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IN THIS ISSUE

This article provides a useful update on the notable impacts that we've seen since the fall of Chevron and the establishment of the Loper Bright standard.

The Fall of Chevron: How the End of 40 Years of Precedent May Impact the Product Liability Practice

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On June 28, 2024, the Supreme Court ushered in a new era of federal administrative law by overruling Chevron, a case which had provided the framework for courts to interpret statutes administered by federal agencies for the past 40 years. The Chevron doctrine informed judicial review of agency interpretation of statutory language by requiring deference to such interpretations where: (1) a statute was ambiguous or silent as to the matter being interpreted; and, (2) the interpretation was a permissible interpretation of the statute. Now, in Chevron's place is the new Loper Bright doctrine which stems from Loper Bright Enterprises v. Raimondo, 603 U.S. 369, 369 (2024) (hereinafter "Loper Bright"). The Loper Bright doctrine requires courts to exercise independent judgment when deciding if an agency has acted within its statutory authority.

Just three days later, on July 1, 2024, the Supreme Court issued another blow to the changing administrative law landscape in their decision in Corner Post, Inc. v. Board of Governors Federal Reserve System, 603 U.S. 799, 804 (2024) (hereinafter "Corner Post"). There, the Court held that the statute of limitations to challenge final agency action under the Administrative Procedure Act ("APA") is no longer six years from the final action itself, rather six years from when a plaintiff is actually injured by that action. This decision essentially allows for an indefinite time frame in which final agency actions can be challenged which leaves agencies vulnerable to constant litigation.

The new Loper Bright standard and the decision in Corner Post have placed administrative law in uncharted territory but not necessarily to the benefit of businesses being regulated.

Out with the Old: Chevron and its Legacy

Cited in over 20,000 decisions, Chevron has been undeniably impactful. The Chevron case centered on the issue of whether the Environmental Protection Agency's ("EPA") decision to allow states to treat all pollution-emitting devices in the same industry group as if within a single "bubble" was based on a reasonable construction of the statute. The Court found that the EPA's definition of the term "source" was a permissible interpretation of the statute that sought to allow progress in reducing air pollution associated with economic growth. This conclusion was reached by reviewing the EPA's various interpretations of "source" over time which showed it was consistently viewed as flexible in the context of implementing policy decisions in a technical, complex area.

In Chevron, the Court more broadly held that where a statute is ambiguous, but a reasonable interpretation has been made by the administrator of an agency, a court cannot replace the agency's construction with its own interpretation of the statute. From this holding, the Chevron doctrine was born in which a two-step approach was adopted to review agency action:

1. Determine whether Congress had directly spoken to the exact question at issue; and,

2. If Congress had not spoken directly on the issue, upholding the agency's interpretation so long as it was a "reasonable" construction of the statute.

Where Congress had spoken directly to a certain issue or where the statute was not ambiguous, Congress's express language would control, and step two of the analysis need not be reached. However, if Congress had not spoken directly to the issue and the statute was ambiguous or lacking, the courts were to grant deference to an agency's reasonable construction of the statute. As a result, the Chevron doctrine allowed for vague statutes to be interpreted by those who regularly engaged in the subject of the statute (i.e. relevant agency) as opposed to by courts who were less familiar with the given topic. This led to an increase in the power administrative agencies wielded. However, the Loper Bright doctrine, no longer binding courts to agency interpretation, returned much of this power to the courts.

In With the New: The Loper Bright Doctrine

Loper Bright requires courts to conduct their own evaluation of a statute and decide whether an agency has acted within its authority. The main issue in Loper Bright was whether the Chevron doctrine should be overruled, and the Court answered in the context of a case dealing with the administration of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) by the National Marine Fisheries Service (NMFS). The MSA, first passed in 1976, is the primary law governing management of marine fisheries in United States federal waters. The NMFS has power under delegation from the Secretary of Commerce and is responsible for the management, protection, and conservation of living marine resources in and near the United States.

