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The Supreme Court's Deconstruction of the "Administrative State" - How the Diminishing Powers of Regulatory Agencies Affect Your Clients

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Dismantling of the Administrative State?

A 2013 dissent by Chief Justice Roberts:

- “The administrative state wields vast power and touches almost every aspect of daily life. The framers could hardly have envisioned today’s vast and varied bureaucracy, and the authority administrative agencies now hold over our economic, social and political activities.”



A 2024 dissent by Justice Sotomayor:

- “Today’s decision is a massive sea change. Litigants seeking further dismantling of the ‘administrative state’ have reason to rejoice in their win today, but those of us who cherish the rule of law have nothing to celebrate.”

Constitutional Separation of Powers



- **Article I:**
“All legislative powers herein granted shall be vested in a Congress of the United States”



- **Article II:**
“The executive power shall be vested in a President of the United States”



- **Article III:**
“The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may ... establish”

Executive Branch Agencies Engage in “Legislative” and “Judicial” Functions

Congress creates agencies to enforce federal statutes

Agencies adopt “legislative rules” (regulations) that interpret and apply their governing statutes

Agencies often interpret and enforce statutes through administrative “adjudications” (hearings conducted by ALJs)

5

Five Limits (or Potential Limits) on the Power of Agencies

A photograph of an American flag flying on a tall pole in front of a modern, multi-story building with many windows. The sky is blue with some clouds.

Non-delegation doctrine

Major questions doctrine

The fall of the *Chevron* doctrine

Potential fall of the *Auer/Seminole Rock* doctrine

Limits on administrative civil money penalties

6

Non-Delegation Doctrine

- **Delegations to agencies are constitutional so long as the statute provides**
 - “An intelligible principle to which” the agency “is directed to conform”
- ***FCC v. Consumers’ Research*, 2025 LX 241299 (U.S. Jun. 27, 2025)**
 - Congress did not violate the doctrine by allowing FCC designee to set service fees necessary to support “universal” phone service in the U.S.

Major Questions Doctrine

- Courts should not find there was an implicit congressional delegation of authority when an “agency asserts an enormous and transformative expansion of its regulatory authority by making a decision of vast economic and political significance”



- *West Virginia v. EPA* (U.S. 2022)
 - Clean Air Act did not implicitly authorize EPA to restructure the electricity industry

The Fall of *Chevron*



***Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024) (overruling *Chevron* doctrine)**

- Courts may not defer to an agency interpretation of the law simply because a statute is ambiguous
- Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority
- The judgment of the executive branch agency may help inform that inquiry (*Skidmore* deference)

Potential Fall of *Auer/Seminole Rock*

- *Auer v. Robbins*, 519 U.S. 452 (1997) (courts should defer to an agency’s interpretation of its own regulations “unless plainly erroneous or inconsistent with the regulation”)
- *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019) – court declines to overrule *Auer* (5-4 vote) but says *Auer* applies only if

Regulation is genuinely ambiguous

Agency’s interpretation is reasonable

Interpretation comes from authoritative personnel

Interpretation implicates agency’s expertise

Interpretation is not a post-hoc rationalization

Interpretation is not new and does not create unfair surprise



Limits on Administrative Civil Money Penalties



- *SEC v. Jarkesy*, 144 S. Ct. 2117 (U.S. 2004)
 - Statute allowing SEC to levy civil money penalties for fraud via an administrative hearing violates the Seventh Amendment right to a jury trial
- More than two dozen other agencies have statutes allowing similar proceedings

Effects on Your Company/Industry?



Opportunities

- **Multiple theories on which to challenge agency actions that adversely affect your company/industry**
- **Challenges are brought under Administrative Procedure Act (cheaper than most litigation)**



Risks

- **Agency rulemakings that may benefit your company/industry will take longer than they have in the past**
- **Competitors and others whose interests conflict with yours have multiple theories on which to challenge agency actions that benefit you (but you can defend your interests in court)**

Questions?

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