bodman

An Environmental Law Update

Bodman PLC **July 1, 2024**

Supreme Court Abolishes Chevron Deference

By: Rebecca El Badaoui, Senior Associate, and Nathan D. Dupes, Member
Environmental Law Practice Group

On June 28, 2024, the U.S. Supreme Court, in *Loper Bright Enterprises v. Raimondo*, overruled the long-standing "*Chevron* doctrine," under which courts were required to defer to "permissible" agency interpretations of the statutes those agencies administer, even if a reviewing court reads the statute differently. The Supreme Court's ruling sharply limits the power of federal agencies to interpret the laws they administer and emphasizes the duty of courts to interpret ambiguous or unclear laws.

The impact of the Supreme Court's decision cannot be understated. Challenges to the validity of regulations will increase now that courts are no longer constrained by deferring to agency interpretation of statutes. We can expect regulations to be invalidated more frequently as a result. The Court's decision is also a signal to Congress that legislation should be drafted in more detail to reduce the "gap-filing" that agencies typically have performed through rulemaking.

The *Chevron* doctrine required courts to employ a two-step framework to interpret statutes administered by federal agencies. First, courts must assess "whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 842-843 (1984). Second, if "the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute. . . Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id*. at 843. *Chevron* made it very difficult to successfully challenge a regulation in court.

In a 6-3 decision, written by Chief Justice Roberts, the Supreme Court overruled *Chevron*, holding that "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the [Administrative Procedures Act ("APA"), 5 U.S.C. § 551 *et seq*.] requires." The Supreme Court reasoned that, under the

APA, “the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.” 5 U.S.C. § 706. Thus, “*Chevron* turns the statutory scheme for judicial review of agency action upside down” and “cannot be reconciled with the APA[.]” While courts must respect the delegation of authority to agencies, consistent with the agency’s constitutional limits, “courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.”

In a concurring opinion, Justice Clarence Thomas wrote: “*Chevron* was thus a fundamental disruption of our separation of powers. It improperly strips courts of judicial power by simultaneously increasing the power of executive agencies.”

Three justices dissented, finding that the decision will have a major impact on agency work over the last 40 years and going forward, with Justice Elena Kagan writing: “Overruling *Chevron*, and thus raising new doubts about agency constructions of statutes, will be far more disruptive.”

If you have questions about how the Supreme Court’s decision in Loper Bright Enterprises v. Raimondo *might affect your business please contact the author or any member of Bodman’s* ***Environmental Law Group****. Bodman cannot respond to your questions or receive information from you without establishing an attorney-client relationship and clearing potential conflicts with other clients. Thank you for your patience and understanding.*

ENVIRONMENTAL LAW PRACTICE GROUP	**FREDRICK J. DINDOFFER |** *Co-Chair* 313-393-7595 fdindoffer@bodmanlaw.com
	NATHAN D. DUPES | *Co-Chair* 313-393-7590 ndupes@bodmanlaw.com
	ERICA J. SHELL 313-393-7548 eshell@bodmanlaw.com
	REBECCA EL BADAOUI 313-393-7545 relbadaoui@bodmanlaw.com