

Business Impact: Chevron Alters the Regulatory Field



On June 28, 2024, the U.S. Supreme Court made a landmark decision that has significantly altered the landscape of administrative law. In a 6-3 ruling in *Loper Bright Enterprises v. Raimondo*, the Court overturned the nearly 40-year-old Chevron deference doctrine with 18,000 agency decisions based on that, fundamentally changing how courts review administrative agency interpretations of ambiguous statutes. This decision, along with the subsequent ruling in *Corner Post, Inc. v. Board of Governors of the Federal Reserve System* on July 1, 2024, which clarified the statute of limitations for challenging agency actions under the Administrative Procedure Act (APA), marks a pivotal shift in the balance of power between the judiciary and federal agencies. This executive brief explores the implications of these decisions for regulated industries, the judicial system, and the legislative process, highlighting the potential challenges and opportunities that lie ahead in a post-Chevron era.

Background

Under the **Chevron doctrine**, when a reviewing court determined that a statute was ambiguous or that **Congress** had not directly addressed the precise question at issue, the Court, rather than imposing its own interpretation of the statute, would defer to the agency's interpretation as long as the agency's interpretation was based on a permissible construction of the statute.

In *Loper*:

- The Court concluded that **Chevron deference** conflicts with separation of powers principles and the command of the **Administrative Procedure Act (APA)** that courts, not agencies, are to "decide all relevant questions of law" and "interpret statutory provisions."

- The Court made clear that it "remains the responsibility of the court to decide whether the law means what the agency says."
- The Court reinforced that "courts, not agencies, will decide 'all relevant questions of law' arising on review of agency action" and prescribed "no deferential standard for courts to employ in answering those legal questions."
- The APA "makes clear that agency interpretations of statutes – like agency interpretations of the **Constitution** – are not entitled to deference."
- The Court specifically rejected arguments that federal agencies, rather than courts, are better suited to determine what ambiguities in a federal law might mean, including when those ambiguities involve technical or scientific questions that fall within an agency's area of expertise.
- The Court noted that "to the extent that **Congress** and the **Executive Branch** may disagree with how the courts have performed that job in a particular case, they are of course always free to act by revising the statute."

Going Forward, Loper Means:

- **Courts must:**
 - Exercise their independent judgment in deciding whether an agency has acted within its statutory authority.
 - Not defer to an agency interpretation of the law simply because a statute is ambiguous.
- **Courts can still:**
 - Consider the "interpretations and opinions" of the relevant agency.
 - Accord "due respect" for the specialized expertise and informed judgment of the agency.
 - The weight of those interpretations and opinions will depend upon:
 - The thoroughness evident in its consideration.
 - The validity of its reasoning.
 - Its consistency with earlier and later pronouncements.
 - All those factors which give it power to persuade, if lacking power to control.
- **Prior cases:**
 - Holding that specific agency actions are lawful are still subject to statutory **stare decisis** despite this change in interpretive methodology.
 - Mere reliance on **Chevron** cannot constitute a "special justification" for overruling such a holding.

Given the wide application of **Chevron** in administrative law over the past 40 years, it is anticipated that the full impact of **Loper** will play out in the courts, the legislature, and administrative agencies for years to come.

Business Impact

Positive Impacts

1. **Enhanced Judicial Review:** The abolition of Chevron deference reinforces the judiciary's role in interpreting laws, ensuring more independent and rigorous review of agency actions. This leads to more balanced and well-considered legal outcomes.
2. **Greater Clarity and Precision:** With courts now interpreting statutes without deferring to agencies, there is a push for clearer and more precise legislative drafting. This reduces ambiguity and promotes more transparent and predictable regulatory environments.
3. **Increased Legal Challenges:** The decision opens avenues for businesses to challenge unfavorable regulations, potentially leading to a reduction in burdensome or overreaching rules. This could result in a more business-friendly regulatory landscape.
4. **Empowered Industries:** Industries may have more leverage in negotiating regulatory standards, as agencies will have less unilateral power to interpret ambiguous statutes. This could lead to more industry-tailored regulations.
5. **Innovation Encouragement:** By limiting agencies' interpretive powers, there is a potential decrease in regulatory hurdles, encouraging innovation and allowing businesses more freedom to explore new technologies and practices.

