



January 26, 2024

U.S. SUPREME COURT HEARS ORAL ARGUMENTS IN CASES CHALLENGING CHEVRON DEFERENCE

On January 17, 2024, the U.S. Supreme Court heard oral arguments in a pair of cases seeking to challenge the *Chevron* doctrine. The *Chevron* doctrine refers to the judicial deference given to administrative actions based on the 1984 case of *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 468 U.S. 837 (1984). Under *Chevron*, the Court set forth a legal test as to when the court should defer to an agency's interpretation, providing that judicial deference is appropriate where the agency's interpretation was not unreasonable, so long as Congress had not spoken directly to the precise question.

In accepting the two cases, the Court stated the issue to be decided is whether to overrule or clarify *Chevron* deference. Although the two cases before the court deal with the fishing industry, the decision will have an impact on all industries subject to oversight by administrative agencies, including the financial services industry.

During oral arguments, the Court's conservative justices appeared inclined to cut back the regulatory power of federal agencies, with several justices seeming ready to overrule the *Chevron* doctrine. The more liberal members of the Court questioned why it was necessary to go as far as to overturn the *Chevron* doctrine. Given the courts make-up, it appears the *Chevron* doctrine will be overruled or limited.

At issue in the two cases before the court, *Loper Bright v. Raimondo* and *Relentless v. Department of Commerce*, is a challenge to a regulation created by the National Marine Fisheries Service, under the Magnuson-Stevens Fishery Conservation and Management Act, requiring commercial fishing vessels to pay for federal monitors who collect data. The lower courts relied on *Chevron* in reaching their conclusions.

Chevron has strengthened presidential administrations' ability to regulate a wide variety of industries. Overruling *Chevron* would mark a major legal victory for business interests, although the court could instead narrow the doctrine's scope without explicitly overruling it.

The Court's decision, whether overruling or limiting *Chevron*, has the potential to impact the financial services industries. The

Consumer Financial Protection Bureau has taken an expansive view of its authority. With *Chevron* deference gone or limited, it will be easier for the industry to successfully challenge the CFPB's actions. The banking regulators also have relied heavily on *Chevron* in adopting regulations and the courts have relied on *Chevron* in upholding the actions of the banking regulators. Thus, the Court's decision will be felt throughout the financial services industry.

A decision is expected by the end of June. ☐

✧ Elizabeth Anstaett, Mike Tomkies and Mercedes Ramsey

Darrell L. Dreher
ddreher@dtlaw.com

Elizabeth L. Anstaett
eanstaett@dtlaw.com

Mercedes C. Ramsey
mramsey@dtlaw.com

Susan L. Ostrander
sostrander@dtlaw.com

2750 HUNTINGTON CENTER
41 S. HIGH STREET
COLUMBUS, OHIO 43215
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600
WWW.DTLAW.COM

To see previously sent ALERTS, visit our website at www.dtlaw.com

To decline future ALERTS, please contact us at ALERTS@DLT.LAW.COM.
This ALERT has been prepared for informational purposes only. It does not constitute legal advice and does not create an attorney-client relationship.

Michael C. Tomkies
mtomkies@dtlaw.com

Judith M. Scheiderer
jscheiderer@dtlaw.com

Robin R. De Leo
robin@deher-la.com