Supreme Court Overturning of Chevron Doctrine May Have Major Impacts on Executive Agency Actions, Including IHS Actions

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written by Chelsea Gutierrez | July 17, 2024

On June 28, 2024, the Supreme Court ruled 6-2 in Loper Bright Enterprises v. Raimondo, overturning Chevron v. Natural Resources Defense Council. The court held that when the Administrative Procedure Act (APA) requires courts to exercise independent judgment when deciding whether an agency has acted within its statutory authority, and courts may **not** defer to agency interpretation of a law based solely on the statute being ambiguous. In making this ruling, the court has overturned Chevron deference, a precedent which has been followed by courts for 40 years.

Chief Justice Roberts delivered the majority opinion, finding that Chevron goes against the APA in its presumption that ambiguities in statutes create implicit delegation to agencies. Additionally, the opinion states that agencies are not more equipped or competent to resolve statutory ambiguities, which should be left for the courts to resolve. The opinion adds that agency interpretation can assist courts in their decision making, but it is not binding as Congress has not provided agencies with authority to be the final decision-maker on resolving statutory ambiguity. The opinion concludes by stating that Chevron has been unworkable since its creation, in that there is no clear definition of "ambiguity" and that the court has often had to provide clarity on its application.

Justice Kagan, in her dissent, references the original Chevron decision which found that "Judges are not experts in the field, and are not part of either political branch of the Government." Explaining that the decision made 40 years ago was about respecting allocation of responsibility, which for regulatory matters was to agencies and not the courts. She raises concern over the power now given to courts, not provided by Congress or within any statute, and the dangers of allowing courts to be the sole decision-maker on important issues such as climate change or health care. She concludes by noting this decision is not a "one-off" as it is another example of the court rolling back agency authority, "despite congressional direction to the contrary."

What is Chevron Deference?

The term was coined after the Supreme Court's 1984 decision in *Chevron v. Natural Resources Defense Council* and is the legal precedent established by the Court to give judicial deference to administrative action. This rule was to be followed when Congress was unclear in statutory language, and provided that courts would defer to how the agency would interpret the statute, based on agencies having necessary expertise. In applying Chevron deference there are two steps:

- First, asking if Congress has directly spoken to the question at issue?
- If the answer is no, the court defers to agency interpretation if that interpretation is permissible or reasonable.

Over time, the Supreme Court narrowed the scope of Chevron deference, finding that only agency

interpretations reached through formal proceedings can qualify for Chevron deference. These formal proceedings included adjudications and notice-and-comment rulemaking.

Impact of Chevron Being Overturned

Moving forward, when regulations are challenged in courts, there will be no requirement that agency expertise or interpretation is accepted. Instead, the court itself will interpret issues where a statute is ambiguous or silent. Although Chevron deference has not been applied by the Supreme Court since 2016, it is more often used by lower courts, especially at the Circuit level. Due to this ruling, lower courts may be backlogged with cases challenging administrative actions. To avoid cases being brought, Congress will now have to be more specific in their legislation and may engage more with agencies in the rulemaking process to provide explicit agency authority. This decision also requires Congress and judges to act as experts on specific issues such as technological advancements in AI or environmental concerns with climate change. It can mean that decisions may drastically differ from how an agency would have interpreted it, or time may be extended to allow for adequate knowledge to be incorporated when making decisions on lawsuits or legislation.

Allowing courts to have this power also means that if lawsuits are filed in more than one jurisdiction, there may be contradictory rulings. As a result, there may be confusion about which ruling is correct and cause different applications of rules across the country since decisions in one circuit court are not binding on other circuits. These conflicting rulings could then be resolved by the Supreme Court, taking time away from their caseload and impeding their ability to hear cases involving disputes unrelated to agency action. This process would extend the time for an agency rule to be implemented, not only because it requires waiting on a court's opinion, but because it could result in an agency having to rewrite the rule to conform with the court's interpretation.

As far as impacts to Health Policy, KFF has made note of potential impacts in their Issue Brief. Specific areas that are affected by regulations and therefore this ruling are: Medicaid and Medicare payment rates, drug price negotiations, pandemic response, pharmaceutical regulation, and coverage of mental health services.

It is not clear how these impacts extend to Indian Country as well as within the IHS/Tribal Organization/Urban Indian Organization (I/T/U) system. Currently, I/T/U facilities utilize ongoing communications with agencies to improve regulations and address pressing issues in American Indian and Alaska Native (AI/AN) communities. This includes Tribal Consultation and Urban Confer, as well as the ability to provide written comments on proposed agency rules. By the court not allowing agency interpretation to not have as much weight in legal challenges, it could change how agencies like CMS interact with I/T/U facilities. A concern is that agencies may not continue to prioritize Tribal Consultation and Urban Confer, and those processes may not hold as much weight in the rulemaking process. Instead, agencies may prioritize working with Congress to avoid legal challenges by ensuring proposed regulations are within the scope of federal statute. Another concern is that current regulations may be challenged in court, resulting in rollback of significant policy changes.

Related Administrative Law Decision

On July 1, 2024, the Supreme Court issued their ruling in Corner Post Inc. v. Board of Governors of the Federal Reserve System. The court ruled 6-3 and found that "an Administrative Procedures Act claim does not accrue for purposes of 28 U.S.C. § 2401(a) — the default 6-year statute of limitations applicable to suits against the United States — until the plaintiff is injured by final agency action." This ruling extends the statute of limitations by allowing for suits to be brought within six years of

when the plaintiff has been injured, regardless of when the agency rule was promulgated. This decision, in conjunction with overturning Chevron deference, will allow for more APA challenges to be brought that can overturn regulations that have existed and guided agency action for decades.