Ultimately, the Court held Chevron must be overruled. In reaching this conclusion, the Court cited three key supporting points. First, the Court asserted the deference afforded by Chevron prevents courts from exercising their Article III responsibility to adjudicate cases and controversies, and, thus, impinges on courts' Constitutional power to interpret the laws. Second, the Court states that the APA, in fact, "requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority" and, as a result, cannot be squared with the Chevron doctrine.[1] The Court reasoned the APA specifies courts will decide all relevant questions of law and interpret constitutional and statutory provisions, even those involving ambiguous laws.[2] The Court further reasoned this language "makes clear that agency interpretations of statutes—like agency interpretations of the Constitution—are *not* entitled to deference."[3] Finally, the Court addressed the matter of *stare decisis* and concluded that "the doctrine governing judicial adherence to precedent, does not

[1] *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 369 (2024).

[2] *See id.* (citing 5 U.S.C. § 706).

[3] *Id.*

require the Court to persist in the *Chevron* project."[4] In support of this, the Court asserts that Chevron has "proved to be fundamentally misguided" in that it "reshaped judicial review of agency action without grappling with the APA, the statute that lays out how such review works."[5] The Court held, for the above reasons, Chevron must be left in the past.

Loper Bright returned power to courts with regard to statutory interpretation mainly by asserting the APA requires the courts to exercise their independent judgment in making the assessment of whether an agency has acted within the limits of its delegated power. The majority in Loper Bright argued the text of the APA gives federal courts the power to do the following:

- Decide all relevant questions of law;
- Interpret constitutional and statutory provisions; and,
- Determine the meaning and applicability of terms of an agency action.

The Court asserts that, when combined, these powers mean courts must *not* take agency constructions of law at face value and instead need to draw their own independent conclusions.

The Court is ushering in a new era in which agency interpretations are no longer given default deference because of the special knowledge and position of such agencies to interpret Congress's meaning in enacting a statute. This decision does not mean all cases previously decided under the Chevron doctrine are overruled—those cases are still subject to *stare decisis*—but it places future agency actions in jeopardy. While the landscape of regulatory litigation will not change overnight, as Justice Gorsuch said in his concurrence of Loper Bright, the decision effectively put "a tombstone on Chevron no one can miss."[6]

The Effect of Loper Bright on Agency Authority

In the first six months following Loper Bright, it was cited more than 400 times.[7] As of February 2026, it has been cited in over 2,000 cases. Given how frequently Chevron was cited, it is unsurprising its successor is receiving the same attention. Many of these citations have been in state court cases which seek to grapple with whether to adopt the Loper Bright approach. State courts have reacted differently based on whether the case involves federal law or state-specific administrative standards are at play.[8]

With regard to federal applications, "early signs indicate that federal courts will be looking skeptically at agency actions—especially new agency rules…"[9] While federal courts must follow Loper Bright when it applies, the lack of additional

[4] *See id.* at 375.
[5] *Id.*
[6] *Id.* at 417. (Gorsuch, J., concurring).
[7] *See* Robin Kundis Craig, *The Impact of Loper Bright v. Raimondo: An Empirical Review of the First Six Months,* 109 MNLR 2671 (2025).
[8] *Id.*
[9] *Id.* at 2677.

guidance from the Supreme Court has led to a fractured approach in which many courts are seeking to determine, as a baseline, when Loper Bright is relevant.[10] Through such decisions, "[c]ourts have rebuffed arguments that *Loper Bright* empowers federal courts to excuse litigants' untimeliness, nullify various kinds of procedural waivers or exhaustion requirements, or ignore litigants' failure to qualify under statutory requirements."[11] However, federal agency requests for Chevron deference must be refused by federal courts.

