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State Attorneys General Will Dominate Post-*Chevron* Litigation

Ashley L. Taylor Jr., Paul Nolette, and Aaron M. Frey*

In this article, the authors explain how the end of Chevron *deference will eventually result in a dramatic change in state administration law across the country.*

In *Loper Bright Enterprises v. Raimondo*,[1] the Supreme Court of the United States overturned its long-standing *Chevron* doctrine. The Court thus shifted from judicial deference to executive agency decision-making instead to the rule that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority." While the general public focused on the impact of the overturning of *Chevron* as it related to federal agencies such as the Consumer Financial Protection Bureau, Environmental Protection Agency, and the Federal Trade Commission, we argue that the real action and the most meaningful impact will occur at the state administrative level. The law will be shaped by key state actors—state Attorneys General (AGs)—as they both challenge federal agencies and defend state agencies in this new environment.

This article explores the roles of the state AGs in this new regulatory environment, drawing on the experience of several states that have varying levels of statutory and precedential adherence to *Chevron*-like rules. This article proceeds as follows. First, it provides an overview of the *Loper Bright* litigation, with particular attention to state AG participation in the case. Second, it provides the view from the states, examining both the state AGs' increasing role in administrative law as well as existing state administrative law standards. It then explores how the Supreme Court's overturning of *Chevron* affects and will be affected by state AG actions moving forward.

Loper Bright is a landmark case for regulatory and administrative law, but it is hardly the end of the story. The relationship

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between courts, agencies, and legislatures will continue to be shaped, with even more responsibility flowing to the states. This, in turn, positions the state AGs to be among the most important actors shaping the regulatory environment for years to come.

Brief Overview of the *Chevron* Litigation

The petitioners in *Loper Bright* challenge a rule promulgated by the National Marine Fisheries Service, arguing that the rule exceeds the agency's statutory authority under the Magnus-Stevens Fishery Conservation and Management Act of 1976. After losses in both the District Court and the Court of Appeals—decisions that relied on *Chevron* deference—the petitioners asked the Supreme Court to reconsider the long-standing *Chevron* doctrine.

U.S. District Court for the District of Columbia and Factual Background

Loper Bright Enterprises is a commercial fishing firm that operates in the Atlantic herring fishery.[2] It joined several other fishing firms as plaintiffs to challenge a U.S. Department of Commerce final rule promulgating the New England Industry-Funded Monitoring Omnibus Amendment.[3] The Magnus-Stevens Fishery Conservation and Management Act of 1976[4] authorizes the National Marine Fisheries Service (NMFS)—as a delegee of the Secretary of Commerce—to implement a comprehensive fishery management program by promulgating and enforcing "fishery management plans."[5] Regional fishery management councils develop these plans, which the Act authorizes to include measures "necessary and appropriate for the conservation and management of the fishery."[6]

As promulgated by NMFS, the Omnibus Amendment established industry-funded monitoring of the Atlantic herring fishery, such that Loper Bright and its peer firms were required to bring "at-sea monitors"—contractors from the National Oceanic and Atmospheric Administration—on their vessels during fishing trips.[7] Loper Bright and its peers were further required to pay the associated costs of carrying the at-sea monitors, up to $710 per day in some cases.[8]

In challenging the Omnibus Amendment, Loper Bright alleged, *inter alia*, that (1) "the Act did not authorize the [NMFS] to create industry-funded monitoring requirements," and (2) "the rulemaking process was procedurally irregular."[9] The U.S. District Court for the District of Columbia ruled in the government's favor on the parties' cross-motions for summary judgment.[10] The District Court applied *Chevron*, finding that the Act was not ambiguous—NMFS had acted within the bounds of its statutory authority.[11] The court likewise concluded that the rulemaking process was proper.[12]

U.S. Court of Appeals for the District of Columbia Circuit

The issues on appeal to the D.C. Circuit concerned (1) whether NMFS acted within its statutory authority under the Act in promulgating the Omnibus Amendment, and (2) whether NMFS's process for doing so was procedurally proper.[13] The D.C. Circuit applied *Chevron* to conclude that NMFS acted within its authority. It found that the Act was ambiguous but that NMFS's interpretation—allowing it to require industry-funded monitoring—was reasonable.[14] As set out under *Chevron*, the D.C. Circuit deferred to NMFS's interpretation of the Act and affirmed the District Court.[15]

U.S. Supreme Court[16]

At the Supreme Court, the questions presented were (1) "whether, under a proper application of *Chevron*, the [Act] implicitly grants NMFS the power to force domestic vessels to pay the salaries of the monitors they must carry," and (2) "[w]hether the Court should overrule *Chevron* or at least clarify that statutory silence concerning powers expressly but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency."[17]

Oral arguments took place on January 17, 2024. In its subsequent decision, the Court not only held that the Act did not authorize NMFS to require the industry to fund at-sea monitors, but also overruled *Chevron*. The Court rejected the notion that statutory ambiguity is a license for courts to defer to an agency's reasonable interpretation, and instead reaffirmed that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority." In doing so, the Court reshaped the framework for judicial review of agency action and set the stage for the state-level developments discussed in the remainder of this article.

