Exhibit No. 2

Nancy Hurt – Exhibit 2
Article-Chevron Case-"SCOTUS Overruling Deference
to Agency Expert for Regulation Rules and Policy Legality"
File No. EC-2024-0108

OPINION ANALYSIS

Supreme Court strikes down *Chevron*, curtailing power of federal agencies

By **Amy Howe**
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The court ruled in *Loper Bright Enterprises v. Raimondo* and *Relentless, Inc. v. Department of Commerce* on Friday. (Thomas Hawk via Flickr)

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In a major ruling, the Supreme Court on Friday cut back sharply on the power of federal agencies to interpret the laws they administer and ruled that courts should rely on their own interpretion of ambiguous laws. The decision will likely have far-reaching effects across the country, from environmental regulation to healthcare costs.

By a vote of 6-3, the justices overruled their landmark 1984 decision in **Chevron v.**

landmark 1984 decision in ***Chevron v. Natural Resources Defense Council***, which gave rise to the doctrine known as the *Chevron* doctrine. Under that doctrine, if Congress has not directly addressed the question at the center of a dispute, a court was required to uphold the agency's interpretation of the statute as long as it was reasonable. But in a 35-page ruling by Chief Justice John Roberts, the justices rejected that doctrine, calling it "fundamentally misguided."

Justice Elena Kagan dissented, in an opinion joined by Justices Sonia Sotomayor and Ketanji Brown Jackson. Kagan predicted that Friday's ruling "will cause a massive shock to the legal system."

When the Supreme Court first issued its decision in the *Chevron* case more than 40 years ago, the decision was not necessarily regarded as a particularly consequential one. But in the years since then, it became one of the most important rulings on federal administrative law, cited by federal courts more than 18,000 times.

Although the *Chevron* decision – which upheld the Reagan-era Environmental Protection Agency's interpretation of the Clean Air Act that eased regulation of emissions – was generally hailed by conservatives at the time, the ruling eventually became a target for those seeking to curtail the administrative state, who argued that courts, rather than federal agencies, should say what the law means. The justices had **rebuffed earlier** requests (including by one of the same lawyers who argued one of the cases here) to consider overruling *Chevron* before they agreed last year to take up a pair of challenges to a rule issued by the National Marine Fisheries Service. The agency had required the herring industry to pay for the costs, estimated at $710 per day, associated with

carrying observers on board their vessels to collect data about their catches and monitor for overfishing.

The agency stopped the monitoring in 2023 because of a lack of funding. While the program was in effect, the agency reimbursed fishermen for the costs of the observers.

After two federal courts of appeals rebuffed challenges to the rules, two sets of commercial fishing companies came to the Supreme Court, asking the justices to weigh in.

The justices took up their appeals, agreeing to address only the *Chevron* question in ***Relentless v. Department of Commerce*** and ***Loper Bright Enterprises v. Raimondo***. (Justice Ketanji Brown Jackson dissented in the *Relentless* case but was recused from the *Loper-Bright* case, presumably because she had heard oral argument in the case while she was still a judge on the U.S. Court of Appeals for the District of Columbia Circuit.)

Chevron deference, Roberts explained in his opinion for the court on Friday, is inconsistent with the Administrative Procedure Act, a federal law that sets out the procedures that federal agencies must follow as well as instructions for courts to review actions by those agencies. The APA, Roberts noted, directs courts to "decide legal questions by applying their own judgment" and therefore "makes clear that agency interpretations of statutes — like agency interpretations of the Constitution — are *not* entitled to deference. Under the APA," Roberts concluded, "it thus remains the responsibility of the court to decide whether the law means what the agency says."

Roberts rejected any suggestion that

Roberts rejected any suggestion that agencies, rather than courts, are better suited to determine what ambiguities in a federal law might mean. Even when those ambiguities involve technical or scientific questions that fall within an agency's area of expertise, Roberts emphasized, "Congress expects courts to handle technical statutory questions" – and courts also have the benefit of briefing from the parties and "friends of the court."

Moreover, Roberts observed, even if courts should not defer to an agency's interpretation of an ambiguous statute that it administers, it can consider that interpretation when it falls within the agency's purview, a doctrine known as *Skidmore* deference.

Stare decisis – the principle that courts should generally adhere to their past cases – does not provide a reason to uphold the *Chevron* doctrine, Roberts continued. Roberts characterized the doctrine as "unworkable," one of the criteria for overruling prior precedent, because it is so difficult to determine whether a statute is indeed ambiguous.

And because of the Supreme Court's "constant tinkering with" the doctrine, along with its failure to rely on the doctrine in eight years, there is no reason for anyone to rely on *Chevron*. To the contrary, Roberts suggested, the *Chevron* doctrine "allows agencies to change course even when Congress has given them no power to do so."

