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Legal Sidebar

Supreme Court Overrules *Chevron* Framework

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In what has the potential to be one of the most consequential decisions in federal administrative law, the Supreme Court on June 28, 2024, overruled *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, in a pair of cases, *Loper Bright Enterprises v. Raimondo* and *Relentless Inc. v. Department of Commerce* (collectively *Loper*). The *Chevron* doctrine—named for the case that articulated it—required federal courts to defer to a federal agency's reasonable interpretation of ambiguous statutory provisions the agency administers.

For the better part of four decades, *Chevron* has been one of the foundational decisions in administrative law, governing the relationship between agencies and courts in matters of statutory interpretation and acting as a backdrop against which Congress has legislated. As one scholar put it: *Chevron* "is the most talked about, most written about, most cited administrative law decision of the Supreme Court. Ever." For the past decade or so, however, *Chevron* has come under increasing fire from some corners of the federal judiciary and legal academia. Once cited often and approvingly by a majority of Supreme Court Justices, *Chevron* has recently fallen into desuetude at the Court. Over the past several terms, the Court has declined to apply or even cite *Chevron* in cases where it may once have governed. Other methods of statutory interpretation, such as the major questions doctrine, appear to have displaced *Chevron*, at least in some instances. *Chevron*'s absence at the Court has not gone unnoticed, with several Justices commenting on *Chevron*'s absence as evidence that it should be overruled.

Against this backdrop, the Court explicitly overruled *Chevron*, holding that the *Chevron* framework violates Section 706 of the Administrative Procedure Act (APA). Section 706 requires courts 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." The majority held that the APA's command required courts to exercise their own independent judgment on the meaning of a federal statute, but *Chevron* required courts to defer to reasonable agency interpretations of an ambiguous statute. That deference requirement, the Court held, abdicated the judiciary's foundational function to "say what the law is." Although the petitioners in *Loper* also challenged *Chevron* on constitutional grounds, the majority's opinion did not address those arguments.

The *Chevron* Framework

The *Chevron* framework required a court to defer to an executive agency's interpretation of an ambiguous statute that it administers so long as the agency's interpretation was reasonable. The framework's

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namesake 1984 Supreme Court case, *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, set out a two-step process for determining whether a court must defer to an agency's statutory interpretation.

The *Chevron* framework typically applied if Congress has given an agency the general authority to make rules with the force of law. If a court determined that *Chevron* applied, at step one it would use the traditional tools of statutory construction to determine whether Congress directly addressed the precise issue before the court. If the statute was clear on its face with respect to the issue before the court, the court was to implement Congress's stated intent. If the court concluded instead that a statute was silent or ambiguous with respect to the specific issue, the court then proceeded to *Chevron*'s second step. At step two, courts were required to defer to an agency's reasonable interpretation of the statute regardless of whether the court would adopt that interpretation on its own were it to have reviewed the statute without the benefit of an agency's interpretation. The *Chevron* framework rested on several related assumptions, including (1) that statutory ambiguity indicates a congressional delegation of interpretive authority, (2) that agencies have more expertise than courts to interpret the statutes they administer, and (3) that agencies are politically accountable and therefore have more claim to make policy than courts.

The *Loper* Decision

The Court in *Loper* took specific aim at Chevron's first presumption—that statutory ambiguities indicate implicit delegation of interpretive authority to the agency. The majority explained that presumptions can be salutary, but only where they approximate reality. *Chevron*'s presumption, the Court explained, does not approximate reality, "because '[a]n ambiguity is simply not a delegation of law-interpreting power. *Chevron* confuses the two.'" Instead, the Court held that, when confronted with a statutory ambiguity, a court should not defer to an agency's interpretation but instead should do its "ordinary job of interpreting statutes, with due respect for the views of the Executive Branch." The views of the executive branch may, in the words of the 1944 Supreme Court case *Skidmore v. Swift & Co.*, have the "power to persuade, if lacking the power to control."

The Court based its decision on Section 706 of the APA which requires courts to interpret all questions of law in challenges to agency actions. Section 706, the Court held, codified existing practice at the time of its enactment in 1946, and although some cases at the time had applied deference doctrines in cases evaluating agency interpretations of law, they were outliers. Rather, courts at that time assumed their role to be the final interpreters of the meaning of federal law.

The majority's frequent reference to *Skidmore* and use of language from that decision suggests that, going forward, the Court expects lower courts to look to *Skidmore* to guide their consideration of an agency's preferred interpretation of an ambiguous statute. *Skidmore* gave its name to a much weaker form of deference that does not require courts to defer to agencies. The *Skidmore* case itself laid out a list of factors for courts to consider when determining whether an agency's interpretation commands the "power to persuade." Under *Skidmore*, courts

> consider that the rulings, interpretations and opinions of [an agency], while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.

Skidmore, however, has received far less attention from the courts than *Chevron* has and may need additional development by the courts to refine its application.