State AG Amicus Briefs and Involvement in *Loper/Relentless*

State AGs have taken keen interest in the outcome of the *Loper Bright* and *Relentless* cases due to the state-level impact of *Chevron*'s application.

Two groups of AGs filed briefs in the case as amici curiae—with one group urging the Court to abandon *Chevron*[18] and the other urging the Court to maintain the status quo.[19] Amid state AGs' growing prominence in nationwide regulation, these amicus arguments highlight the case's important implications for the state regulatory sphere.

Amicus Briefs in Support of Petitioners

In favor of the petitioners, one group of state AGs urges the Court to overrule *Chevron*. They argue that *Chevron* deference is detrimental to state regulatory autonomy under basic federalism principles. Federal bureaucrats have little institutional incentive under *Chevron* to protect state power, say the AGs. Indeed, they assert, *Chevron* encourages courts to allow encroachment on state regulatory spheres based on uncertain federal statutory text.[20] For instance, federal agencies may rely on *Chevron* to preempt state laws, heighten conditions that states must meet to qualify for federal funding programs, and exercise greater federal subpoena power against state government bodies.[21] The growth of federal agencies over the past decades has only further amplified these potential impacts and influence.

The AGs also highlight the impact of *Chevron* on cooperative federalism: the coordination of regulatory efforts between states and the federal government. These programs are born of federal statutes authorizing and allocating funding for federal-state collaboration. Under *Chevron*, they argue, the federal government enjoys nearly absolute discretion to *decide* when to collaborate with states.[22] This is not the type of "federalism" envisioned by the Founding Fathers of this nation, say the AGs. They argue that *Chevron* thereby displaces the founding principle that states—not the federal government—have "primary responsibility for matters of greatest concern to citizens."[23]

A lone governor also filed in favor of petitioner—Georgia Governor Brian Kemp. Following the approach of state AGs, Kemp argued that state governors are discreetly impacted by *Chevron*'s expansion of federal preemption. However, implicitly Kemp anticipates that if federal agencies are limited in their rulemaking, state regulatory agencies will fill the gap. The resulting patchwork of state regulations would be "a feature, not a flaw, of our federal system which allows States to maintain individual identities in line with the views of their citizens." Kemp anticipates this model will reward states with new investment that strike the right balance within regulatory spheres. While this model could destabilize some industries, it likewise may provide new lands of opportunity for pioneering industries that require the regulatory flexibility to bring new products or services to market.

Amicus Brief in Support of Respondents

In favor of the respondents, another group of state AGs urge the Court to preserve *Chevron*. They argue that *Chevron* deference promotes healthy and successful cooperative federalism programs.[24] Congress has increasingly embraced the cooperative federalism model by allocating regulatory authority jointly between states and federal agencies under various programs.[25] These programs function best, the AGs say, when states are confident that the reasonable statutory interpretations of their federal agency partners will survive judicial review.[26] Under *Chevron*, federal agencies' baseline rules for cooperative programs will generally withstand judicial scrutiny.[27] According to these AGs, this provides a sense of stability, allowing states to participate in and commit resources to these programs more effectively.[28]

Further, the AGs highlight *Chevron*'s application to federal agency decisions to approve states' gap-filling proposals under cooperative federalism programs.[29] States must also fill in statutory gaps with their own regulatory proposals under these programs, and federal agencies may choose to approve these interpretations. *Chevron* deference likewise applies to agencies' decisions to approve state proposals.[30] This further stabilizes cooperative federalism, the AGs say, by insulating them from significant risk of courts abruptly displacing federal agencies' (and consequently, the states' own) underlying interpretations of the program.[31] The AGs argue this application of *Chevron* further allows states to confidently engage in federal-state collaboration.[32]

Loper Bright and the View from the States

In particular, as discussed below, Pennsylvania has a statute that invites courts to consider agency interpretations of statutes that they administer. Courts also generally treat agency interpretations of statutes with deference. None of the other states—South Carolina, Georgia, Virginia, Delaware, and Ohio—have similar statutes. The courts of those states treat agency interpretations with varying levels of deference, with South Carolina and Georgia affording "substantial" deference, and Virginia, Delaware, and Ohio affording less (if any) deference).

