Court Deference to Federal Agency Regulations is Over

The power of federal agencies to promulgate regulations to interpret and apply ambiguous federal statues, including labor and employment laws, recently suffered a body blow. In *Loper Bright Enterprises v. Raimondo*, a 6-3 decision issued by the Supreme Court on June 28, 2024, the Court overturned the *Chevron* deference doctrine and squarely held that courts, not federal agencies, will decide *all* questions of law arising on review of agency action. 603 U.S. _____ (2024). https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf. That means courts can set aside any such action inconsistent with the law, as the courts interpret it.

Prior to the Court's Loper decision in late June, courts generally deferred to permissible federal agency interpretations of a statue the agency administers, even when a reviewing court might read the statue differently. *Chevron U.S. A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984)*. Under Chevron, if a court determined that a statute was silent or ambiguous, the court must defer to the agency's interpretation if it was based upon a permissible construction of the statute. Reviewing courts applied Chevron to resolve most challenges to agency rules in favor of the Government.

In overturning the Chevron doctrine, Chief Justice Roberts, writing for the majority in Loper, noted the elemental proposition dating back to the 1803 Marbury v. Madison decision, that the courts, not agencies, will decide all relevant questions of law arising on review of agency action. Such decisions should be based upon the reviewing court's own independent judgment in determining the meaning of statutory provisions. An exception applies when Congress has expressly delegated to an agency the authority to give meaning to a particular statutory term, so long as such the agency has engaged in reasoned decision-making. Statutory ambiguities are not, however, implicit delegations to agencies, according to the Court.

Chief Justice Roberts wrote that Chevron's deferral doctrine was misguided because agencies "have no special competence in resolving statutory ambiguities. Courts do." When resolving such ambiguities, particularly in highly technical cases, the court will not decide questions of law blindly. Rather, courts will consider the perspectives of the parties and *amici* (friends of the court) steeped in the subject matter, as well as the agency's body of knowledge and experience. If Congress and the Executive Branch disagree with the court's interpretation, they are free to revise the statute.

Chief Justice Roberts noted that the Court's decision to overturn Chevron does not mean prior case holdings that specific agency actions were lawful are nullified. Despite the Court's change in "interpretative methodology," mere past reliance on Chevron does not constitute a special justification for overruling such a holding.

In a strongly worded dissent, Justice Kagan wrote that for forty years, Chevron served as a cornerstone of administrative law, allocating responsibility for statutory construction between courts and agencies. If the law is clear, then the agency's views make no difference. But if the Court finds Congress has left an ambiguity or gap, then who should give content to a statute when Congress's instructions have run out? Under Chevron, the answer is the agency Congress charged with administering the statute, within the bounds of reasonableness.

Justice Kagan noted that some interpretive issues arising in the regulatory context involve scientific or technical matter, where agencies have expertise and courts do not. Some demand a detailed understanding of complex and interdependent regulatory programs which agencies know inside-out, and courts do not. "In one fell swoop, the majority today gives itself exclusive power over every open issue—no matter how expertise-driven or policy-laden—involving the meaning of regulatory law." To illustrate her point, Justice Kagan cited several examples, such as:

- Under Medicare, reimbursements to hospitals are adjusted to reflect "differences in hospital wage levels" across "geographic area[s]." 42 U. S. C. §1395. How should the Department of Health and Human Services measure a "geographic area"? By city? By county? By metropolitan area? See *Bellevue Hospital Center* v. *Leavitt*, 443 F. 3d 163, 174–176 (CA2 2006).
- Under the Public Health Service Act, the Food and Drug Administration (FDA) regulates "biological products, including "protein[s]." 42 U. S. C. §262(i)(1). When does an alpha amino acid polymer qualify as such a "protein"? Must it have a specific, defined sequence of amino acids? See *Teva Pharmaceuticals USA, Inc.* v. *FDA*, 514 F. Supp. 3d 66, 79–80, 93–106 (DC 2020).
- Congress directed the Department of the Interior and the Federal Aviation Administration to reduce noise from aircraft flying over Grand Canyon National Park—specifically, to "provide for substantial restoration of the natural quiet." §3(b)(1), 101 Stat. 676; see §3(b)(2). In the past, a federal agency determined how much noise was consistent with "the natural quiet"? And how much of the park, for how many hours a day, must be that quiet for the "substantial restoration" requirement to be met? See *Grand Canyon Air Tour Coalition* v. *FAA*, 154 F. 3d 455, 466–467, 474–475 (CADC 1998).

In each case, a statutory phrase at issue had more than one reasonable reading. For the last 40 years, the court has thought that choice should usually fall to agencies, with the courts broadly deferring to their judgments. According to Justice Kagan, judges are not experts in the field, agencies are experts. The *Loper* decision overturning Chevron deferral is another example of the Court's resolve to "roll back agency authority, despite congressional direction to the contrary," wrote Justice Kagan.

Significance of the Court's Holding with Respect to Labor and Employment Matters

Federal agencies seeking to enforce labor and employment laws will undoubtedly face increased court challenges of the agency's interpretation and regulations, and greater judicial scrutiny of such actions. For example, new Department of Labor regulations interpreting the Fair Labor Standards Act which change minimum salary requirements for exempt status or define independent contractors, may well be challenged. New NLRB rules defining joint employer status will likely come under greater scrutiny. Recent EEOC rules implementing the Pregnant Workers Fairness Act may be contested. What will this mean to the federal government's ability to regulate technology in the workplace, including artificial intelligence?

The ramifications of the Court's decision to overturn the *Chevron* deference doctrine will be felt for many years to come. And while the *Loper* decision has no effect on state law, it remains to be seen whether individual state supreme courts may adopt the U.S. Supreme Court's view and limit deference given to regulations issued by state labor relations boards or other state agencies.

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