There is concern that Loper Bright may impact federal agency authority beyond that previously afforded by Chevron.[12] For example, the Seventh Circuit has held that Loper Bright requires federal courts to "uphold agency regulations when Congress expressly delegated rulemaking authority to the agency."[13] Additionally, the Third Circuit has addressed agencies' rulemaking functions in holding that Loper Bright does not impact the analysis of the EPA's pesticide labeling authority under FIFRA.[14] In that case, the Court cited to Loper Bright which held courts alone must analyze a statute's meaning but that the meaning could be the agency is allowed to exercise a certain amount of discretion.[15] In the Third Circuit case, the Court found FIFRA is such a statute that empowers an agency to prescribe rules which fill out the open areas of a statutory scheme because FIFRA is express in its grant to the EPA Administrator to create regulations which carry out the statute.[16] Thus, some federal courts are taking the approach of deferring to agencies where there is an express grant of power to prescribe rules and fill gaps in the statutory scheme. While it is yet to be seen if this approach will be adopted across the board, the Third Circuit's holding seems to square Loper Bright's requirement of independent judicial review with the spirit of Chevron which, unless Congress had spoken directly on the issue, sought to defer to agencies who possessed specialized knowledge of the subject matter.

While, thus far, such decisions have maintained the authority of federal agencies, as courts continue to apply Loper Bright independently to determine agency authority, there is a chance the scope of agency authority decreases.[17] While past cases deferring to agency interpretations under Chevron will remain good law unless directly challenged, Loper Bright's impact may soon stretch beyond agencies' power to interpret statutes.

Compounding the Impact: Corner Post

Corner Post was decided on the heels of Loper Bright and will likely compound the destabilizing effect Loper Bright has had on the administrative state. Taken together, these cases open the door to a significant

[10] *Id.*
[11] *Id.* at 2705-06.
[12] *Id.* at 2716.
[13] *Id.* (citing *Midthun-Hensen v. Grp. Health Coop. of S. Cent. Wis.,* 110 F.4th 984 (7th Cir. 2024)).
[14] *Id.* at 2716.
[15] *Id.*
[16] *Id.*
[17] *See id.*

increase in regulatory challenges. While prior to Corner Post federal agency regulations were insulated from review six years after their publication, now they may be *challenged at any time* as any newly created entity now subject to the regulation or existing entity that suffers a first-time injury under the regulation will have grounds to challenge it.

In Corner Post, the Court was tasked with addressing whether, under the APA, a plaintiff's claim first accrues when an agency issues a rule or when the rule first causes the plaintiff harm. The APA section at issue, § 2401(a), states civil actions against the United States must be filed "within six years after the right of action first accrues."[18] The Court held this means "[a] claim accrues when the plaintiff has the right to assert it in court—and in the case of the APA, that is when the plaintiff is injured by final agency action."[19] In coming to this conclusion, the Court rejected arguments that APA claims should receive different treatment from other civil actions against the government. Instead, the Court emphasized a traditional interpretation of the term "accrues" from 1948 when § 2401(a) was enacted and presently has a "well-settled meaning."[20] Such an interpretation essentially creates an indefinite statute of limitations for claims against federal agencies.

Corner Post, in practice, allows for the challenging of federal agency regulations at nearly any time and such challenges will now be assessed according to the Loper Bright doctrine. While the nature of the impact depends on the number and type of lawsuits brought, there is no doubt agencies will likely be more cautious in rulemaking, decisions, and statutory interpretations.

The Role of Agencies Post-Chevron

Although agency interpretations no longer have Chevron deference, until a court overturns them, cases decided under Chevron are functioning rules that regulated entities must abide by. With the likely caution that agencies will exercise with regard to rulemaking and interpretations, agencies may still inform the law in a variety of ways, including:

1. Administering the law which allows agencies to control its meaning to an extent;
2. Using the executive influence to inform the legislative agenda and engage in the legislative process; and
3. Offering their expertise in drafting legislation.

A notable limitation of Loper Bright is that it is limited to federal agencies. However, if a state court has adopted Chevron deference in the past with regard to challenges to state agencies, it may become difficult for such courts to continue justifying this deference in the wake of federal changes.

[18] 28 U.S.C. 2401(a).
[19] *Corner Post, Inc. v. Board of Governors Federal Reserve System*, 603 U.S. 799, 804 (2024).
[20] *See id.* at 810.