Pennsylvania—Deference to Agency Interpretations of Statutes and Regulations After *Chevron*?

Pennsylvania does not have a constitutional provision that imposes *Chevron* deference. The Commonwealth does, however, have a statute directing that courts consider agency interpretations when construing statutes: 1 Pa. Cons. Stat. § 1921(c)(8). But the Supreme Court of Pennsylvania has limited somewhat the deference that courts should afford agency interpretations. For example, (1) agency interpretations are not binding on the Pennsylvania Supreme Court, (2) agency interpretations of non-ambiguous laws are not given deference, (3) agency interpretations of nonlegislative rules are not given deference, and (4) an agency's interpretation that is at odds with the statute's plain language is not given deference.

The Pennsylvania Statutory Construction Act directs how Pennsylvania law should be interpreted. Regarding the construction of statutes, legislative intent controls.[33] In ascertaining legislative intent, "administrative interpretations of such statute" should be considered.[34]

Likewise, the Supreme Court of Pennsylvania has held "[a]n interpretation by the agency charged with the administration of a particular law is normally accorded deference, unless clearly erroneous."[35]

Since *Harkness*, the Supreme Court of Pennsylvania has described two types of agency interpretations that are accorded different levels of deference. Agency interpretations that are promulgated in published rules and regulations are referred to as "legislative rules" and "are accorded a particularly high measure of deference"—virtually indistinguishable from *Chevron*[36] deference—and "enjoy a presumption of reasonableness."[37] Nonlegislative rules, also known as "interpretive rules" or "guidance documents," such as "manuals, interpretive memoranda, staff instructions, policy statements, circulars, bulletins, advisories, [and] press releases" are accorded "a lesser quantum of deference[,]" also known as *Skidmore* deference, which allows an agency's interpretation to be disregarded when a court is "'convinced that the interpretative regulation adopted by an administrative agency is unwise or violative of legislative intent.'"[38]

Notably, although the Supreme Court of Pennsylvania has considered these varied situations where agency interpretations inform its statutory construction analysis, and has ascribed some measure of value to those interpretations under certain circumstances, the court has never held an agency's opinion is binding on it.[39] Indeed, that court has declined to accord any deference to an agency's interpretation of a statute where "there is nothing in the record indicating that the [agency] had considered and decided [the] issue at a point prior to the instant litigation."[40] Similarly, an agency's interpretation of a clear and unambiguous statute is not entitled to deference.[41] Further, when an agency's interpretation is inconsistent with the plain and unambiguous language of the statute, that interpretation carries little, if any, weight.[42]

Do Other States Have a Constitutional Provision or Statute That Requires Deference to Agency Interpretations of Statutes and Regulations?

A sampling of courts in other states reveals differing levels of deference to agency interpretations. There are, of course, exceptions to the level of deference each court affords to such interpretations (e.g., courts will reject an interpretation that is contrary to the plain language of a statute).

- *South Carolina*. The Supreme Court of South Carolina generally gives deference to an administrative agency's interpretation of an applicable statute or its own regulation.[43]
- *Georgia*. Judicial deference is afforded an agency's interpretation of statutes it is charged with enforcing or administering.[44]
- *Virginia*. Generally, courts *do not defer* to an agency's construction of a statute. But courts afford *greater weight than normal* to an agency's position with respect to a statute an agency administers.[45]
- *Delaware*. The Delaware Supreme Court reviews questions of statutory interpretation *de novo* and does not defer to an agency's interpretation of a statute.[46]
- *Ohio*. Ohio courts engage in permissive deference; that is, a court *may* rely on the expertise of a state agency but the judiciary has ultimate authority to interpret the law.[47]
- *Maine*. Maine courts will give deference to an agency's reasonable interpretation of an ambiguous statute that is administered by the agency within that agency's expertise.[48] The court in *Cobb v. Bd. of Counseling Prof'ls Licensure* provided guidance for what deference is appropriate. It is also worth noting that Maine courts have also suggested that deference to agency interpretation is rooted in Maine's Constitution.[49]

