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Authors:

[Beth Schneider Naylor](#)

[Kaitlyn Hawkins-Yokley](#)

How the U.S. Supreme Court Set the Stage for Deregulation 2.0 Across All Industries

The U.S. Supreme Court recently overturned a 40-year-old precedent commonly referred to as “Chevron Deference” increasing the probability of successful challenges to regulatory agency actions across all industries.^[1] Overruling *Chevron*, which has been long-advocated for by regulated businesses, will have a significant impact in the regulatory world.

Understanding the Old: What *Chevron* Meant

Under *Chevron*, lower courts were required to defer to federal agencies’ interpretation of the statutes they administered. The Chevron analysis was: if Congress spoke directly to a regulatory question, courts applied Congress’s clear intent; however, if Congress’s intent was not clear, courts were required to defer to the agency’s reasonable construction of the statute.

In other words, when there were challenges to regulatory actions that could go either way due to an ambiguous statute, the tie would go to the agency.

Understanding the New Post-*Chevron* Regulatory World

The Supreme Court overruled two lower courts and *Chevron*, deciding that from now on, courts must exercise “independent judgment” in cases of ambiguity. While step one of *Chevron* was correct in the case of an unambiguous statute, courts should no longer defer to an agency’s interpretation if a statute is ambiguous. Now, if a court disagrees with a regulatory agency’s application or interpretation, the court may substitute its own independent judgment for that of the agency.

What This Means Going Forward

With a “tie” no longer going to the agency, regulatory challenges where statutes are unclear are encouraged. It also significantly increases the chances of a favorable challenge by regulated businesses. Importantly, the Supreme Court stated that all prior decisions made under *Chevron’s* framework cannot be challenged retroactively. And in a related case,^[2] the court decided that regulatory challenges under the APA^[3] can be brought within six years of an “injury by final agency action” providing a generous limitations period for regulated businesses to mount new challenges.

After decades of complaints about overregulation, the Supreme Court’s decision is welcomed by many regulated businesses who may more successfully challenge federal regulations. It is unclear, however, how the regulatory landscape will evolve with a high probability of inconsistent rulings from court-to-court interpreting the same regulatory actions. As federal judges are tasked with tackling complex technical issues to which they previously deferred to subject matter experts within the federal agencies, this new post-*Chevron* world may be welcome, albeit somewhat uncertain.

If you have questions about how this decision will impact you or your business, please contact our [regulatory specialists](#) at Frost Brown Todd.

**[Matt Carlin](#) contributed to this article while working as a summer associate in Frost Brown Todd’s Cincinnati office. Matt Carlin is not a licensed attorney.*

^[1] [Loper Bright Enterprises v. Raimondo; Relentless, Inc. v. Department of Commerce](#).

^[2] [Corner Post v. Board of Governors of the Federal Reserve](#).

^[3] The Administrative Procedure Act (this does not cover all regulatory decision challenges such as ones brought under the Hobbs Act, which only have a 60-day statute of limitations that begins when the regulation in question was issued).

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