

Loper & Relentless: Post-Ruling Messaging

GENERAL

- ❖ *Loper Bright Enterprises v. Raimondo* and *Relentless, Inc. v. Department of Commerce* are challenges by fishing companies to a regulation that requires large-scale fishing operations to share in the cost of fishery observers. These observers provide independent data that is used to manage a fishery and prevent overfishing, and the collapse of U.S. fisheries. Fisheries across the country have imposed similar requirements for decades.
- ❖ While these cases started as cases about fishing regulations, they were designed to bring a different, broader issue to the Supreme Court.
- ❖ That issue is the future of the *Chevron* deference framework, which was formalized 40 years ago but dates back much longer than that. This legal framework is key to ensuring that judicial review does not turn into a game where federal judges impose their policy preferences when reviewing challenges to federal regulations.
- ❖ Federal regulations do everything from protect the country's clean air and water; guarantee safe food and medicines; guard against aviation accidents and prevent unsafe motor vehicles; minimize dangerous working conditions; secure our bank deposits and punish consumer fraud and much more.

CHEVRON

- ❖ These cases were the result of a decades-long campaign to eliminate a longstanding legal principle known as *Chevron* deference. Under it, federal judges must give respect to an agency's reasonable interpretation of a statute that it carries out.
- ❖ *Chevron* deference recognizes that, in countless key laws, Congress gives federal agencies authority to interpret ambiguous laws in the first instance when creating rules and regulations. These agencies — such as the Environmental Protection Agency (EPA), Food and Drug Administration (FDA), and Federal Transit Administration (FTA) — implement statutes using their technical expertise, resources, and experience. *Chevron* deference therefore ensures that the laws Congress enacts are carried out effectively based on these factors.
- ❖ *Chevron* deference means that expert agencies subject to the supervision of the President and tasked by Congress — not unelected judges trying to substitute their own personal preferences — are in charge of crafting smart policies, protections, and programs that are consistent with the law and public input.
- ❖ The legal principle has been relied on in thousands of federal court decisions, including more than a hundred decisions from the Supreme Court. For decades, it's provided the foundation against which Congress has legislated and agencies have established rules.
- ❖ *Chevron* deference has also come to be relied on by all those influenced by federal law — that includes businesses, state and local governments, federal policymakers, policy advocates, and ordinary individuals. It underpins countless statutes and programs.
- ❖ The alternative is unworkable. The kinds of legal questions that *Chevron* applies to involve intricate questions about how a statute works that amount to policy questions.
- ❖ When federal judges weigh in on these questions, there's a decent chance that they will act based on their policy preferences, for example, for less regulation across the board, or based on an incorrect view of the science before the agency.

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- ❖ Without this framework, agencies are denied the breathing room needed to implement their statutes based on the factors that Congress meant for them to consider and must instead take into account the policy preferences of the most conservative judge that might review their regulations.
- ❖ And without this framework, federal courts across the country are more likely to reach inconsistent decisions about what a statute means, creating an unequal, unpredictable regulatory system.

OPPONENTS

- ❖ The right-wing groups representing the plaintiffs, along with a number of other groups involved in these cases, have deep ties to wealthy funders like the Koch network who oppose regulations that protect everyday Americans (as the [NYT reported](#)).
- ❖ Big polluters and right-wing movements targeted *Chevron* deference because they're opposed to virtually any use of federal law to protect the public.
- ❖ These industries—hedge funds, industrial agriculture, and industry trade associations—are all betting that they will be able to defeat regulations in courts stacked with federal judges chosen because their policy views predispose them to strike down regulations.
- ❖ These antiregulatory forces seek to dismantle the system Congress has chosen for implementing foundational laws that protect everyday Americans.

FISHERIES

- ❖ These cases concerned the authority of the National Marine Fisheries Service (NMFS) and the New England Fishery Management Council to mandate the use of at-sea observers to gather critical data about the Atlantic herring fishery.
- ❖ Under the Magnuson-Stevens Act, which Congress passed with broad bipartisan support in 1976, the NFMS is authorized and required to promulgate fisheries management plans that prevent overfishing based on “the best scientific information available.” The law also states that the plans may “require that one or more observers be carried on board” operating fishing vessels.
- ❖ It's perfectly reasonable for fishing companies who profit off of a public resource, and benefit from government actions that keep that resource from disappearing, to bear some or all of the cost of complying with regulations.
- ❖ In fact, fisheries across the country have created similar programs for decades that require the fishing industry to bear some of the costs of monitoring their use of public resources.

CASE HISTORY

- ❖ Two district courts rejected the plaintiffs' argument that the Magnuson-Stevens Act does not authorize the NMFS to require fishing companies to share the costs of observers
- ❖ Two courts of appeals upheld that ruling. One of them applied the *Chevron* framework; the other viewed the statute as clearly supporting the government.
- ❖ The Supreme Court chose to take up the case in May 2023, and it heard oral arguments in January.

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TOPLINE MESSAGING:

- ❖ Today, the Supreme Court issued yet another decision that grabs power for federal judges to strike down federal regulations that we depend on to keep us safe.
- ❖ The Court's conservative supermajority eliminated a longstanding legal principle that respects the role and expertise of federal agencies like the Environmental Protection Agency and allows them to effectively respond to the needs of everyday Americans.
- ❖ The Court overruled its own legal principle known as *Chevron* deference, that was formalized 40 years ago and dates back much longer. Under that framework, when a law is ambiguous and the federal agency that Congress has authorized with administering the law has interpreted it in a reasonable way, judges should defer to the agency.
- ❖ By eliminating *Chevron* deference, the Court is telling judges to take over the role of interpreting ambiguous language in complicated laws, instead of deferring to the federal agencies that have the expertise and are politically accountable.
- ❖ This decision shifts power away from our elected branches of government and puts it in the hands of unelected judges who can serve their personal views instead of the law.

TAKEAWAYS:

- ❖ The Supreme Court's conservative supermajority just put a bullseye on rules and regulations that hundreds of agencies issue to protect our health and safety, the environment, maintain economic stability and fairness, and so much more.
- ❖ The ruling will extend far beyond fishing regulations, which have prevented U.S. fisheries from being depleted and kept the American fishing industry afloat. Now all sorts of vital protections that we all rely on every day are at risk of being taken away.
- ❖ Our society depends on sound and effective government regulations to function, remain safe and secure, and thrive. But now the very idea of expert-based, accountable government regulation is in question because of the Supreme Court's conservative supermajority.
- ❖ With *Chevron* deference eliminated, politically motivated judges can substitute their own policy views for the judgments of expert agency officials. This will help industries and ideological activists sidestep government regulations that protect regular people.
- ❖ Until now, *Chevron* deference supported a regulatory system that prevented the courts from usurping the authority granted to the executive branch by Congress by requiring judges to defer to agencies' reasonable understandings of the law they administer.