Under *Chevron* and its progeny, courts defer to an agency's reasonable interpretation of ambiguous statutory language when Congress has entrusted the agency with administering the statute in question.[50] At *Chevron* Step One, courts "begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose."[51] If the ordinary meaning of the statute is clear, the ordinary meaning controls. Where the court finds the statute ambiguous as to the delegation of authority which the agency claims, the analysis proceeds to *Chevron* Step Two. There, the court will defer to the agency's statutory interpretation if it is a "reasonable resolution of an ambiguity in a statute that the agency administers."[52]

Although *Chevron* is a solely federal doctrine, it has long been an influential reference point for state judiciaries when they consider questions of deference to state agencies. State courts have taken vastly different positions regarding whether such deference is appropriate—often with reference to the *Chevron* doctrine as an ideal to emulate or a foil to avoid. The current patchwork of state approaches would likely grow even more varied in the absence of an active federal example of administrative deference. Below, we discuss the state-level importance of reconsidering *Chevron*, with particular focus on the expressed interest of state AGs in these issues.

The Recent Rise in State AG Challenges to Federal Administrative Action

Over the past decade, state AGs have become some of the most active and consistent challengers of federal administrative action, regardless of which party controls the White House. What began as episodic litigation has evolved into a sustained pattern of multistate suits and coordinated comment practice targeting high-salience federal rules across environmental, healthcare, financial, and consumer-protection domains.

Republican-led coalitions first drew attention for their aggressive use of nationwide injunctions and Administrative Procedure Act challenges to Obama-era regulations, often arguing that agencies had exceeded statutory authority or failed to comply with procedural requirements. Democratic-led coalitions then adopted similar strategies during the first Trump administration, challenging rollbacks and reinterpretations on comparable grounds. This bipartisan pattern has continued into the current administration, with both red and blue state AGs using administrative law tools to contest federal regulatory priorities they oppose.

Chevron has been a constant backdrop to this activity. Many of these challenges were framed to avoid or minimize *Chevron* deference—by arguing that the statute was unambiguous, that the agency interpretation was unreasonable, or that the agency had acted without proper rulemaking. At the same time, when aligned with federal agencies, state AGs have invoked *Chevron* to defend cooperative federalism programs and federal rules that support their policy preferences.

Loper Bright does not create state AG activism so much as it recalibrates the terrain on which that activism occurs. With federal courts no longer obliged to defer to reasonable agency interpretations of ambiguous statutes, state AGs—on both sides of the "v."

and across administrations—are likely to double down on statutory-interpretation-focused challenges and defenses. The existing trend of robust state AG engagement with federal administrative law thus provides the context in which the post-*Chevron* state-level developments described in the next Part will unfold.

State-Level Impacts of *Chevron*

Chevron's state-level influence arises from its situation as the "federal reference point" for state courts when they consider issues of deference to agencies. At bottom, the *Chevron* doctrine bolsters a federal agency's position in court regarding the proper interpretation of a statue it administers. This federal doctrine does not bind state courts to give deference to state agency interpretations of state law. But despite being a creature of federal law, the doctrine has at times acted as a reference point for state courts and bears indirect influence on decisions regarding deference to state agencies. *Chevron* deference additionally implicates state interests in the contexts of preemption and cooperative federalism programs.

Chevron also acts as a baseline for state courts deciding whether to defer to state agencies' statutory interpretations. State courts tend to reference federal jurisprudence on *Chevron*—both approvingly and disapprovingly—in decisions regarding whether state agencies deserve deference for their statutory interpretations.[53] In recent years, state courts have increasingly turned away from giving *Chevron*-like deference to state agencies, but the attitudes of the federal judiciary are nonetheless influential in these decisions. On one hand, when the Mississippi Supreme Court "abandon[ed] the old standard of review giving deference to agency interpretations of statutes," it found persuasive "the reasoning of then-Judge Gorsuch who wrote . . . that, absent judicial deference to administrative agencies' interpretation of statutes, '[c]ourts would then fulfill their duty to exercise their independent judgment about what the law is.'"[54] On the other hand, the Maine Supreme Judicial Court described its approach to deference as "the same two-step analysis developed by the U.S. Supreme Court in *Chevron*."[55] In states like Maine, the reconsideration of *Chevron* could encourage the development of additional state common law on the issue of agency deference. Thus, regardless of a state court's approach to administrative deference, federal jurisprudence on *Chevron* and its progeny looms large as a point of reference.

