterprises*, at 33-34.

<sup>25</sup> *Loper Bright Enterprises*, at 34.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

## Key Takeaways

- **Agency Interpretive Guidance:** The Supreme Court's decision in *Loper Bright* does not eliminate the U.S. Securities and Exchange Commission's ability to issue guidance. The SEC issued guidance on an uninterrupted basis between its founding in 1934 and the issuance of *Chevron* in 1984. The SEC can and is likely to continue to issue guidance regarding how it interprets federal securities laws. Such guidance will be useful to the industry in understanding the agency's position, but importantly, it is not binding on the courts and is entitled to appropriate weight, not outright deference. Accordingly, the SEC's guidance should follow court precedent interpreting the federal statutes, and where precedent does not exist, the SEC should follow the plain language of the statute, and statutory silence and ambiguities should be addressed according to the traditional judicial canons of statutory interpretation.
- **Impact on Industry and Regulatory Landscape:** The decision creates a new playing field for the SEC and the industry, particularly in enforcement actions and rulemaking, as the SEC is constrained to existing precedent interpreting the federal securities laws and, in the absence of precedent, the SEC is limited to the plain language of the statute as interpreted by the canons of statutory interpretation. Policy agendas supported by a permissible interpretation alone will no longer control outcomes. Instead, the SEC will need to ascertain the best interpretation of a statute based on traditional statutory construction and support its position with a persuasive analysis.

This decision will potentially increase the judicial scrutiny of the following: SEC endorsements of certain SEC staff no-action positions, particularly those positions indicating the staff would recommend enforcement action based on an interpretation of a statute; SEC decisions that are insufficiently linked to the plain wording of federal statutes; and the statutory basis for certain agency rules. No longer can an SEC interpretation of a statute, standing on its own, conclusively resolve statutory ambiguity or silence. This change may open the door to challenging some of the SEC's more aggressive interpretations of the federal securities laws, as without *Chevron* deference, a permissible interpretation may no longer be defensible in the face of a better interpretation. One does not have to look very far to see how this decision could affect other SEC priority areas, such as climate disclosure, cryptocurrency and artificial intelligence.

- **Navigating the New Playing Field:** This will take some time, and the industry should ensure that it understands how the judiciary has interpreted the various provisions of the federal securities laws when interacting with the SEC, including but not limited to responding to examination requests, enforcement inquiries, requesting no-action letters and commenting on proposed rules. The SEC and the industry will be required to embrace a more rigorous textualist approach to statutory interpretation, consistent with the Supreme Court's current jurisprudence, and should consider enlisting counsel's assistance with applying federal precedent and the canons of statutory interpretation when evaluating the scope of the federal securities laws.

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