Negative Impacts

1. **Regulatory Uncertainty:** The shift away from Chevron deference may lead to increased uncertainty as businesses and agencies navigate the new legal landscape. This could result in a period of instability as courts establish new precedents.
2. **Increased Litigation Costs:** With more opportunities to challenge regulations, businesses may face higher legal costs. The need for continuous legal engagement to protect interests could strain resources, especially for smaller entities.
3. **Potential Regulatory Delays:** Agencies may become more cautious and slower in issuing regulations due to the fear of judicial overturn, potentially leading to delays in the implementation of necessary regulatory actions.
4. **Strained Agency Resources:** The need for more detailed and defensible rulemaking processes could strain agency resources, requiring more time and effort to ensure compliance with judicial expectations.
5. **Inconsistencies Across Jurisdictions:** Different courts may interpret statutes in varying ways, leading to inconsistent regulatory environments across jurisdictions. This could complicate compliance efforts for businesses operating in multiple states.

Public Policy Analysis

The overturning of Chevron deference in *Loper Bright Enterprises v. Raimondo* signals a profound change in the judicial approach to administrative agency interpretations. Businesses and policymakers must adapt to this new legal landscape. Key recommendations include increasing legislative clarity, preparing for

increased litigation, emphasizing thorough rulemaking processes, and fostering stronger communication between agencies and industries to navigate this shift effectively.

Themes to Watch in the Next 12 to 24 Months

1. **Judicial Interpretations:** As courts take on a more active role in interpreting statutes, their decisions will shape the new legal landscape.
 - Monitor key rulings that set precedents for agency actions.
 - Analyze how different circuits address statutory ambiguities.
2. **Legislative Clarity:** Congress will need to draft more precise laws to minimize ambiguity.
 - Encourage collaboration between lawmakers and industry experts.
 - Advocate for clear and detailed legislative language.
3. **Regulatory Adjustments:** Agencies will need to adapt their rulemaking processes to meet new judicial expectations.
 - Focus on thorough and well-reasoned rulemaking documentation.
 - Prepare for increased judicial scrutiny of regulations.
4. **Increased Litigation:** Businesses may seek to challenge regulations more frequently, leading to a rise in legal disputes.
 - Develop robust legal strategies to address potential challenges.
 - Allocate resources to manage increased litigation risks.
5. **Inter-agency Collaboration:** Enhanced cooperation between agencies may be necessary to ensure consistent regulatory enforcement.
 - Foster inter-agency dialogues to align regulatory approaches.
 - Share best practices for compliance and enforcement.
6. **Industry-Specific Impacts:** Different sectors will experience varied impacts from the ruling.
 - Assess sector-specific regulatory challenges and opportunities.
 - Engage with industry groups to advocate for favorable regulations.
7. **State-Level Responses:** States may adjust their regulatory frameworks in response to the federal shift.
 - Monitor state legislative and regulatory changes.
 - Coordinate with state regulators to ensure compliance.
8. **Policy Advocacy:** Increased need for businesses to engage in policy advocacy to influence regulatory outcomes.
 - Build relationships with policymakers and regulators.
 - Participate in public comment processes for new regulations.
9. **Economic Implications:** The economic impact of regulatory changes will be significant.
 - Analyze potential economic benefits and drawbacks of regulatory shifts.
 - Develop strategies to mitigate negative economic impacts.

10. **International Considerations:** Global businesses must consider how U.S. regulatory changes affect their operations.
 - Assess the international implications of U.S. regulatory changes.
 - Adapt global compliance strategies to align with new U.S. standards.

Top 3 Actions Businesses Can Take

In light of the Supreme Court’s decision to overturn Chevron deference, businesses must adapt to a regulatory landscape where judicial interpretations of statutes will play a more significant role. Here are the top three actions businesses and nonprofits can take to navigate these changes effectively.

1. **Enhance Legal Preparedness:** Businesses should bolster their legal teams and strategies to navigate the increased judicial scrutiny of agency interpretations. This includes:
 - **Invest in Expert Legal Counsel:** Ensure access to legal experts who can provide strategic guidance on regulatory challenges and court interpretations.
 - **Regular Legal Training:** Implement regular training for in-house legal teams to stay updated on the latest judicial rulings and regulatory changes.
2. **Engage in Policy Advocacy:** Active participation in policy advocacy can help businesses influence legislative and regulatory outcomes in their favor. This involves:
 - **Build Strong Relationships:** Develop and maintain strong connections with policymakers, regulators, and industry associations to voice concerns and recommendations.
 - **Participate in Public Comment Processes:** Engage in public comment periods for new regulations to ensure industry perspectives are considered in the rulemaking process.
3. **Strengthen Compliance Programs:** Robust compliance programs are crucial for adapting to the new regulatory environment and mitigating risks associated with potential legal challenges. Steps include:
 - **Conduct Regular Audits:** Regularly audit compliance programs to ensure they align with current legal standards and regulatory requirements.
 - **Implement Dynamic Compliance Frameworks:** Develop flexible compliance frameworks that can quickly adapt to changes in regulations and judicial interpretations.



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