The *Chevron* doctrine also directly affects state interests with respect to preemption. Preemption refers to the general principle that federal law is supreme; when state and federal law cannot or should not coexist, federal law trumps state law.[56] Under *Chevron*, courts will defer to a federal agency's interpretation of a federal statute's requirements, even where that interpretation entails a preemptive effect on state law.[57] This plainly implicates state interests in areas of federal-state regulatory overlap. In a notable example, the U.S. Supreme Court deferred under *Chevron* to the Comptroller of the Currency's regulation which gave preemptive effect to the underlying federal statue over California law.[58] Without *Chevron*, these preemption-causing interpretations would not be given this deference, and states could argue more strongly that their own laws should control.

Cooperative federalism provides another useful example of *Chevron* deference impacting state interests. "Cooperative federalism" programs are joint regulatory efforts borne of federal statutes "which invite state agencies to implement federal law."[59] Federal agencies cooperating with states in these programs will often interpret the underlying federal statute to set parameters for the cooperative effort. These interpretations are eligible for *Chevron* deference if challenged, thereby augmenting federal power in setting the stage in cooperative regulatory arrangements with the states.[60] For instance, the Telecommunications Act of 1996[61] established a national regulatory framework that left key decisions to state public utility commissions regarding the opening of their markets to competition. The federal statute carves out certain responsibilities for states, such as approving agreements between telephone companies.[62] The Federal Communications Commission (FCC) further interpreted this carve-out to give states the power to interpret and enforce these agreements—in addition to approving them.[63] When this interpretation was challenged, federal courts applied *Chevron* and upheld the FCC's interpretation empowering the states.[64]

At a practical level, a curtailing of *Chevron* would likely open the door for challenges to several facets of the federal administrative state. Litigants may find greater success challenging agency rules and decisions on statutory interpretation grounds in the absence of *Chevron* deference in the agency's favor. To the extent these future challenges invalidate or otherwise shrink federal regulatory influence, state policy—often enforced by state AGs—would take center stage.

The Decline of *Chevron* Invites Additional State AG Challenges to Federal Regulatory Action, Regardless of Presidential Administration

Over the past year, much federal agency activity has been driven by executive order or direct presidential direction rather than by traditional notice-and-comment rulemaking. Challenges to this activity have generally not relied on *Loper Bright*, in part because these actions are often untethered from formal agency regulations. It may take time for federal agencies to initiate or complete rule-making (or rule-repeal) efforts before we see litigation that squarely presents post-*Chevron* questions.

As this federal administration drags on, however, there is potential for activity that will generate *Loper Bright* challenges. For example, there have been two executive orders directing agencies to evaluate the lawfulness of current regulations that either implicate or invoke *Loper Bright*. One of the executive orders called on agencies to identify regulations that may be deemed unlawful.[65] The second executive order directed agencies to review regulations under a series of Supreme Court decisions, including *Loper Bright*, and it directed those agencies to finalize rules without notice and comment where doing so was consistent with a "good cause" exception.[66] The "good cause" was stated to be that repealing the unlawful regulations is in the public interest and notice/comment is unnecessary when simply following the rulings of the Supreme Court. If federal agencies are taking action under this second executive order, it may take a little time for litigation to develop because a federal agency's actions may not be immediately evident.

Turning to multistate litigation involving federal agency action, *Loper Bright* has not yet emerged in any substantive way. A review of a sampling of comment letters submitted by Democratic AGs over the past year shows only limited references to *Loper Bright*, typically in the form of arguments that:

- An agency lacks authority to alter judicial statutory interpretations with which it disagrees;

- Although an agency's interpretation is not binding on a court, it may still be informative to the extent it rests on factual findings within the agency's expertise;
- Judicial interpretation may benefit from agency interpretations issued contemporaneously with the passage of the relevant federal statute and maintained consistently over time; and
- *Loper Bright* did not disturb other lines of case law governing agency action.

These points have generally been secondary rather than primary arguments. At this early stage, then, *Loper Bright* functions more as a background principle shaping how state AGs frame their statutory and administrative law arguments than as a central, standalone claim in multistate challenges to federal regulatory action.

Strategic Implications for Litigation Involving State AGs

The end of *Chevron* deference will not affect all state AGs in the same way. Its impact will depend heavily on each state's existing approach to deference and on the posture in which the AG's office typically appears—whether as a challenger to federal action, a defender of state agencies, or both. Several strategic implications follow from the doctrinal landscape described above.

State AGs Challenging Federal Agency Action Will Lean Even More Heavily on Statutory Text and Structure

Without *Chevron*, federal courts will no longer default to an agency's reasonable interpretation of ambiguous statutes. This change invites state AGs—particularly those already active in multistate litigation—to frame challenges around the "best reading" of the statute, rather than around the reasonableness of the agency's view. Complaints and briefs are likely to devote more space to close textual analysis, legislative history, and structural arguments, and less to the familiar *Chevron* two-step framework. In practice, this may lower the barrier to successful challenges to federal rules and guidance, regardless of which party controls the White House.