In holding that the judiciary, not agencies, are to resolve statutory ambiguities, the majority explained that the Framers understood "the complexity of objects, . . . the imperfection of the human faculties, and the

simple fact that no language is so copious as to supply words and phrases for every complex idea," yet still expected politically insulated judges to exercise independent legal judgment in resolving statutory ambiguities. While ambiguities in statutes surely exist, the majority acknowledged, statutes have one "best" reading that courts can discover by applying the traditional tools of statutory interpretation. The majority further explained that courts do that all the time when reviewing statutes that an agency has not yet interpreted. In the Court's view, there is no reason for courts to abdicate their duty when an agency is involved. Undercutting another one of *Chevron*'s presumptions (that ambiguities call for agency expertise), the majority reasoned that statutory ambiguities do not call for policy expertise or draw judges into making policy—they call for the exercise of legal judgment. This distinction exists because, the majority stressed, courts, not agencies, have expertise in interpreting statutes and have done so for centuries.

Although the Court overruled *Chevron*, it appears to have preserved the holdings in cases that were decided pursuant to the *Chevron* framework prior to *Loper*. In the briefing of the case and during oral argument, the litigants and some of the justices discussed the fate of cases decided at *Chevron* step two. As explained above, at *Chevron* step two, a court must defer to an agency's reasonable interpretation of an ambiguous statute. In such cases, a court has not made a specific ruling on what the statute means—it has left that determination to an agency in light of the court's finding at step one that the statute is ambiguous. At oral argument, some of the Justices questioned the litigants about whether these step two decisions would still be considered binding if *Chevron* were overruled. Counsel for the petitioners argued that overruling *Chevron* would not disturb these cases because what the court had found at step two was that an agency's interpretation was "lawful." The Court appears to have adopted this argument in its opinion, holding that "we do not call into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are lawful—including the Clean Air Act holding of *Chevron* itself—are still subject to statutory stare decisis despite our change in interpretive methodology." Despite the Court's holding, questions are likely to remain about whether agencies can change statutory interpretations that were found to be "reasonable" or "lawful" under step two.

The Dissent

The dissent, penned by Justice Kagan and joined by Justices Sotomayor and Jackson (the latter only with respect to the *Relentless* case), defended the *Chevron* framework on grounds that largely track those that supported the continued application of *Chevron* for the last four decades. *Chevron*, Justice Kagan wrote, is part of "warp and woof of modern government" and "reflects what Congress would want"—politically accountable expert agencies making policy, not judges. Justice Kagan, providing examples, explained that regulatory statutes often contain ambiguities or gaps (sometimes purposefully so) that cannot be resolved without the exercise of some kind of policymaking expertise that the courts simply do not have. Justice Kagan reasoned that statutes with such ambiguities or gaps have not fixed any "best" meaning at the time of enactment, and accordingly there is no law for a court to find using its tools of statutory construction. The judiciary's role, Justice Kagan articulated, is only to ensure that an agency's interpretation is a reasonable one, to ensure that courts stay out of policymaking. This limited role for courts, Justice Kagan stressed, is one of judicial "humility," recognizing that agencies have a better claim to democratic legitimacy and more expertise in making policy than courts. In other words, she explained, "agencies often know things about a statute's subject matter that courts could not hope to." Courts, Justice Kagan explained, can "muddle through" when asked to determine the meaning of an ambiguous statute, but compared to an agency that Congress has entrusted to administer a statute that may deal with technical subjects like wildlife regulation or medical drugs and devices, it is reasonable to believe Congress would prefer the agency to have interpretive authority.

Considerations for Congress

The *Loper* opinion rested on an interpretation of the APA—not the Constitution. Although the petitioners argued that *Chevron* violated Article III of the Constitution, the majority's opinion did not reach that issue. As a result, the Court left open the possibility that Congress could amend the APA or enact a standalone statute to codify some form of deference. Nonetheless, some commentators have argued that codifying *Chevron* would violate Article III. In their view Article III, like the APA, requires that the judiciary have final authority over the meaning of federal law—"to say what the law is" in the words of the seminal 1803 case *Marbury v. Madison*. By relying at times on *Marbury*—a case interpreting Article III—the majority's opinion appears to cast doubt on the Congress's ability to codify *Chevron*-like deference.

The decision, however, appears to leave open Congress's authority to expressly delegate interpretive authority to agencies. The Court held: "That is not to say that Congress cannot or does not confer discretionary authority on agencies. Congress may do so, subject to constitutional limits, and it often has." The Court cited examples where Congress had conferred discretion on an agency to interpret statutory terms or "to regulate subject to the limits imposed by a term or phrase that leaves agencies with flexibility . . . such as appropriate or reasonable." Accordingly, Congress may still be able to confer interpretive authority on agencies so long as it does so expressly.

Author Information

Benjamin M. Barczewski
Legislative Attorney

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