WIMBERLY, LAWSON, STECKEL, SCHNEIDER & STINE, P.C.
Attorneys at Law
3400 Peachtree Rd., Suite 400
Atlanta, GA 30326-1107

ALERT

July 2, 2024

THE DEATH OF DEFERENCE: SUPREME COURT OVERRULES THE *CHEVRON* DOCTRINE

By Betsy Dorminey
Wimberly, Lawson, Steckel Schneider & Stine PC

In a move long anticipated by many court watchers, the Supreme Court on June 28, 2024, jettisoned a longstanding doctrine of deference to Federal agencies' interpretations of the statutes they are charged to enforce. The *Chevron* doctrine, so named for the 1984 case in which it originated – *Chevron v. Natural Resources Defense Council* – said that courts should defer to "permissible" agency interpretations of the statutes those agencies administer—even when a reviewing court reads the statute differently. Naturally enough, Federal agencies embraced this rule enthusiastically, plying it as a trump card when their interpretations, sometimes even those adopted simply as a litigating position in a single case, were challenged.

No more. In *Loper Bright Enters. v. Raimondo,* the Supreme Court held that the Administrative Procedure Act (APA) requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and that they may not defer to an agency interpretation of the law simply because statutory language is claimed to be ambiguous.

The *Loper Bright* was a fishing boat, subject to regulation under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). To carry out its mission of regulating fisheries, the National Marine Fisheries Service (NMFS) established pursuant to the Act decreed that fishing boats could be obliged to carry one or more observers on board to ensure compliance. The NMFS capped fees for such observers at 2 or 3% of the value of the fish harvested. In 2013, however, they changed the rules, and issued a new one that required owners to pay up to $710/day for a government-selected observer to come aboard.

The vessel owner challenged this new rule, which they said reduced their annual revenues by 20%. They argued that the MSA did not authorize NMFS to mandate that they pay for observers required by a fishery management plan. The District Court granted summary judgment to the Government, concluding that the MSA authorized the Rule, and even if the petitioners' "arguments were enough to raise an ambiguity in the statutory text," deference to the agency's interpretation would be warranted under *Chevron*. A divided panel of the D. C. Circuit affirmed.

Wimberly, Lawson, Steckel, Schneider & Stine, P.C. Attorneys at Law ©2024 www.wimlaw.com

In a 6-3 opinion by Chief Justice Roberts, the Supreme Court reversed, finding that it is the exclusive province of the Courts, not Federal agencies, to say what the law is. Courts have at their disposal a wide range of interpretive tools. Agencies may have specialized expertise, but the U.S. Constitution places responsibility for interpreting laws squarely in the Article III courts. While agency interpretations may earn respect – and the battalions of lawyers they deploy to plead their cases are able advocates – they are not entitled to deference, which is inconsistent with the requirements of the APA, which places responsibility for such determinations in the courts.

What does this mean for employers? This will be a game-changer for anyone involved in litigation with any Federal regulatory agency, such as the U.S. Department of Labor. It raises the bar considerably for the Government: no longer can they simply assert in Court that a particular interpretation must prevail simply because they say so. It will be up to the advocates for each side, government and employer, to persuade the Court of the position they advocate.

What does this mean for regulatory agencies? It's a game-changer.

Along with the Court's recent decisions in *Starbucks v. McKinney* and *Jarkesy v. SEC, Loper Bright* is sending a loud message to Federal regulators to take care not to overstep the bounds Congress sets for them. In *Starbucks,* the Supreme Court told the National Labor Relations Board (NLRB) that it is subject to the same requirements as anyone else when they seek an injunction to halt an alleged unfair labor practice, not preferential treatment. *Jarkesy* held that fines and penalties cannot be assessed by Administrative Law Judges employed by the agencies who want to collect because that denies the other party their Seventh Amendment right to a jury trial. And after *Loper Bright,* Federal agencies can no longer assert an entitlement to automatic deference for their views.

All three of these decisions signal a Supreme Court bench that is taking the separation of powers seriously, and holding the Federal government to more stringent, Constitutional standards that has been the case in recent years. It's a severe rebuke to the excesses of the regulatory state. Stay tuned to see how the Government comes to terms with these new rules of the road.

Questions? Need more information? Call Betsy Dorminey at 404-365-0900.

###