State AGs Defending Their Own Agencies Will Need to Navigate a Patchwork of State Deference Doctrines

In states that already reject strong deference (such as Delaware and, in practice, Ohio), AGs are accustomed to litigating under a model that resembles *Loper Bright*: courts exercise independent judgment, and agency views are persuasive at most. For those offices, the primary change will be in federal litigation, not in state-court practice.

By contrast, in states that have embraced *Chevron*-like frameworks or statutory deference (such as Pennsylvania's heightened deference to "legislative rules," or Maine's explicit adoption of a *Chevron*-style two-step), AGs may face increased pressure from litigants to revisit those doctrines. Plaintiffs may invoke *Loper Bright* as a persuasive model for why state courts should curtail deference to state agencies. AGs in those jurisdictions will need to decide whether to defend existing deference regimes as a matter of state law, to propose refinements (for example, distinguishing between formal rules and informal guidance), or to accept a shift toward more searching judicial review.

AGs Will Likely Adjust How They Counsel State Agencies on Rulemaking and Guidance

As courts become less inclined to defer reflexively to agency interpretations—whether under federal or state law—AGs will have incentives to encourage agencies to build stronger records and clearer statutory justifications for their actions. That may include:

- More careful documentation of statutory authority in preambles and statements of basis and purpose;
- Greater attention to legislative history and contemporaneous understandings of key terms; and
- More deliberate use of notice-and-comment procedures, even where not strictly required, to bolster the legitimacy and durability of agency interpretations.

In states that continue to afford some form of deference, AGs may also counsel agencies to distinguish clearly between "legislative rules" and "interpretive guidance," recognizing that courts are increasingly sensitive to the procedural pedigree of the agency action when deciding how much weight to give it.

Forum Selection and Coalition-Building Will Take on Added Importance

Because state deference doctrines vary widely, multistate coalitions will need to account for those differences when selecting forums and framing claims. An AG from a state that has rejected strong deference may be more comfortable pressing *Loper*-like arguments in state court, while an AG from a state with a statutory deference provision may prefer to emphasize other grounds (such as state constitutional limits, procedural defects, or separation-of-powers principles). Over time, these differences may influence which states lead or join particular coalitions and may contribute to a more fragmented map of multistate litigation.

Taken together, these dynamics underscore that *Loper Bright* is not simply a federal administrative law case. It is a catalyst for a broader reexamination of the relationship between courts and agencies at the state level, and state AGs will be at the center of that reexamination—both as litigators and as counselors to the administrative state.

Conclusion

Loper Bright's formal holding concerns the relationship between federal courts and federal agencies, but its practical consequences extend far beyond Washington. By displacing *Chevron* as the default framework for judicial review of agency interpretations, the Supreme Court has removed the federal "reference point" that many state courts have either emulated or consciously rejected. In its place, state doctrines—some *Chevron*-like, some Skidmore-like, some openly skeptical of deference—will take on renewed importance.

For practitioners in this space, this shift presents both opportunities and risks. On the state side, AGs must navigate a heterogeneous landscape of deference doctrines while defending their own agencies and advising them on how to regulate in a world where judicial deference can no longer be taken for granted.

The early post-*Loper* record suggests that change will be gradual. Executive order–driven federal actions have not yet produced a wave of *Loper*-based challenges, and state AG comment letters have invoked the decision only sparingly. Likewise, in states such as Maine, the end of *Chevron* has not yet translated into a measurable uptick in litigation over deference to state agencies. But the underlying pressures are clear: as federal agencies lose some of their interpretive insulation, state law and state institutions will become the center of gravity for regulatory governance.

Whether states respond by codifying deference, curtailing it, or developing new hybrid approaches, state AGs will be central to that process. They will shape the arguments that courts hear, the rules that agencies adopt, and the balance of power between state and federal regulators. In that sense, *Loper Bright* is not the end of administrative deference; it is the beginning of a new phase in which the most consequential developments are likely to occur in state courts, under state law, under the auspices of state AGs.

Notes

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1. Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). Loper Bright was decided with a companion case, Relentless, Inc. v. Department of Commerce.

2. Loper Bright Enters. v. Raimondo, 544 F. Supp. 3d 82, 93 (D.D.C. 2021).

3. Id.

4. 16 U.S.C. §§ 1801-1884.

