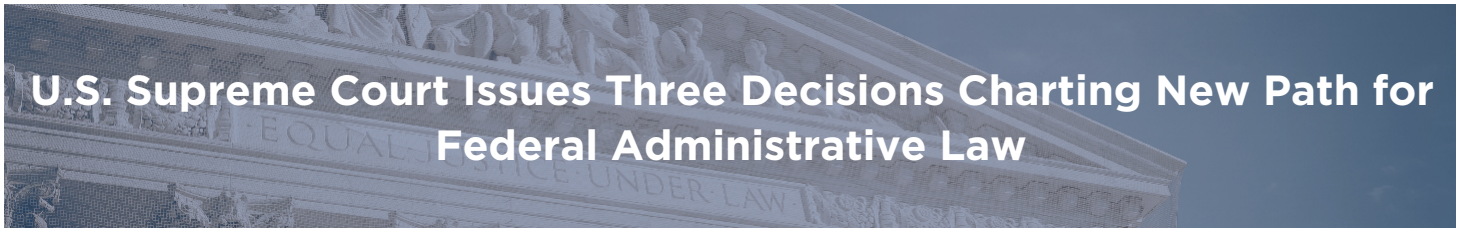

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Pittsburgh, PA and Washington, DC

Firm Alert

Chevron is overruled; right to jury trial in many agency enforcement actions is guaranteed; and claim accrual date for Administrative Procedure Act claims are fixed.

(by **Gary Steinbauer**, **Jess Deyoe** and **Joseph Schaeffer**)

In the span of five days, the U.S. Supreme Court issued three decisions with the potential to significantly alter the future of federal administrative law. These decisions, *Loper Bright Enterprises v. Raimondo*, No. 22-451, 603 U.S. — (2024) (*Loper Bright*) and *Securities and Exchange Commission v. Jarkesy*, No. 22-859, 603 U.S. — (2024) (*Jarkesy*), and *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, No. 22-1008, 603 U.S. — (2024) (*Corner Post*) are explained in more detail below. They are poised to have profound implications for federal agency regulatory and enforcement actions, particularly those involving federal agency actions under the major environmental and energy statutes.

In *Loper Bright*, *t*he Supreme Court has overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), a four-decades-old and oft-cited Supreme Court decision that granted federal administrative agencies deference when interpreting ambiguous statutory provisions. More recently, *Chevron* deference and the familiar two-step test it established has come under increasing scrutiny, with the Supreme Court itself not invoking the test since 2016. The Court's decision in *Loper Bright Enterprises v. Raimondo* is *Chevron's* formal death knell.

Chevron, decided in 1984, evolved into a pillar of federal administrative law. Its two-step framework for resolving ambiguities in agency-administered statutes is familiar to many regulatory attorneys and judges. It required courts reviewing an agency's statutory interpretations to ask, first, whether Congress had clearly spoken to the precise question at issue. If so, the Congressional intent controlled over any contrary agency interpretation. If not, *Chevron*'s second step required the court to defer to the agency so long as it offered a "permissible construction" of the statute, even if that construction was not the one the court would have reached on its own.

The petitioners in *Loper Bright* challenged an agency rule mandating that certain commercial fishing vessels pay for onboard observers. Prior to 2020, the federal government fully funded observer coverage, but federal funding later ceased, leading the petitioners to challenge the rule as unlawful. Both District Courts and Circuit Courts of Appeals ruled in favor of the federal agency, relying on *Chevron* deference after finding some ambiguity as to Congress's intent and deferring to the agency's "reasonable" interpretation of the underlying statute. The Supreme Court's acceptance of the challenges addressed in *Loper Bright* all but confirmed *Chevron's* demise. The sole question before the Supreme Court in *Loper Bright* was whether *Chevron* should be overruled or clarified.

Writing for the 6-3 majority, Chief Justice John G. Roberts Jr. issued a sharp rebuke of *Chevron*, laden with historical references and analysis. By requiring courts to defer to agency interpretation of ambiguous statutory enactments, the Court held that *Chevron* ran counter to the Congressional commandment in the Administrative Procedure Act (APA) for courts to "decide all relevant questions of law" and to Constitutional separation-of-powers principles. The Court held that it is a judge's obligation to determine what the law is, including determining statutory meaning in the face of ambiguity. *Chevron*, according to the majority, "fosters unwarranted instability in the law, leaving those attempting to plan around agency action in an eternal fog of uncertainty."

In overturning *Chevron* deference, the Court clarified that its decision in *Loper Bright* does not "call into question prior cases that relied on the *Chevron* framework." According to the Court, a prior decision's "mere reliance" on *Chevron*

doctrine is not enough for a court to overrule in the future, without an additional "special justification." The majority opinion also made clear that *Chevron* is survived by *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944), under which agency interpretations and opinions are entitled to respect consistent with "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control."

Justice Elana Kagan, writing for the three Justices in dissent, denied any contradiction of the *Chevron* doctrine with the APA, arguing that the statute does not compel the *de novo* statutory review required by the majority opinion. The dissent also cautioned that statutes passed during the four-decades of *Chevron* doctrine were done under the expectation that *Chevron* would guide interpretative authority between agencies and courts and, similarly, that rules issued during this timeframe would presume statutory ambiguities were the agencies' to reasonably resolve. Justice Kagan justified *Chevron* and emphasized the practical consequences (and in her opinion, significant problems) with having judges interpret ambiguous provisions in complex "scientific and technical" statutes, using several examples to support this view.

The *Loper Bright* decision represents a fundamental change in federal administrative law, particularly for stakeholders involved in federal environmental regulatory matters. This is particularly true when considered in conjunction with the Supreme Court's decision the day before in *Jarkesy*, where Justice Roberts, again writing for the majority, held that the Seventh Amendment requires agencies to prosecute common-law forms of action in federal courts, where juries are available, instead of in administrative tribunals, where they are not. These twin decisions reset (some may argue upset) the balance of power between courts and federal agencies implementing regulatory statutes, like the major federal environmental laws. And given the Supreme Court's decision in *Corner Post*, which held that an Administrative Procedure Act claim accrues when the injury occurs, many regulations once thought beyond challenge may become susceptible to attack.

The impact of the *Loper Bright, Jarkesy*, and *Corner Post* decisions on federal environmental and energy regulatory efforts will unfold in the coming months and years. But it seems assured that federal courts now are the sole arbiter of whether a federal agency's action aligns with the underlying statute, without regard or deference to the federal agency's interpretation of Congressional intent and while according "due" respect to the agency based on *Skidmore*.

If you have questions about the *Loper Bright, Jarkesy*, and *Corner Post* decisions or their implications for your business, please contact Gary E. Steinbauer 412-394-6590 or **gsteinbauer@babstcalland.com**, or Jessica Lynn Deyoe at 202-853-3489 or **jdeyoe@babstcalland.com**, at Joseph V. Schaeffer at 412-394-5499 or **jschaeffer@babstcalland.com**.