CLIENT ALERTS & INSIGHTS

Transportation & Logistics Regulatory Agencies After the Fall of “Chevron Deference”

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Authors: 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 specific federal agency decision-making authority.

In two instances, the United States Congress wasted no time exploring this decision's impact on agencies with jurisdiction over transportation and logistics operations. This article explains how the tangible effect on 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, two Congressional 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 U.S. DOT Secretary Buttigieg and U.S. DHS Secretary 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 Jan. 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.

Why Chevron Deference Mattered

The case initially at the heart of this issue was 1984's *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.,* 47 U.S. 837. In Chevron, the question before the Court was 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 so, 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 an expert in its field rather than itself issuing a judicial interpretation. As a result, courts following Chevron could not exercise independent judgment when reviewing the propriety of agency statutory interpretations.

How Loper Eliminated Chevron Deference

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 under 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 judgment" in interpreting 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.

What Transportation & Logistics Operation Do Now

Raimondo overrules the long-standing "Chevron Deference" by declaring that when confronted with ambiguous statutory language, the interpreter's role rests firmly with the courts, not the agencies. The 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 judgment"* (emphasis added). Chevron Deference, as a default legal principle, is no longer the law of the land.

The concrete effects immediately following Raimondo will be less apparent than 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 ultimately choose to rely upon them. The difference for the first time in forty years is that today, courts must exercise their independent judgment 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. Collectively, these effects may lead to a degree of "venue shopping" as 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 immediately regulated parties such as for-hire carriers and transportation intermediaries, private carriers and beneficial cargo owners, who must comply with regulations 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 Benesch's Transportation & Logistics Practice Group. He can be reached at 216.363.4658 or jtodd@beneschlaw.com.

Robert Naumoff is Of Counsel in the Group. He can be reached at 614.223.9305 or rnaumoff@beneschlaw.com.