

Corporate Governance & Compliance

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Overturing Chevron: Supreme Court Requires Agency Ambiguity To Be Interpreted in Courts

By [Kathleen A. McGee](#)

**This alert was co-authored by Anya Wasserman, Lowenstein Sandler summer associate.*

On June 28, in a 6-3 decision of *Loper Bright Enterprises et al. v. Raimondo, Secretary of Commerce, et al.*, 603 U.S. ____ (2024), the Supreme Court overturned a 40-year precedent known as “Chevron deference,” which required courts to defer to an agency when interpreting the agency’s regulations. The recent decision returns this power to the courts, which will have long-lasting effects on every federal agency and its laws and will likely impact the timing of agency rules and regulations. Clients operating in highly regulated areas should be aware of the potential implications of the *Loper* decision.

Holding, Background, and Procedural History

In 1984, the Supreme Court gave deference to the Environmental Protection Agency’s (EPA) interpretation of a definition in the EPA’s Clean Air Act in *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984). The Court ruled that, unless congressional intent is clear, when a statute is ambiguous or silent regarding a specific issue, the court must determine whether the agency’s interpretation was based on a permissible construction of the statute. If it was, deference would be given to the agency’s interpretation. Thus, in *Chevron*, the EPA was entitled to interpret ambiguous terms as it saw necessary.

Challenging this decision nearly four decades later, one family-operated fishing business and two other fishing vessels called out a federal agency for not having the authority to require the businesses to pay for part of its plan. The plan was made by the National Marine Fisheries Service (NMFS) and required “observers” to collect data for the conservation and management of the fishery. The businesses could apply for grants, but if none were awarded to the businesses, they were required to pay for the observers themselves. The ambiguity hinged on whether the Magnuson-Stevens Fishery Conservation and Management Act authorized the NMFS to mandate that the fishermen pay for observers as required by the fishery management plan.

The District Court for the District of Columbia, applying *Chevron*, granted the government’s summary judgment motion seeking to defer ambiguities to the agency. The D.C. Circuit Court of Appeals affirmed the decision. In his dissent, Judge Justin Walker noted that congressional silence and the requirement of such observers on foreign fishing vessels meant that the NMFS lacked the authority to require the fishermen to pay the observers’ wages. In taking on the fishermen’s plight, the Supreme Court granted certiorari to address whether the *Chevron* decision should be overruled or clarified. The Court referred to Article III of the Constitution, which gives the judicial branch the power to adjudicate “cases and controversies,” along with early American framer intent by way of Alexander Hamilton to overrule *Chevron*. Chief Justice John Roberts wrote that allowing judges rather than agencies to interpret ambiguity and silence ensures decisions remain free from politics.

The Supreme Court clarified that courts could, and often should, look at an agency’s interpretation of an ambiguous term, but that following this decision, courts should no longer give complete deference to the agency’s interpretation. In essence, “[t]he views of the Executive Branch could inform the judgment of the Judiciary but [do] not supersede it.”

Analysis and Conclusion

This unprecedented ruling places the power to determine ambiguous regulatory terms with the courts, whereas it used to lie with the agency itself. This will impact all U.S. agencies and their laws, including restrictions and allowances for food, drugs, medical devices, tobacco, air quality, securities trading, and more.

We anticipate a delay in court proceedings as every agency ambiguity will be subjected to judicial interpretation. As Justice Elena Kagan noted in her dissent to the ruling, the courts reviewing agency determinations may lack the expertise required in certain regulatory contexts involving science or technology. This could mean parties to a case will bear heavier costs in finding suitable experts to explain nuances in more complex cases.

Legislation may also be delayed, as both Congress and agencies will have to anticipate challenges and use more specific language when drafting laws. Therefore, overturning *Chevron* will impact both private and public agencies for years to come.

If you are interested in exploring this issue further, please reach out to one of the lawyers in the [Corporate Governance & Compliance](#) group.

Contact

Please contact the listed attorney for further information on the matters discussed herein.

KATHLEEN A. MCGEE

Partner

T: 646.414.6831

kmcgee@lowenstein.com

NEW YORK

PALO ALTO

NEW JERSEY

UTAH

WASHINGTON, D.C.

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