5. See id. § 1801(a)(6); id. § 1852(h)(1) (regarding "fishery management plans").

6. Id. § 1853(a)(1)(A).

7. Loper Bright, 544 F. Supp. 3d at 97.

8. Id.

9. Loper Bright Enters. v. Raimondo, 45 F.4th 359, 364 (D.C. Cir. 2022) (stating concisely the appellant's contentions at the U.S. District Court stage that would remain in issue on appeal).

10. Loper Bright, 544 F. Supp. 3d at 127.

11. Loper Bright, 544 F. Supp. 3d at 107. The court further stated that, "[e]ven if Plaintiffs' arguments were enough to raise an ambiguity in the

statutory text, the Court, for the same reasons identified above, would conclude that Defendants' interpretation is a reasonable reading of the [Act]." Id.

12. Id. at 126.

13. See Loper Bright, 45 F.4th at 363.

14. See id. at 365 ("The court's review thus is limited to the familiar questions of whether Congress has spoken clearly, and if not, whether the implementing agency's interpretation is reasonable. See Chevron U.S.A., Inc. v. Nat. Res. Def. Council, 467 U.S. 837, 842-43, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984). Although the Act may not unambiguously resolve whether the Service can require industry-funded monitoring, the Service's interpretation of the Act as allowing it to do so is reasonable.").

15. See id.

16. Another case concerning the same statute and regulation, Relentless, Inc., et al v. Department of Commerce, et al., was argued in tandem with Loper Bright at the U.S. Supreme Court on January 17, 2024. See No. 22-1219, Relentless, Inc. v. Department of Commerce, Question Presented, https://www.supremecourt.gov/docket/docketfiles/html/qp/22-01219qp.pdf.

17. See No. 22-451, Loper Bright Enters. v. Raimondo, Question Presented, https://www.supremecourt.gov/docket/docketfiles/html/qp/22-00451qp.pdf.

18. See Brief for West Virginia, et al. as Amici Curiae Supporting Petitioners, Loper Bright Enters. v. Raimondo, No. 22-451 (argued Jan. 17, 2024), [hereinafter, Brief for West Virginia, et al.], https://www.supremecourt.gov/DocketPDF/22/22-451/272740/20230724151234261_Loper%20Bright%20States%20Merits%20Amicus.pdf.

19. See Brief for District of Columbia et al. as Amici Curiae Supporting Respondents, Loper Bright Enters. v. Raimondo, No. 22-451 (argued Jan. 17, 2024), [hereinafter, Brief for District of Columbia, et al.], https://www.supremecourt.gov/DocketPDF/22/22-451/280236/20230928093823090_22-451%20Loper%20Bright%20Amicus%20Brief%20-%20CORRECTED.pdf.

20. See Brief for West Virginia, et al. at 18-19.

21. See id. at 20.

22. See id. at 21.

23. See id. at 21 (quoting Todd E. Pettys, Competing for the People's Affection: Federalism's Forgotten Marketplace, 56 Vand. L. Rev. 329, 340 (2003)).

24. See Brief for District of Columbia, et al. at 4.

25. Id. at 6.

26. See id. at 7.

27. See id. at 11-12.

28. See id.

29. See id. at 15.

30. See id.

31. See id. at 12-15.

32. See id.

33. 1 Pa. Cons. Stat. § 1921(a) ("The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly.").

34. Id. § 1921(c)(8).

35. Harmon v. Unemployment Comp. Bd. of Review, 652 Pa. 23, 35 (Pa. 2019) (citing Harkness v. UCBR, 591 Pa. 543, 920 A.2d 162, 171 (Pa. 2007)).

36. The Pennsylvania Supreme Court has not considered how, if at all, the Supreme Court's decision overruling Chevron in Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244 (2024) would affect the deference Pennsylvania courts grant agency interpretations of state law. Although, since Pennsylvania adopted its Chevron-like statute in 1972 (i.e., before Chevron) it is unlikely that Loper will change how Pennsylvania courts treat the issue.

37. Northwestern Youth Services, 66 A.3d 301, 310-11 (Pa. 2013).

38. Id. at 310-12 (quoting Pa. Human Relations Comm'n v. Uniontown Area School District, 313 A.2d 156, 169 (Pa. 1973)).

39. Harmon, 652 Pa. at 36.

40. Malt Beverage Distributors Ass'n, 974 A.2d 1144, 1154 (Pa. 2009).

41. Crown Castle NG East LLC v. Pa. PUC, 660 Pa. 674, 677 (Pa. 2020).

42. AUUE, Inc. v. Borough of Jefferson Hills Zoning Hearing Bd., 318 A.3d 771, 786 (Pa. 2024).

43. Brown v. Bi-Lo, Inc., 354 S.C. 436, 440 (2007) (citing Brown v. South Carolina Dep't of Health and Envtl. Control, 348 S.C. 507, 560 S.E.2d 410 (2002)).

