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U.S. SUPREME COURT

Supreme Court could limit agency power after agreeing to reconsider Chevron deference

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

MAY 1, 2023, 11:51 AM CDT

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A Chevron oil refinery at night in Salt Lake City in February 2015. Image from Shutterstock...

(<https://www.shutterstock.com/image-photo/salt-lake-city-usa-february-20-258376067>).

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The U.S. Supreme Court has agreed to consider overruling a 1984 decision that established Chevron deference—the principle (<https://www.abajournal.com/news/article/chemerinsky-remaining-rulings-to-address-administrative-state-stare-decisis>) that federal courts should defer to reasonable federal agency views when Congress passes ambiguous laws.

The Supreme Court agreed to consider the issue when it granted cert (https://www.supremecourt.gov/orders/courtorders/050123zor_1an2.pdf) Monday in *Loper Bright Enterprises v. Raimondo*. Loper Bright Enterprises and other petitioners are challenging a federal regulation that requires fishing vessels on national waters to “foot the bill for the salaries of the monitors they must carry” under federal law.

The estimated cost amounts to about 20% of the vessel owners’ income, according to the cert petition.

Chevron deference is based on the 1984 Supreme Court decision *Chevron USA Inc. v. Natural Resources Defense Council*. The Supreme Court agreed to consider (https://www.supremecourt.gov/DocketPDF/22/22-451/246256/20221110145441811_2022-11-10%20Loper%20Bright%20Cert%20Petition%20FINAL.pdf) the second question of the cert petition, which asks whether the Supreme Court should overrule *Chevron* “or at least clarify” that agency interpretations are not entitled to deference in some instances of “statutory silence.”

Steve Vladeck, a professor at the University of Texas School of Law, told CNN (<https://www.cnn.com/2023/05/01/politics/supreme-court-chevron-deference-conservatives-power-of-agencies/index.html>) that a decision overturning Chevron deference “will give courts more power—and the executive branch less—on everything from environmental regulation to immigration to public health to meat inspections to telecommunications policy.”

Justice Neil Gorsuch has previously indicated that he sees “serious questions” about the Chevron doctrine’s constitutionality and its compatibility with the Administrative Procedure Act. He expressed his views (<https://www.abajournal.com/news/article/supreme-court-rules-on-federal-regulator-power-in-case-on-auer-deference>) in a 2019 concurrence that was joined by Justice Clarence Thomas and Justice Brett Kavanaugh.

The dispute in the Loper Bright Enterprises case concerns a federal law that expressly authorizes fishing vessels to pay for federal monitors “only in three narrow circumstances inapplicable here, and even then, subject to strict caps on how financially onerous the payment requirement can be for domestic vessels,” the cert petition said.

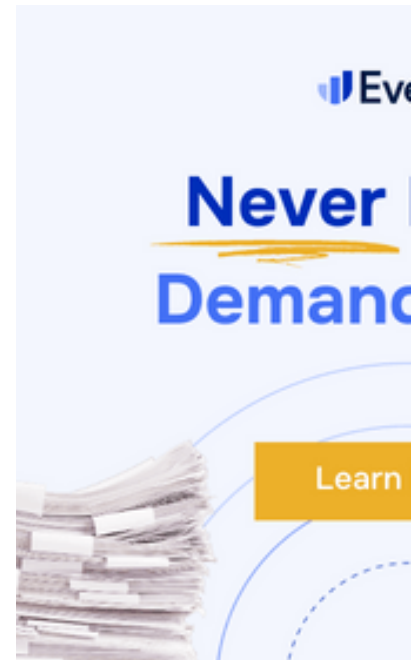
“In light of those clear and clearly limited authorizations, the agency’s claimed power to impose payment requirements on other domestic vessels unburdened by statutory caps should have been a complete nonstarter,” according to the cert petition.

Just because the law authorized vessels to pay for the monitors in some instances, it does not mean that there is an ambiguity requiring deference to an agency determination that vessels must pay for the monitors in other instances, according to the cert petition.

The fishermen are represented by former U.S. Solicitor General Paul Clement and lawyers from the Cause of Action Institute, which bills itself (<https://causeofaction.org/about>) as an oversight group advocating for economic freedom and limited government.

In a May 1 press release (<https://causeofaction.org/supreme-court-to-hear-fishermens-chevron-challenge>), Clement said Chevron deference “has enabled the widespread expansion of unchecked executive authority.”

The SCOTUSblog case page for *Loper Bright Enterprises v. Raimondo* is here (<https://www.scotusblog.com/case-files/cases/loper-bright-enterprises-v-raimondo>).



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