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Loper Bright and Its Effect on Environmental Law

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Loper Bright Enterprises, et al. v. Raimundo, 144 S.Ct. 2244(2024)

- ***Loper Bright v. Raimundo* overrules *Chevron* deference!**
 - “Watershed decision”
 - “Will significantly impact judicial review of agency decisions for years to come!”
- **First, some basic terminology:**
 - ***Statute***: these are the laws passed by Congress and signed by the President. Often statute are broad and sometimes vague.
 - ***Regulations***: these are also called “rules” and sometimes “orders.” These are rules drafted and implemented by federal agencies to implement the statutes that Congress enacted. These can be very specific. They derive their authority from the statute that gives the agency the power to implement them.
- **Second, what is *Chevron* deference?**

Chevron: Its Significance and Context

- *Chevron* has been the foundation of Administrative Law for 40 years
- “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.”
- “In such a case, a court **may not** substitute its own construction of a statutory provision for a **reasonable interpretation** made by the administrator of an agency.”

CHEVRON U. S. A. INC. *v.* NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 82–1005. Argued February 29, 1984—Decided June 25, 1984*

The Clean Air Act Amendments of 1977 impose certain requirements on States that have not achieved the national air quality standards established by the Environmental Protection Agency (EPA) pursuant to earlier legislation, including the requirement that such “nonattainment” States establish a permit program regulating “new or modified major stationary sources” of air pollution. Generally, a permit may not be issued for such sources unless stringent conditions are met. EPA regulations promulgated in 1981 to implement the permit requirement allow a State to adopt a plantwide definition of the term “stationary source,” under which an existing plant that contains several pollution-emitting devices may install or modify one piece of equipment without meeting the permit conditions if the alteration will not increase the total emissions from the plant, thus allowing a State to treat all of the pollution-emitting devices within the same industrial grouping as though they were encased within a single “bubble.” Respondents filed a petition for review in the Court of Appeals, which set aside the regulations embodying the “bubble concept” as contrary to law. Although recognizing that the amended Clean Air Act does not explicitly define what Congress envisioned as a “stationary source” to which the permit program should apply, and that the issue was not squarely addressed in the legislative history, the court concluded that, in view of the purpose of the nonattainment program to improve rather than merely maintain air quality, a plantwide definition was “inappropriate,” while stating it was mandatory in programs designed to maintain existing air quality.

Held: The EPA’s plantwide definition is a permissible construction of the statutory term “stationary source.” Pp. 842–866.

Loper Bright Overrules *Chevron* Deference

Chevron is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires. Careful attention to the judgment of the Executive Branch may help inform that inquiry. And when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it. But courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.

Because the D. C. and First Circuits relied on *Chevron* in deciding whether to uphold the Rule, their judgments are vacated, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

- June 28, 2024, 6-3 Decision
- Majority Opinion (Roberts)
- Courts:
 - “must exercise independent judgment”
 - “may seek aid from [agency] interpretations”
- But “**may not defer** to an agency interpretation . . . simply because a statute is ambiguous” 144 S.Ct. 2273

Loper Bright and Agency Fact-finding

- “Section 706 [of the APA] *does* mandate that judicial review of agency policy-making and fact-finding be deferential.” 144 S.Ct. at 2261 (emphasis in original).
- Section 706 provides:

“The reviewing court shall—

...

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, and abuse of discretion or otherwise not in accordance with law;

...

(E) unsupported by substantial evidence

5 U.S.C. Section 706.

Loper Bright and Legislative Delegations

- “[W]hen a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it.” 144 S.Ct. at 2273.
- Court must “independently interpret the statute” “fixing the boundaries of [the] delegated authority.” 144 S.Ct. at 2263.
- Court must ensure that agency “has engaged in ‘reasoned decision-making’ within those boundaries.” *Id.*

Loper Bright What Does It Mean to Me?

- *Loper Bright* does “not call into question prior cases that relied on the Chevron framework.” 144 S.Ct. at 2272.
- Before *Loper Bright*, there were very few court cases involving the Federal Aviation Administration that explicitly relied on *Chevron*.
- The U.S. Supreme Court had not itself applied Chevron in deciding a challenge to agency regulations in nearly a decade.
- Recent decisions articulating and applying the “major questions doctrine,” including *West Virginia v. EPA*, limit the authority of federal agencies to regulate on issues of “national political or economic significance” absent clear authorization from Congress.

Deference to Agency Decisions after *Loper Bright*

- **After *Loper Bright*, courts will still give deference to agency decisions when:**
 - There are mixed questions of law and fact;
 - When the agency is within the boundaries of the authority delegated to it by Congress, subject to the court ensuring that the agency has engaged in “reasoned decision-making.”
- **Courts will still give agencies the benefit of the doubt, they just will not be required to *defer* to the agency’s decisions.**

Questions to Ask Yourself

- In determining if a particular order/regulation/policy will be affected by *Loper Bright*, here are some questions to ask yourself.
 - (1) *What statute does the agency rely upon as the authority for its order/regulation/policy?*
 - (2) *Does the statute specifically delegate to the agency the authority to make that order/regulation/policy?*
 - (3) *Is the statute silent or ambiguous on the specific issue?*
 - (4) *Is the agency's interpretation of the statute a "reasonable" interpretation?*