NGFA
TRANSFORMING AMERICA'S HARVEST ™

Chevron Deference

NGFA Board of Directors Meeting

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Supreme Court Overturned *Chevron* Deference

- The precedent, *Chevron* *v. Natural Resources Defense Council*, initially helped the Reagan administration fend off challenges from environmentalists.

- For over 40 years, when courts have had to interpret ambiguous statutes resulting from agency rulemaking, they looked to "*Chevron* deference" to decide how much weight to give to the executive branch's interpretations. Historically, courts have deferred to agencies' "reasonable" interpretations because of their expertise, experience, and political accountability in resolving statutory ambiguity.

- Several members of the Supreme Court's current majority criticized the so-called *Chevron* deference, or suggested that judges should be reluctant to find ambiguity in federal statutes and therefore assert more authority over regulatory agencies.

Impact Now That *Chevron* is Overturned

- The fall of *Chevron* in *Loper Bright Enterprises v. Raimondo, Secretary of Commerce,* will lead to a new era in which courts will serve as the final arbiters of statutory interpretation, as Chief Justice Roberts and the Court‘s majority believe was intended by the Administrative Procedure Act (APA).

- Decades of deference granted to federal regulators, which impact the ability of federal agencies to interpret statutes, promulgate binding regulations and issue sub-regulatory guidance, will be called into question and limit the ability of federal agencies to act when Congress fails to address unforeseeable and unknown complexities in a statutory scheme.

- However, it does not immediately change any agency regulation but may spar far reaching administrative actions. Duties under existing standards continue.

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- The theory underlying the deference afforded agencies in *Chevron* is that experts who work within federal agencies are often better attuned to the impact of new laws and how they should be implemented within the context of specific industry practices, policies and trends.

- The decision is sure to embolden prospective plaintiffs who feel that various federal agencies have been operating beyond the confines of their statutory authority.

- The uncertainty lies with the results of the litigation and the impact that it could have on a wide range of issues such as employment/labor, environment, treasury, food safety, energy, securities, etc.

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- It is also possible that courts will revisit new challenges to existing rules in litigation stemming from enforcement actions by agencies whose interpretations previously passed judicial review under *Chevron.*

- One important limitation of *Loper* is that it only impacts federal agencies. While *Loper* does not expressly impact state agencies, to the extent state courts have adopted *Chevron*-like deference in adjudicating challenges to the state's agency actions in the past, it may become more difficult for those courts to continue justifying such deference, with the traditional federal persuasive authority no longer available to cite as support for their approach.

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- *Loper* may mark an end to agencies swinging back and forth on regulations when a new administration of a different political party enters office. Obviously, the official end of *Chevron* deference may narrow an agency's policymaking options, but note that rescinding an existing rule essentially requires the same steps under the APA that passing a new one does. Courts will no longer rely on *Chevron* Deference for the agency in case such a rule recission is challenged under the APA.

- One of the signature regulatory innovations of the former Trump administration was the "one in, two out" mandate of Executive Order 13771, to the effect that for every one new regulation issued, at least two prior regulations must be identified for elimination. President Biden rescinded EO 13771 on his first day in office, but a similar order is likely to return should a new Trump administration take office.