Transportation & Logistics Regulation Post-*Chevron*

By Jonathan R. Todd & Robert Naumoff

The United States Supreme Court recently brought to a close forty years of "*Chevron* deference" and its guidance for legal interpretation of certain federal agency decision-making authority. In two instances, the United States Congress wasted no time in exploring the impact of this decision on agencies with jurisdiction over transportation and logistics operations. This article explains how the tangible impact in a post-*Chevron* world is far more nuanced than a wholesale change to the power of the Executive Branch.

On July 10, 2024, less than two weeks after the Supreme Court decision overturned *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 47 U.S. 837, two House chairmen began a letter-writing campaign to examine the decision's fallout.

Letters signed by Transportation and Infrastructure Committee Chairman Sam Graves (R-Mo.), together with Oversight and Accountability Chairman James Comer (R-Ky.), were issued to Transportation Secretary Pete Buttigieg and Homeland Security Secretary Alejandro Mayorkas, as well as other cabinet secretaries. Those letters argue that an expansive "administrative state" emerged after *Chevron* under which the Judicial Branch "abdicated" its role by "enabling" the Executive Branch to grow all too powerful and "usurp" the Legislative Branch.

In a separate press release, the chairmen summarize the letters by requesting that the secretaries "send any information about legislative rules proposed or promulgated, agency adjudications initiated or completed, enforcement actions brought by agencies, and agency interpretive rules proposed or issued since January 20, 2021." The statement also requests "information about any judicial decisions to which agencies have been party since the 1984 *Chevron* decision." Information requests for each respective agency were largely identical. A deadline of July 23, 2024, was requested.

Chevron Deference Background and Why It Mattered

In *Chevron*, the question before the court was essentially whether the Environmental Protection Agency acted appropriately within its discretion as it applied amendments to the Clean Air Act. The court held that judicial review of an agency's decision-making requires a two-part process. First, courts must determine whether legislative intent is unambiguously clear on the face of the respective statute or through legislative history.

If this is so, then the legislative intent governs the permissibility of an agency's interpretation. Second, if legislative intent is ambiguous then courts must give deference by examining the reasonableness of the agency's interpretation, as if the agency were expert in its field, rather than itself issuing a judicial interpretation. As a result, courts following *Chevron* could not exercise independent judgement when reviewing the propriety of agency statutory interpretations.

Loper Eliminates *Chevron* Deference and Why It Matters

The case that challenged *Chevron* deference was this year's *Loper Bright Enters. v. Raimondo* (2024 U.S. LEXIS 2882). *Raimondo* involved a federal agency known as the National Marine Fisheries Services ("NMFS") and its finding that fishing vessels operating within the economic area of the United States must pay for federal observers pursuant to the Magnuson-Stevens Act.

In its holding, the Supreme Court specifically found that a lower court's use of *Chevron* deference was an improper delegation to the Executive Branch of the judiciary's constitutionally-mandated responsibility of statutory interpretation. The court's ruling aims to correct that perceived error of Chevron by reinstating the judiciary's obligation to exercise "independent judgement" in the interpretation of statutes and resolving ambiguities. As such, courts may still consider an agency's interpretation of a statute when making rulings, but those agency interpretations are no longer dispositive.

Where Transportation & Logistics Operations Go From Here

Raimondo overrules the long-standing "*Chevron* deference" by declaring that when confronted with ambiguous statutory language, the role of interpreter rests firmly with the courts and not the agencies. The high court held that, while agency statutory interpretation can be considered, the framers of the Constitution "anticipated that courts would often confront statutory ambiguities and expected that courts would resolve them by *exercising independent legal judgement*" (emphasis added). Chevron deference as a default legal principle is no longer the law of the land.

The concrete effects immediately following *Raimondo* will not be quite as apparent as the Congressional letter writing campaign. Prior rulings that relied upon *Chevron* remain good law until subsequent challenge. Even where there are narrow legal challenges to existing or new agency decisions, a court may still consider agency statutory interpretations and may ultimately choose to rely upon the same. The difference for the first time in forty years is that today courts must exercise their own independent judgement in that process.

Also, while express delegation by Congress is permissible and must be respected by the courts, we can surely expect to see stronger challenges of whether agencies exceeded the scope of their delegation during enforcement or rulemaking activities, and we have already begun to see regulated parties proactively raise the *Raimondo* decision with respect to forward-looking interpretations far in advance of litigation. Collectively, these effects may lead to a degree of "venue shopping" as would-be plaintiffs seek favorable outcomes from a newly independent-minded judiciary.

We know all too well that transportation and logistics are heavily regulated sectors with a wide range of stakeholders. Interested parties in any agency action include not only the immediately regulated parties, such as for-hire carriers and transportation intermediaries, but also the private carriers and beneficial cargo owners who must comply with regulation and may bear enforcement.

For now, the post-*Chevron* world means that we stay the course in dutifully complying with the letter of the law and regulation — understanding that new avenues for challenging agency discretion are now available.

Jonathan Todd is Vice Chair of the Transportation & Logistics Practice Group at Benesch Law. He may be reached at 216-363-4658 or jtodd@beneschlaw.com. Robert Naumoff is Of Counsel in the Practice Group. He may be reached at 614-223-9305 or rnaumoff@beneschlaw.com.