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Locke Lord QuickStudy: Ramifications for Texas State Agencies ?After Overturning of *Chevron* Deference

Locke Lord LLP

WRITTEN BY

[Lauren Morgan Fincher](#) | [Cole Hutchison](#)

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In *Loper Bright Enterprises v. Raimondo*, No. 22-4511, 2024 WL 3208360 (June 28, 2024), the U.S. Supreme Court overturned an essential and longstanding cornerstone of administrative law: *Chevron* deference. While the *Chevron* doctrine applies to federal agencies, Texas courts have given similar deference to state agencies. Given the landmark *Loper* opinion, could that deference to Texas state agencies soon disappear?

Under the *Chevron* doctrine, established in *Chevron U.S.A. Inc. v. Natural Resources Defense Council Inc.*, 467 U.S. 837 (1984), if a statute is silent or ambiguous with respect to a specific issue, a reviewing court must defer to the administrative agency's interpretation of the statute so long as it is based on a permissible construction. *Chevron* deference has subsequently been refined by the Supreme Court in various opinions. In his opinion for the majority, Chief Justice Roberts emphatically rejected the *Chevron* doctrine. An analysis of the reasoning behind *Loper* is necessary to fully understand the implication for Texas state agencies.

The majority opinion first compared the *Chevron* doctrine to the federal Administrative Procedures Act (5 U.S.C. § 551 *et seq*) ("APA"). The Supreme Court noted that *Chevron* defied the APA's mandate that a reviewing court, not the agency, decide all questions of law and statutory interpretation arising on review of agency action (5 U.S.C. § 706). Chief Justice Roberts further argued that a *de novo* standard of review for legal questions is implied within 5 U.S.C. § 706. Accordingly, the Court concluded that, even if a statute is ambiguous, the APA cannot be reconciled with agency deference under *Chevron*.

Next, the Supreme Court challenged the idea that an agency charged with administering a specific statute possesses the necessary subject-matter expertise to resolve any ambiguity. Chief Justice Roberts argued that courts have long handled cases involving complicated technical matters. The majority also questioned if federal agencies had the necessary expertise in statutory interpretation to entitle them to deference.

Finally, the Supreme Court concluded that *stare decisis*, the doctrine governing judicial adherence to precedent, does not necessitate upholding *Chevron* deference. Revisions to the *Chevron* analysis in subsequent years have rendered it both unreliable and unworkable. The Court, however, specifically noted that it is not calling into question prior cases that relied upon *Chevron*.

Given the outright rejection of deference to federal agencies by the Supreme Court, Texas state agencies must consider the effect on their own statutory interpretations. The Texas Administrative Procedures Act (Tex. Gov't Code §§ 2001.001–.902) addresses when a court reviews state agency action *de novo* or under the substantial evidence rule (Tex. Gov't Code §§ 2001.173–.74). Neither of those statutes, however, call for *Chevron* deference to an agency's interpretation of a statute it enforces.

Although the Texas Supreme Court has never adopted or rejected the *Chevron* doctrine, it has provided a similar method of deference to state agencies. In *Railroad Commission v. Texas Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619 (2011), the Texas Supreme Court held that an agency's interpretation of a statute it is charged with enforcing is entitled to deference if (1) the statute is ambiguous; and (2) the interpretation is reasonable and does not conflict with the statute's plain language. Like *Chevron*, deference under Texas state law considers the agency's expertise.

With the overturning of the *Chevron* doctrine by the Supreme Court, it is likely that agency deference will be a hotly-contested issue in Texas state courts going forward. Given that the Texas Supreme Court has explicitly expressed that *stare decisis* has its "greatest force in construing statutes," Texas courts will need to reconcile their previous position on agency deference with *Loper*. Further, attempts to limit agency deference may continue outside of the courts. In 2019, Senate Bill 2371 and House Bill 2854 sought to end agency deference in Texas. Neither of those bills, however, were enacted. Without *Chevron* as a guiding light, future attacks may experience more success.

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