The Death of the Chevron Deference and its Repercussions for the American Legal System

By Michael Krensavage

This summer, the Supreme Court made a variety of rulings that attracted national attention, and in some cases outrage, due to their significant potential for repercussions. *Snyder v. United States* legalized forms of political corruption,[1] *Trump v. United States* empowered presidents against prosecution, and *City of Grants Pass v. Johnson* expanded the criminalization of homelessness.[2] Each ruling holds significant repercussions for the future of American law and society, but the case with the potential to impact the widest variety of areas is *Loper Bright Enterprises v. Raimondo*, which was decided on June 28th, 2024. The ruling—6-2 along partisan lines in favor of Loper Bright Enterprises—overturned the Chevron deference, a precedent that emerged from the Supreme Court's 1984 landmark ruling in *Chevron v. Natural Resources Defense Council*. The Chevron deference grants federal agencies the power to interpret and apply the law in ambiguous situations, essentially entrusting these federal agencies (not the courts) with the micromanagement of the laws that Congress creates. When determining the application of a law enforced and overseen by a federal agency, it is thus not the responsibility of any judge to provide their own interpretation of a statute; rather, they must defer to the interpretation of the agency as long as said interpretation is "reasonable."[3] Since its inception in 1984, the Chevron deference has become integral to American law, having been cited over 18,000 times by federal courts.[4]

While it stood, the Chevron deference provided the American legal system with several practical benefits. Firstly, it ensured that the enforcement of field-specific laws was entrusted to the experts of said fields. The U.S. Environmental Protection Agency (EPA), for example, is largely staffed by scientists and researchers that have spent years of their lives cultivating knowledge and developing opinions on how to best protect the environment and human health;

[1] Kanu, H. A. (2024, June 26). *The Supreme Court Blesses a Form of Bribery*. The American Prospect. https://prospect.org/justice/2024-06-26-supreme-court-blesses-form-bribery-snyder-v-us
[2]Liptak, A., VanSickle, A., & Parlapiano, A. (2024, May 9). The Major Supreme Court Cases of 2024. *The New York Times*. https://www.nytimes.com/interactive/2024/05/09/us/supreme-court-major-cases-2024.htm
[3] Turrentine, J. (2024, June 28). *The Supreme Court Ends Chevron Deference – What Now?* National Resources Defense Council. https://www.nrdc.org/stories/what-happens-if-supreme-court-ends-chevron-deference
[4] Howe, A. (2024, June 28). *Supreme Court strikes down Chevron, curtailing power of federal agencies*. SCOTUSblog. https://www.scotusblog.com/2024/06/supreme-court-strikes-down-chevron-curtailing-power-of-federal-agencies/

this superior knowledge often means they're better equipped to interpret environmental law than judges. This philosophy has also afforded policymakers in congress with wiggle room that makes writing law easier. As Jeff Turrentine of the Natural Resources Defense Council puts it, "Sometimes Congress is purposefully inexplicit in order to give the subject-area experts space to decide how best to implement a regulation. For example, an agency made up of occupational safety specialists should already be well equipped to decide how to handle the technical, nuts-and-bolts aspects of imposing workplace protections—rules about equipment usage, say, or the need for periodic employee rest breaks—without the meddling of judges."[5]

The Chevron deference has also helped preserve the balance of power between government institutions by curbing the power of the judicial branch to determine the practical effects of policy through interpretation, instead entrusting some of this responsibility to federal agencies. By overturning the Chevron deference, the Supreme Court has spoiled this balance. In her dissenting opinion, Justice Elena Kagan lamented this decision: "In one fell swoop, the majority today gives itself exclusive power over every open issue—no matter how expertise-driven or policy-laden—involving the meaning of regulatory law. As if it did not have enough on its plate, the majority turns itself into the country's administrative czar."[6]

The Chevron deference guaranteed security and stability to the legal system that is unlikely to remain thanks to the judicial system's newfound trampling power. While active, the Chevron deference did not render the interpretations of federal agencies impenetrable—the Brennan Center found that "federal agencies prevail in only about 70 percent of legal challenges to their rules"—but it did entrust legislative responsibility to agencies that are accountable to the president and explicitly tasked with protecting the public.[7] Overturning this preference will likely make the legal process more susceptible to corporate influence, as lobbyists won't have to negotiate with federal agencies in order to meddle with American law. They will instead concentrate the majority of their focus on members of Congress and judges. The appointment process for both has become significantly more partisan in recent years,[8] meaning that if

[5] See footnote 3
[6] See footnote 3
[7] Kornberg, M., & Kinsella, M. (2023, May 30). *Whether the Supreme Court Rolls Back Agency Authority, Congress Needs More Expert Capabilities*. Brennan Center for Justice. https://www.brennancenter.org/our-work/analysis-opinion/whether-supreme-court-rolls-back-agency-authority-congress-needs-more
[8] See footnote 3

corporations can get their cases in front of the right judges, they will likely succeed in molding the law to their preferred interpretation. It's thus no surprise that massive lobbying groups, such as the National Federation of Independent Business and the U.S. Chamber of Commerce, favored the Supreme Court's decision to strike down the Chevron deference.[9]

The *Loper Bright* decision thus threatens nearly every sector of American law; this includes climate policy, labor laws, and food and drug standards, which are overseen by the EPA, Department of Labor, and the U.S. Food & Drug Administration respectively. However, any regulation's susceptibility to change will likely vary based on how contentious it is within partisan dispute. An advisory report by Arnold&Porter, a law firm that excels in pro bono work, estimates that "*Loper Bright's* practical impact for regulated industries may not be as significant as widely anticipated" in regards to EPA policy because the "EPA already has every reason to support its statutory interpretations in rulemaking as the 'best' interpretation of Congress' intent using the text, structure, and purpose of the statute, together with all other traditional tools of statutory construction and its own expertise and policy rationales."[10] Even without the Chevron deference, those looking to challenge federal enforcement of law will need to find a judge with a different interpretation of a statute that can be justified as more, or at least equally reasonable to that of a federal agency. Thus, it's likely that issues with the widest range of "reasonable" perspectives concerning them are the most vulnerable to change.

