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ALERT

SCOTUS Overrules *Chevron* and Opens Door to More Challenges Under APA: Environmental Law Implications of *Loper Bright* and *Corner Post*

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The U.S. Supreme Court issued two opinions at the end of its term impacting environmental law. In *Loper Bright Enterprises v. Raimondo,* the Court held that courts must exercise independent judgment when determining if an agency acted within its statutory authority, overruling the 1984 decision in *Chevron U.S.A. Inc. v. Natural Resources Defense Council,* which directed courts to defer to an agency's interpretation of ambiguous statutory language, so long as the agency's interpretation was "permissible." In *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, the Court held that the statute of limitations applicable to many agency rule challenges under the Administrative Procedure Act (APA) is more flexible than previously thought and will allow certain challenges previously thought to be time-barred. These two decisions change the regulatory landscape, and entities need to evaluate how these changes will impact them. Additional information about these two decisions and potential ramifications for environmental law are discussed briefly below.

Loper Bright Enterprises v. Raimondo

The days of *Chevron* deference are over. *Loper Bright* now obligates Federal courts to, in every administrative agency statutory interpretation case, "use every tool at their disposal to determine the *best* reading of the statute[.]" *Loper Bright Enterprises v. Raimondo*, No. 22-1219, slip op. at 23 (2024) (emphasis added). Broadly speaking, under *Chevron*, an agency's interpretation of an

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ambiguous statute received deference if the agency's interpretation was "permissible," even if a court did not think it was the best interpretation. *Loper Bright* tells us that "statutes, no matter how impenetrable, do—in fact, must—have a single, best meaning." *Id.* at 22.

Chevron Deference

In *Chevron*, the Court considered whether the U.S. Environmental Protection Agency (EPA) had authority under the Clean Air Act to define a "stationary source" as plantwide. The Court found that Congress did not explicitly define a "stationary source," and held that EPA's plantwide definition was a permissible construction of the ambiguous statutory term "stationary source." Under this deferential standard, the Court did not have to determine if EPA's interpretation was the "best" or most accurately reflected congressional intent – it was enough that the interpretation was "permissible."[1]

Chevron created a two-part test for judicial review of an agency's interpretation of statutes. First, courts determined if Congress had spoken to the precise question at issue using the traditional principles of statutory interpretation. If the statute was unambiguous, the court would follow the unambiguously expressed intent of Congress. Second, if the statute was ambiguous, the court would defer to the agency's reasonable interpretation of the statute.

A review of case law shows that agencies frequently were successful in defending their statutory interpretations when *Chevron* deference was applied, particularly in the District Courts and the Circuit Courts of Appeal. Prior to overruling *Chevron*, the Supreme Court had identified paths around *Chevron* deference, most notably the "major questions doctrine." In *West Virginia v. EPA,* 597 U.S. 697 (2022), the Court held that agencies would need to show clear congressional authorization for any action that (in a court's view) impacted an issue of major national significance. In other words, merely pointing to a permissible construction of an ambiguous statute is insufficient when major national questions are involved. With *Chevron* overruled, agencies must convince the court that their actions are authorized under the "best" reading of the statute regardless of whether the question presented is one of national significance or not. However, *Loper Bright* appears to acknowledge that an agency's interpretation can help to inform the court, as discussed below.

The Post-*Chevron* Landscape

By overruling *Chevron*, *Loper Bright* has created many questions. First, what weight will be given to an agency's interpretation in future litigation? Chief Justice Roberts explains in *Loper Bright* that there are situations in which agency interpretations are due "respect," to "inform the judgment of the Judiciary," rather than "supersede it" and that "careful attention to the judgment of the Executive Branch may help inform" statutory interpretation questions. *Loper Bright*, slip op. at 9, 35. This form of "deference" or "respect" is referred to as "*Skidmore* deference," *see Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). Notably, agency interpretations lose their claim to *Skidmore* "respect" if they are not consistent with prior agency interpretations of the same statute. This has practical implications for agencies, including those that administer environmental laws like EPA, which may seek to revise statutory interpretations of different presidential administrations.

A second question is, how broadly will the effects of *Chevron's* overruling be felt? An important limitation on *Chevron* was that it only applied in cases where an agency's interpretation of a *statute* was in question. In such cases, agencies will face a greater burden in future litigation. However, there are, and will continue to be, cases in which the interpretation of a statute is not raised by either side – often, because the case does not implicate the outer limits of an agency's regulatory authority or its interpretation of statutory terms. When statutory interpretation questions are not raised, courts look to whether the agency "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action, including a rational connection between the facts found and the choice made." *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983) (internal quotations omitted). Courts will apply the framework of *State Farm* to determine if an agency's action is arbitrary and capricious, and, thus, violates the APA.

A third question is, what impact will *Loper Bright* have on previously resolved matters? Many cases were decided during the past 40 years based, in large or small part, on *Chevron* deference. Is it possible to pull the tablecloth off the administrative law table and leave the cups, plates, and candlesticks standing? The *Loper Bright* majority insists it can be done by invoking the principle of *stare decisis*. "Mere reliance on *Chevron*," the majority opinion says, is not grounds for overruling a prior holding; something more – a "special justification" to overrule a longstanding precedent – is needed. *Loper Bright*, slip op. at 34. But as the *Loper Bright* dissenters ask: if "special justification" can be found to overrule *Chevron* – a 40-year-old cornerstone of administrative law – how hard could it be to find comparable "special justifications" to overrule other cases that relied on the now-overruled *Chevron* doctrine? *Id.*, dissent of Kagan, J., at 31.