Roberts indicated that the court's decision on Friday would not require earlier cases that relied on *Chevron* to be overturned. "Mere reliance on *Chevron* cannot constitute a 'special justification' for overruling" a decision upholding agency action, "because to say a precedent relied on *Chevron* is, at

best, just an argument that the precedent was wrongly decided" – which is not enough, standing along, to overrule the case.

The Supreme Court is expected to rule on Monday on when the statute of limitations to challenge agency action begins to run. The federal government has argued in that case, ***Corner Post v. Federal Reserve***, that if the challenger prevails, it would open the door for a wide range of "belated challenges to agency regulation."

Justice Clarence Thomas penned a brief concurring opinion in which he emphasized that the *Chevron* doctrine was inconsistent not only with the Administrative Procedure Act but also with the Constitution's division of power among the three branches of government. The *Chevron* doctrine, he argued, requires judges to give up their constitutional power to exercise their independent judgment, and it allows the executive branch to "exercise powers not given to it."

Justice Neil Gorsuch filed a longer (33-page) concurring opinion in which he emphasized that "[t]oday, the Court places a tombstone on *Chevron* no one can miss. In doing so, the Court returns judges to interpretative rules that have guided federal courts since the Nation's founding." He sought to downplay the impact of Friday's ruling, contending that "all today's decision means is that, going forward, federal courts will do exactly as this Court has since 2016, exactly as it did before the mid-1980s, and exactly as it had done since the founding: resolve cases and controversies without any systemic bias in the government's favor."

Kagan, who read a summary of her dissent from the bench, was sharply critical of the decision to overrule the *Chevron* doctrine. Congress often enacts regulatory laws that

Congress often enacts regulatory laws that contain ambiguities and gaps, she observed, which agencies must then interpret. The question, as she framed it, is "[w]ho decides which of the possible readings" of those laws should prevail?

For 40 years, she stressed, the answer to that question has generally been "the agency's," with good reason: Agencies are more likely to have the technical and scientific expertise to make such decisions. She emphasized the deep roots that *Chevron* has had in the U.S. legal system for decades. "It has been applied in thousands of judicial decisions. It has become part of the warp and woof of modern government, supporting regulatory efforts of all kinds — to name a few, keeping air and water clean, food and drugs safe, and financial markets honest."

By overruling the *Chevron* doctrine, Kagan concluded, the court has created a "jolt to the legal system."

Kagan also pushed back against the majority's suggestion that overruling the *Chevron* doctrine would introduce clarity into judicial review of agency interpretations. Noting the majority's assurances that agency interpretations may be entitled to "respect" going forward, she observed that "[i]f the majority thinks that the same judges who argue today about where 'ambiguity' resides are not going to argue tomorrow about what 'respect' requires, I fear it will be gravely disappointed."

Similarly, she questioned the majority's assertion that Friday's decision would not call into question decisions that relied on the *Chevron* doctrine to uphold agency action. "Courts motivated to overrule an old *Chevron*-based decision can always come up with something to label a 'special

justification,'" she posited. "All a court need do is look to today's opinion to see how it is done."

But more broadly, Kagan rebuked her colleagues in the majority for what she characterized as a judicial power grab. She lamented that, by overruling *Chevron*, the court had, in "one fell swoop," given "itself exclusive power over every open issue — no matter how expertise-driven or policy-laden — involving the meaning of regulatory law."

Roman Martinez, who argued the case on behalf of one of the fishing companies, applauded the decision. "By ending *Chevron* deference," he said in a statement, "the Court has taken a major step to preserve the separation of powers and shut down unlawful agency overreach. Going forward, judges will be charged with interpreting the law faithfully, impartially, and independently, without deference to the government. This is a win for individual liberty and the Constitution,"

But Kym Meyer, the litigation director for the Southern Environmental Law Center, decried the ruling in a statement. "[T]he Supreme Court today says individual judges around the country should decide the best reading of a statute. That is a recipe for chaos, as hundreds of federal judges — who lack the expertise of agency personnel — are certain to reach inconsistent results on the meaning of federal laws as applied to complex, technical issues."

Friday's ruling came in one of three cases during the 2023-24 term seeking to curtail the power of federal agencies – a conservative effort sometimes dubbed the "war on the administrative state." In October, the court heard arguments in a challenge to the constitutionality of the mechanism used to fund the consumer watchdog Consumer Financial Protection

watchdog Consumer Financial Protection Bureau. Last month the court upheld the CFPB's funding by a 7-2 vote. And on Thursday, the justices pared back the power of the Securities and Exchange Commission and other administrative agencies, holding that the SEC cannot continue to use in-house proceedings to impose fines in securities fraud cases.

The fishermen in both cases were represented at no cost by conservative legal groups, the Cause of Action Institute and the New Civil Liberties Alliance, **linked to funding from billionaire and longtime anti-regulation advocate Charles Koch**.

*This article was **originally published at Howe on the Court**.*

Posted in **Merits Cases**

Cases: **Loper Bright Enterprises v. Raimondo**, **Relentless, Inc. v. Department of Commerce**

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