

Loper Bright's Impact on Labor & Employment Policy

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Loper Bright Decision

- June 28, 2024 - Overrules *Chevron* Deference
 - Commercial fisheries sued the US Commerce Department regarding an agency rule (not yet implemented) requiring vessels to carry observers/compliance monitors and pay for them to on board the vessels
 - HOLDING: 6-3 - Doctrine of deference to an agency's reasonable interpretation of an ambiguous law 'has provided to be fundamentally misguided.'

Framework of Chevron

- Administrative action had a review process to
 - Is the precise question at issue directly addressed with clear meaning by Congress
 - If no, then make a determination of whether the agency's interpretation of the statute is reasonable
- Deference by federal courts to an agency's reasonable interpretation of an ambiguous statute

Loper Bright Majority



- Roberts, for the Court:
 - “Chevron was a judicial invention that required judges to disregard their statutory duties.”
- Thomas, concurring:
 - Chevron “improperly strips courts of judicial power by simultaneously increasing the power of executive agencies.”



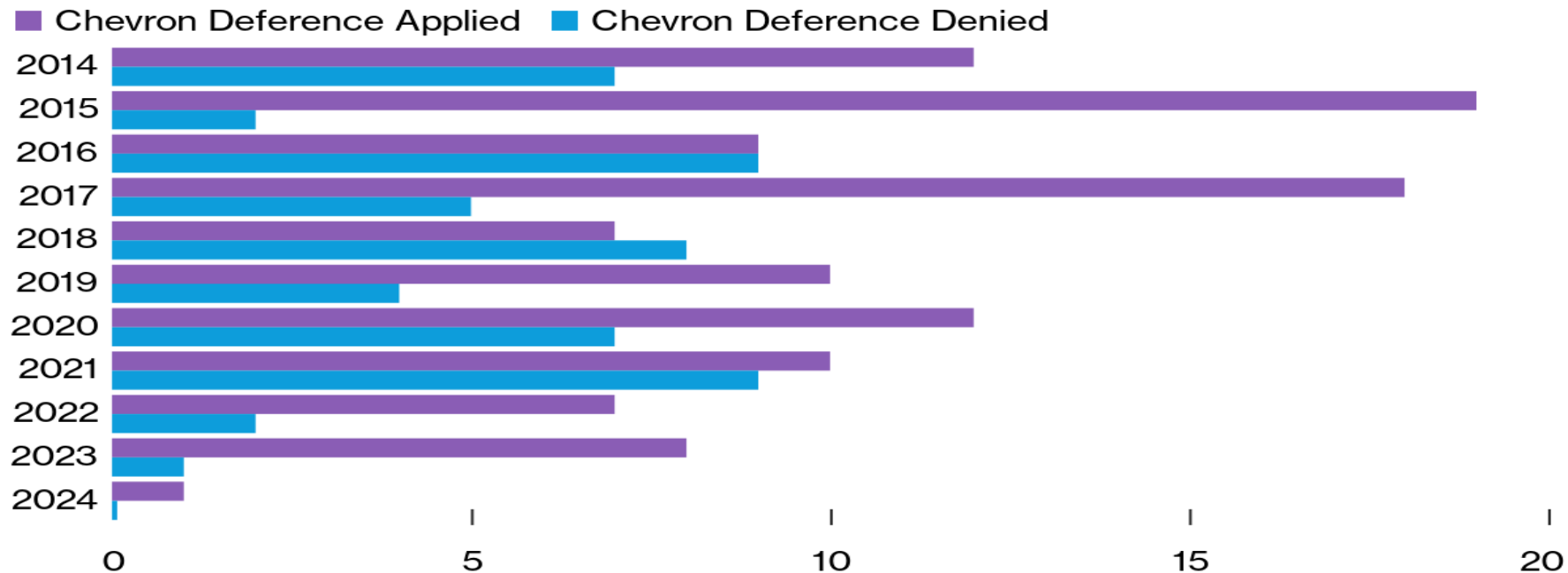
Loper Bright Minority

- Kagan, dissenting
 - “A longstanding precedent at the crux of administrative governance thus falls victim to a bald assertion of judicial authority.”
 - “Congress knows that it does not – in fact cannot – write perfectly complete regulatory statutes.”



How big of a deal is this?

'Chevron' Axed by Supreme Court Used Often Over Last Decade Second Circuit Court of Appeals applied doctrine in March



Sources: Chart uses Bloomberg Law's [BCite search](#) (Bloomberg Law subscription required) of circuit court cases from Jan. 1, 2014, through June 28, 2024; analysis of cases that employed the two-step Chevron doctrine framework by Kate Azevedo, Bloomberg Law analyst

Impact on Labor & Employment Policy

- **Equal Employment Opportunity Commission**
- **Office of Federal Contract Compliance Programs (OFCCP)**
- **Occupational Safety and Health Administration (OSHA)**

Labor & Employment Policy Post Loper Bright?

- **National Labor Relations Board**
- **Wage and Hour Division of the U.S. Department of Labor**
 - Increases to FLSA Salary Basis Threshold
 - FLSA Trip Credit Rules

Tools to Challenge Agency Action

- **Extended Tolling of Statute of Limitations**
 - *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 144 S.Ct. 2440 (2024)
 - **HOLDING:** Individuals and businesses may challenge any final agency rule (regardless of how long it has been in effect) for up to six years after they suffer any alleged injury from the rule.
- **Challenges to Administrative Hearing Forum:**
 - *Securities & Exchange Commission v. Jarkesy*, 144 S. Ct. 2117 (2024)
 - **HOLDING:** U.S. Constitution's 7th Amendment entitles a defendant to a jury trial – rather than an administrative hearing – when the U.S. SEC seeks civil penalties against defendant for securities fraud.

Congressional Actions?

- Several proposed bills regarding increased oversight of agencies and their rule-making authority
 - S. 4692 – agency official required to communicate with and testify before Congress
 - S. 4749 – conflicts of interest
 - “Upholding Standards of Accountability”
 - “RESTORE Resolution of 2024”

Thank you!

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