

A World Without Chevron? U.S. Supreme Court Hears Oral Arguments in Cases that Could Overturn 40-Year-Old Doctrine of Statutory Interpretation

4 min read

Jan 19, 2024

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On January 18, 2024, the United States Supreme Court heard oral arguments in two cases challenging the *Chevron* doctrine of statutory interpretation, *Loper Bright Enterprises, et al., v. Gina Raimondo, Secretary of Commerce* (*Loper-Bright*) and [Relentless, Inc. v. Department of Commerce](#) (*Relentless*). Under the *Chevron* doctrine, courts are supposed to grant deference to an agency's reasonable interpretation of an ambiguous statute.

Chevron Deference

Chevron, U.S.A., Inc. v. NRDC, Inc. established a two-step framework for courts to apply when reviewing an agency's construction of a statute, commonly known as "*Chevron* Deference." Since its decision nearly 40 years ago, *Chevron* Deference has been applied in over 70 Supreme Court cases.

The doctrine requires courts to do the following:

- 1) Question "whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter."
- 2) If the statute is silent or ambiguous with respect to the specific issue, question "whether the agency's answer is based on a permissible construction of the statute."

Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837, 842-43 (1984).

Case Backgrounds

In *Loper-Bright*, the U.S. Court of Appeals for the D.C. Circuit, relying on the principles set forth in *Chevron*, upheld a final rule of the National Oceanic and Atmospheric Administration (NOAA) and the National Marine Fisheries Service (NOAA Fisheries) that required fishing companies to pay for government monitoring of their catch.

The First Circuit Court of Appeals came to a similar conclusion in *Relentless*, which closely mirrored *Loper-Bright*, challenging the same NOAA rule. Petitioners in both cases requested that the Supreme Court determine whether the court should overrule *Chevron* entirely or, in the alternative, narrow the *Chevron* framework to clarify that statutory silence pertaining to certain agency powers does not constitute an ambiguity requiring deference to the agency.

Arguments for Overturning *Chevron*

In both oral arguments, petitioners focused on several key arguments for overturning *Chevron*.

Petitioners argued that *Chevron* should be overturned for the following reasons:

- 1) *Chevron* violates section 706 of the Administrative Procedures Act (APA) because section 706 mandates de novo review;
- 2) *Chevron* violates Article III of the U.S. Constitution by undermining the duty of judges to interpret federal statutes using independent judgment; and
- 3) the *Chevron* framework is unworkable because it “facilitates agency flip-flopping.”

In response to *Loper-Bright*’s Article III argument, Solicitor General Elizabeth Prelogar, arguing on behalf of the Department of Commerce, said that *Chevron* does not violate Article III of the Constitution because the framework recognizes Congress’s Article I authority to delegate filling statutory gaps to federal agencies and aligns with their Article II authority to fill in those statutory gaps. Under Article III, judges must give effect to the acts of Congress.

General Prelogar also addressed *Chevron*’s failure to mention Section 706. Prelogar argued that this section was never understood to prescribe de novo review for questions of statutory interpretation and, therefore, was not at odds with the framework of review prescribed by *Chevron*.

In both the *Relentless* and *Loper-Bright* oral arguments, the Justices questioned the petitioners’ consideration of stare decisis principles. In response to Justice Sotomayor’s focus on the significant *Chevron* precedent of 77 cases, Roman Martinez, attorney for *Relentless*, argued that the “bottom-line holdings in those cases...would get stare decisis” preventing “convulsive change of the law.”

Justice Sotomayor was not convinced by this argument, responding, “I don’t understand how that happens... [o]nce you have a new approach, I’m not sure.” Justice Kagan in *Loper-Bright* highlighted this point when she

challenged petitioners' argument, stating, "You're saying blow up [the *Chevron* doctrine], blow up [stare decisis], and then expect anybody to think that the courts are acting like courts."

Justice Alito questioned whether Paul Clement, attorney for *Loper-Bright*, believed that the rationale for the *Chevron* framework, "taking judges out of the business of making [...] policy decisions," was incorrect. Mr. Clement stated that while he believed the Justices were "partially right" in *Chevron*, since then, he said, statutory interpretation has "come a long way" and cited case law from the past decade in which Justices were able to determine the purpose of a statute without deferring to the respective agencies.

Several of the Justices also homed in on the petitioners' position that the *Chevron* framework created ambiguity in the law. Justice Kavanaugh posed the question to General Prelogar: "[h]ow would you define ambiguity or how would you, if you were a judge, say, yes, this is ambiguous or no, that's not ambiguous?" General Prelogar responded that pursuant to the Court's holding in *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), courts would find a statute ambiguous "when the Court has exhausted the tools of interpretation and hasn't found a single right answer."

Throughout the oral arguments, both the Justices and the parties recognized the importance of the outcome of these cases. General Prelogar observed that overturning *Chevron* would be a "shock to the legal system," although Justice Kavanaugh challenged this view, saying that, under *Chevron*, there are "shocks to the system every four or eight years when a new administration comes in[.]" and that *Chevron* is "at war with reliance."

Significance of These Cases

The Court's decision could trigger the following crucial questions, amongst others:

- 1) If silence in a statute is no longer considered to be ambiguous, will there be an onslaught of litigation questioning agency interpretation of statutes?
- 2) If *Chevron* is completely overruled, how, if at all, will judicial appointments change?
- 3) How, if at all, will agencies alter their rule-making processes?

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