As of February 2026, Loper Bright has been cited in over 170 state court cases. The majority of these (90+) are in Puerto Rico, but of the 50 United States, California cited Loper Bright most frequently. Given California's focus on environmental safety and, often, more stringent regulations, this does not come as a surprise. Of the state cases, only 10 have explicitly treated Loper Bright negatively. In some of those cases, the court declines to apply Loper Bright on the grounds that state law does not allow it and, until the state legislature changes the law, they cannot adopt Loper Bright's approach.[21] In others, the court merely declines to extend because they do not think it applicable in the circumstances.[22]

Ultimately, most of the debate seems to be over whether Loper Bright is relevant to states. Some states adopted Chevron and need to decide if the Supreme Court overruling Chevron automatically changes the state approach.[23] Overall, state court reactions have been dependent on "state law standards of review, whether federal law plays a role in the state court decision, and the state judges' respect for state agencies."[24] Generally, Loper Bright seems to be deemed more relevant when state cases involves federal law and less relevant with regard to state administrative law.[25] As the expanse of case law surrounding Loper Bright continues to build at the federal level, we anticipate it also will at the state level as state courts grapple with when the doctrine should even be considered.

Impact on OSHA, CPSC, and EPA

Loper Bright and Corner Post have not caused immediate change to OSHA and the Third Circuit's decision regarding FIFRA is promising, but the new statutory review standard and change to the statute of limitations prescribed by the APA leaves legal challenges likely. Challenges to OSHA, CPSC and EPA are not new, but in the post-Chevron world they have the potential for devastating impacts if successful. Notably, the Supreme Court declined to hear the Allstate Refractory case which sought a decision on whether the grant of power given to OSHA to create and impose any workplace standard it views as reasonably necessary was an unconstitutional delegation of legislative authority. In his dissent to the Court's decision to refuse to hear the case, Justice Thomas expressed that OSHA may be the largest delegation of authority to an administrative agency. Further, Thomas shares in the concerns of those who sought to bring the case: that such power is meant to be reserved solely for the legislature.

This is not the first, and is unlikely to be the last, challenge to OSHA's authority. The potential for OSHA's power to be diminished through such challenges poses a threat to the industries OSHA regulates. OSHA

[21] *See, e.g., Brookston Resources, Inc. v. Department of Natural Resources*, 243 N.E.3d 1127, 1138 (Ind. Ct. App. 2024).

[22] *See Kambon v. State*, 23 N.W.3d 576 (Minn. 2025).

[23] *See* Craig, *supra* note 7, at 2685.

[24] *Id.*

[25] *Id.* at 2687.

regulations not only aid in protecting workers from hazards, but they provide safe harbors for businesses and a set system of known rules which can be easily ascertained. A successful challenge to OSHA' s regulatory power would mean returning to a system of fragmented safety standards and a minefield of potential violations and lawsuits.

Similarly, CPSC and EPA regulations are also at risk. While the EPA's pesticide labeling authority from FIFRA has been addressed under Loper Bright, there are many statutes where the EPA has "filled in the blanks" which have not yet been confronted in the post-Chevron world, including the statute from Chevron itself. While such decisions will only lose force if directly challenged, Corner Post has expanded the time in which these challenges can be brought which means the stability of all industries is at risk.

Although a lack of sure regulations may appear as a 'win' to some as it creates a gray area to operate in, this gray area leaves regulated entities vulnerable. Agency regulations provide a standard and guide those who are bound to abide by them. Meeting such standards can act as a defense for regulated entities who are sued and protect both consumers and regulated entities from harm. Consistency also allows entities to know when they are compliant and when they are clearly breaking the rules. Without such a clear line, regulated entities may lack proper information on what the law requires and unknowingly fail to adhere to it. Regulated entities should stay apprised of developing challenges to agencies that regulate their industry, particularly OSHA and EPA, as it is anticipated that there will be an uptick in regulatory litigation because of the Loper Bright and Corner Post decisions. Returning to a patchwork system of regulatory law poses a significant risk to regulated entities and consumers alike.

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