Arguably no issue causes more extreme polarization across partisan lines than transgender rights. In a 2022 report conducted by the Pew Center, researchers asked a pool of people whether American society has "gone too far," "not gone far enough," or "been about right" in regards to accepting transgender identities.[11] 66% of surveyed republicans answered that society had gone too far, 10% answered that society had not gone far enough, and 22% answered that society had been about right. Surveyed democrats unsurprisingly broke down differently, with 15% answering "gone too far," 59% answering "not gone far enough," and 24%

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[9] Ackley, K. (2024, June 28). *Lobbyists Brace for "Earth-Moving" Change After Chevron Ruling*. Bloomberg Law. https://news.bloomberglaw.com/antitrust/lobbyists-regroup-for-big-change-after-high-court-agency-ruling

[10] Elwood, J., Talber, J., Piper, B., Martel, J., Shenkman, E., Rumsey, A., & Halliday, S. (2024, July 2). *Chevron Overturned: Impacts on Environmental, Energy, and Natural Resources Regulation*. Arnold & Porter. https://www.arnoldporter.com/en/perspectives/advisories/2024/07/chevron-overturned-impacts-on-environmental

[11] Parker, K., Horowitz, J. M., & Brown, A. (2022, June 28). *Americans' Complex Views on Gender Identity and Transgender Issues*. Pew Research Center. https://www.pewresearch.org/social-trends/2022/06/28/americans-complex-views-on-gender-identity-and-transgender-issues/

answering "been about right" (the remaining 2% in each demographic did not answer). This variance in opinion is reflected in state policy: as of August, 2024, 26/50 states have passed bans on gender affirming care for citizens below the age of 18, and Oklahoma, Texas, and South Carolina have considered banning it up to age 26.[12] Before *Loper Bright*, transgender people living in these states could at least rely on federal protections afforded by the Department of Education and the Department of Health and Human Services. With the Chevron deference overturned, however, the right conservative judge could easily block regulations from either department by challenging their interpretations of existing legislation.

The idea that *Loper Bright* could enable increased judicial transphobia is scary; what's scarier is that this process has already started. On July 3rd, 2024, five days after the Chevron deference was overturned, Mississippi federal judge Louis Guirola cited the ruling as reason to file for a nation-wide block of the Biden administration's anti-discrimination protections for transgender Americans. The protections, which were set to go into effect two days later on July 5th, were meant to "bar health providers and insurers receiving federal funding from discriminating against those seeking care on the basis of gender identity or sexual orientation."[13] Guirola specifically cited language from *Loper Bright*, asserting that the Department of Health and Human Services (HHS) improperly interpreted Section 1557 of the Affordable Care Act, which prohibits treatment and coverage discrimination on the basis of race, ethnicity, age, disability or sex. The Biden administration argued that sex applies to both gender identity and sexual orientation in instances of anti-discrimination—*Bostock v. Clayton County*, a 2020 Supreme Court case that deemed employment discrimination based on both sexual orientation and gender identity to be illegal, served as precedent—but Guirola overruled this interpretation.[14] With the absence of the Chevron deference, Guirola surely will not be the only judge to take a meaningful swing at federally afforded transgender protections. Federal judges from Florida and Texas followed Guirola in citing *Loper Bright* to block the HHS' protections, and conservative judges will likely be further empowered to influence battles over The Education Department's

[12] *Attacks on Gender Affirming Care by State Map*. (2023, April 24). Human Rights Campaign. https://www.hrc.org/resources/attacks-on-gender-affirming-care-by-state-map

[13] Cole, D. (2024, July 3). *Judge cites new Supreme Court ruling in blocking health care anti-discrimination protections for transgender Americans*. CNN. https://www.cnn.com/2024/07/03/politics/transgender-anti-discrimination-protections-biden-chevron/index.html

[14] Vogel, S. (2024, July 9). *Federal judge blocks LGBTQ+ healthcare protections*. Healthcare Dive. https://www.healthcaredive.com/news/lgbtq-healthcare-protections-blocked/720833/

Title IX rule, which, among other things, "prohibits schools from barring transgender students from using bathrooms and other facilities that correspond with their gender identities."[15]

Only time will reveal the exact repercussions of *Loper Bright*, but it undoubtedly holds the power to transform the American legal landscape. If Donald Trump were to win the 2024 election, for example, the absence of the Chevron deference would likely make it easy—at least much easier than his first term—to roll back previously established democratic policy through the courts. The flipside is also true—Democratic judges could wield their increased power to resist the upheaval that would come with a Trump presidency—but the ability to aggressively reinterpret policy through buying individual judges will be a valuable tool to anyone looking to radically overhaul the government. The execution of Project 2025, for example, is undoubtedly more feasible without the Chevron deference. The courts are rapidly straying from their intended purpose of upholding and interpreting the law, and *Loper Bright* represents another increase in the capabilities of judges—and perhaps more importantly, the powerful figures who appoint and influence them—to exercise unchecked power over the law.

[15] Kalish, L. (2024, July 13). *The Supreme Court's Chevron Decision Is Already Hurting Transgender Rights*. HuffPost. https://www.huffpost.com/entry/the-supreme-courts-decision-overturning-chevron-is-already-hurting-transgender-rights_n_66919cfbe4b0fbdc3e04d219