44. Handel v. Powell, 284 Ga. 550, 553 (2008).

45. Nielsen Co. (US), LLC v. County Bd. of Arlington County, 289 Va. 79, 88 (2015).

46. Dir. of Revenue v. Verisign, Inc., 267 A.3d 371, 376 (2021); see also Public Water Supply Co. v. DiPasquale, 735 A.2d 378, 382 (1999) ("A reviewing court may accord due weight, but not defer, to an agency interpretation of a statute administered by it.").

47. TWISM Enters., L.L.C. v. State Bd. of Registration for Prof'l Eng'rs & Surveyors, 172 Ohio St. 3d 225, 231 (2022).

48. See Competitive Energy Servs. LLC v. Pub. Utils. Comm'n, 818 A.2d 1039, 1046 (Me. 2003).

49. ("Respecting our constitutional separation of powers, Me. Const. art. III, and statutes governing administrative appeals, our review of state agency decision making is deferential and limited." Friends of Lincoln Lakes v. Bd. of Envtl. Prot., 989 A.2d 1128, 1133 (Me. 2010).)

50. Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, 467 U.S. 837, 842-43 (1984).

51. Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 541 U.S. 246, 252 (2004).

52. Michigan v. Env't Prot. Agency, 576 U.S. 743, 751 (2015).

53. Compare Cobb v. Bd. of Counseling Prof'ls Licensure, 896 A.2d 271, 275 (Me. 2006) ("When a case concerns the interpretation of a statute that

an administrative agency administers and that is within its area of expertise, our scope of review is to determine first whether the statute is ambiguous.... If the statute is ambiguous, we defer to the agency's interpretation and we affirm the agency's interpretation unless it is unreasonable. This is the same two-step analysis developed by the United States Supreme Court in Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-43 (1984)."), with TWISM Enters., L.L.C. v. State Bd. of Registration for Prof'l Eng'rs & Surveyors, 223 N.E.3d 371, 377-78, 381-82 (Ohio 2022) ("Most practitioners are familiar with the framework established by the United States Supreme Court in Chevron, ... under which a court is required to defer to an administrative agency's reasonable interpretation of an ambiguous statute.... Ohio's approach to deference is much harder to categorize.... [I]t is never mandatory for a[n] [Ohio] court to defer to the judgment of an administrative agency.").

54. King v. Miss. Military Dep't, 245 So. 3d 404, 408 (Miss. 2018).

55. See Cobb, 896 A.2d at 275.

56. See generally U.S. Const. art. IV, cl. 2 ("This Constitution, and the Laws of the United States ... shall be the supreme Law of the Land...."); Gade v. Nat'l Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 89 (1992) ("Pre-emption may be either expressed or implied, and is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose.") (Internal quotation marks omitted).

57. See Smiley v. Citibank (S.D.), N.A., 517 U.S. 735, 743-45 (1996). Note that the Supreme Court has not squarely answered the related question of whether an agency is entitled to Chevron deference regarding an opinion that a federal statute preempts state law.

58. See id.

59. See Philip J. Weiser, Federal Common Law, Cooperative Federalism, and the Enforcement of the Telecom Act, 76 N.Y.U. L. Rev. 1692, 1694 (2001).

60. See, e.g., Sierra B. Weaver, Local Management of Natural Resources: Should Local Governments Be Able to Keep Oil Out?, 26 Harv. Env't L. Rev. 231, 242 (2002) (arguing that applying Chevron to cooperative federalism arrangements ensures that "federal agencies will retail almost absolute discretion to 'cooperate' with state and local governments or not").

61. 47 U.S. § 251 et seq.

62. See id. § 252(e).

63. See In re Starpower Commc'ns, LLC, 15 F.C.C. Rcd. 11277 (2000).

64. See, e.g., Core Commc'ns, Inc. v. Verizon Pa., Inc., 493 F.3d 333 (3d Cir. 2007); Sw. Bell Tel. Co. v. Brooks Fiber Commc'ns of Okla., Inc., 235 F.3d 493, 496 (10th Cir. 2000).

65. Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulation Initiative (Feb. 19, 2025.

66. Directing the Repeal of Unlawful Regulations, Apr. 9, 2025.