Corner Post, Inc. v. Board of Governors of the Federal Reserve System

The Court held in *Corner Post* that in certain circumstances the limitations period, i.e., how long a party has to initiate legal proceeding against an agency, starts when a party is injured rather than when the final agency action occurred. This may enable some suits to be filed that would have been time-barred if the clock started when the agency action was finalized.

In 2010, Congress tasked the Board of the Federal Reserve System (Board) with ensuring that the fees that merchants pay to banks each time a debit card is used (known as "interchange fees") were "reasonable and proportional to the cost incurred by the issuer with respect to the transaction." 15 U.S.C. § 1693o-2(a)(3)(A). The Board issued a rule in 2011 capping these fees.

In April 2021, about 10 years later, two trade associations challenged the rule under the APA for setting fee caps that were too high. The Board moved to dismiss the case on statute of limitations grounds, arguing that the suit was time-barred under the six-year statute of limitations that applies to APA claims, 28 U.S.C. § 2401 (a). In response, the trade associations added a third plaintiff, Corner Post, a truck stop that first opened in 2018. Nevertheless, the district court dismissed the suit as time-barred, concluding that Corner Post's statute of limitations began running in 2011 when the Board finalized the fee cap regulation at issue. The Eighth Circuit affirmed, and Corner Post appealed.

The Court considered whether a plaintiff's claim under the APA "first accrues" under Section 2401(a) when an agency issues a final rule, or when a final rule first causes harm to the plaintiff. Pursuant to Section 2401(a), civil actions against the United States "shall be barred unless the complaint is filed within six years after the right of action first accrues." Since Corner Post was not in business in 2011 when the fee cap rule was implemented, it argued that the statute of limitations did not begin running for it until 2018, when it opened its business and was first allegedly harmed by the rule.

The Supreme Court sided with Corner Post, concluding that an APA claim does not accrue for purposes of Section 2401(a)'s six-year statute of limitations until the plaintiff is injured by final agency action. *Corner Post, Inc. v. Board of Governors of Federal Reserve System*, No. 22-1008, slip op. at 1 (2024). The Supreme Court relied on two main justifications. First, the Court pointed to other portions of the APA. Specifically, 5 U.S.C. § 702 provides that a person who suffered injury by agency action is entitled to seek judicial relief, while 5 U.S.C. § 704 provides that a plaintiff may only seek review of a final agency action. Taken together, the Court read these two provisions to mean that a claim "first accrues" under Section 2401(a) only when the plaintiff suffers an injury from a final agency action, not simply when the agency takes final action. *Id.* at 4-6. Second, the Court stated that the historical interpretation of the term "accrues" supports its conclusion. *Id.* at 6-9.

Although *Corner Post* could potentially pave the way for challenges to decades-old agency actions, its impacts are limited by a few factors.

First, Section 2401(a) is a default statute of limitations for actions brought against the United States. It has been held to apply in many instances where a statute does not specify a limitations period, including the APA and also for certain claims under the Endangered Species Act. *Corner Post*, dissent of Jackson, J., slip op. at 7. The default established in Section 2401(a) is often superseded by limited time frames for filing specific causes of action under other statutes, including many environmental statutes. For instance, under the Clean Water Act, a plaintiff must bring suit within 120 days from the date of various agency actions, including, for instance, the promulgation of a standard of performance related to the discharge of pollutants or the issuance or denial of a national pollutant discharge elimination system permit. 33 U.S.C. § 1369(b). In such cases, a plaintiff would need to adhere to the statute-specific requirements, rather than Section 2401(a). Similarly, challenges to EPA actions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Toxic Substances Control Act (TSCA) that were subject to notice-and-comment rulemaking must be brought within 60 days of the "entry of such order" (as further defined by regulation) based on 7 U.S.C. § 136n(b) and 15 U.S.C. § 2618, respectively.

Second, *Corner Post* will only affect a business or entity that is outside the six-year time frame from the date of the final agency action but incurs an injury that forms the reason to challenge the action.

Last, but not least, *Corner Post* will only impact the time in which a litigant can assert a "facial challenge" to an agency action, i.e., an argument that an agency action is invalid even if an agency has not yet brought an enforcement action against the party. Entities have always been able to mount an "as-applied challenge" in response to an enforcement action against them. *Corner Post* slip op. at 20-21.

Conclusion

Corner Post will not result in facial challenges to every existing agency rule, just as *Loper Bright* will not reopen every major environmental law holding or make it impossible for agencies to prevail. But both have changed the underpinnings of administrative law in important ways. Regulated entities should ensure that their strategies are updated accordingly and carefully consider the new framework in evaluating potential opportunities and risks.

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[1] *Chevron*, 467 U.S. at 866. While the Court used the word "permissible" in the holding of *Chevron*, it also used the term "reasonable" interchangeably in its discussion. *See, e.g., id.* at 865 ("[T]he Administrator's interpretation represents a reasonable accommodation of manifestly competing interests and is entitled to deference[.]"); *Edelman v. Lynchburg Coll.*, 535 U.S. 106, (2002) ("[U]nder our decision in *Chevron*, the question ... [becomes] whether the agency's [position] is based on a permissible construction of the statute, or, in other words, whether the agency's position is reasonable[.]") (O'Connor, J., concurring) (internal citations and quotations omitted).