SCOTUS: Chevron, Lord Voldemort, and a Doctrine That Shall Not Be Named

May 3, 2023

On May 1, 2023, the U.S. Supreme Court agreed to decide the continued validity of the so-called *Chevron* doctrine. Almost 40 years ago, in *Chevron v. Natural Resources Defense Council,**[1]* the Supreme Court had established this doctrine, which holds that federal courts should defer to a federal agency's interpretation of an ambiguous statute as long as that interpretation is reasonable.

In granting a writ of certiorari to review the Fifth Circuit Court of Appeal's decision in *Loper Bright Enterprises, Inc. v. Raimondo, **[2]* the Supreme Court has agreed to examine the continued validity and scope of the *Chevron* doctrine. The decision could have major ramifications for federal agency power going forward in almost every major sector of the economy. **As we noted last year**, the Supreme Court has recently signaled both a reluctance to apply *Chevron* and a potential move away from the doctrine of judicial deference to administrative agencies generally. This potential movement away from *Chevron* has become so pronounced that judges in the Fifth and Tenth Circuits have even begun to describe *Chevron* as "the Lord Voldemort of administrative law, the case-which-must-not-be named."[3]The Supreme Court's decision to reconsider such a long-standing administrative law precedent may portend either a rejection or narrowing of *Chevron*, which would have significant effects on the ability of federal regulatory agencies to interpret ambiguous statutes going forward.

In *Loper,* a group of commercial fishing companies challenged a National Marine Fisheries Service (NMFS) rule that requires the companies to pay for the significant cost of on-board fishing monitors rather than have those costs borne by the NMFS. After the federal district court upheld the cost rule, the fishing companies appealed to the U.S. Court of Appeals for the D.C. Circuit. On appeal, a divided panel of the D.C. Circuit concluded that while the federal statute at issue clearly required commercial fishing boats to carry third-party observers who monitor compliance with a fishing management plan, the statute was silent about who was responsible for paying the significant cost of such monitoring. The majority concluded that under *Chevron,* the court should defer to the agency interpretation and rule, which required the commercial fishing industry to pay these monitoring costs since the agency interpretation was reasonable.

In the Supreme Court, the companies challenge the deference lower courts have shown to the agency rule under *Chevron*. Should the companies in *Loper* succeed, businesses that have relied on a federal administrative agency interpretation of a statute may have to reassess their reliance. Conversely, businesses currently restrained by agency interpretations previously shown deference by courts could have a significant basis to challenge those interpretations. Finally, national corporations that may currently be operating under a uniform administrative agency interpretation could potentially face increased compliance costs and differing court interpretations across jurisdictions if *Chevron* were to be overruled.

Loper will likely be argued in the fall with a decision to be issued in late 2023 or in 2024.

Please contact your Miller Canfield attorney or any of the authors to discuss these developments further.

[1] 467 U.S. 837 (1984).

[2] 45 F.4th 359 (5th Cir. 2022).

[3] *See, e.g., Cargill v. Garland*, 57 F.4th 447, fn. 10 (5th Cir. 2023) and case law cited therein. *See also Mexican Gulf Fishing Company v. United States Department of Commerce*, 60 F.4th 956, fn. 3, 976 (5th Cir. 2023).