

Loper Bright and the End of Chevron Deference: Implications for North Carolina State and Local Government

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Presentation Roadmap

Loper Bright: An Introduction

- Backstory: let's talk about fish
- The Supreme Court's decision

The End of Chevron Deference and a New Era

- Challenges to federal agency regulations
- *Corner Post, Inc. v. Board of Governors Federal Reserve System*

What Does This Mean for North Carolina?

- How federal regulations impact state and local government work
- Administrative rulemaking in North Carolina

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Loper Bright: An Introduction

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Refresher: Federal Regulations

Congress...

- Enacts laws
- Can enact a law directing an agency to promulgate regulations
- Directions from Congress ("scope of authority" for the agency) can be broad or specific

Agencies...

- Must use a specific process for adopting regulations that involves multiple opportunities for public notice and comment
- Cannot adopt regulations without authority from Congress or outside the scope of authority given to them by Congress



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Loper Bright Enterprises v. Raimondo



Citation: 603 U.S. __ (2024)
Lower Court: U.S. Court of Appeals- D.C.
Decision Date: June 28, 2024
Decided: 6-2 (Justice Jackson did not participate)
Impact: Overturned *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (1984), which was the basis for 40 years of legal precedent and considered a "cornerstone" of administrative law



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History of the Case

1976- Congress passes the Magnuson-Stevens Fishery Conservation and Management Act (MSA)

- 16 USC 1801, *et seq*
- Primary law governing marine fisheries management and sustainability in United States waters
- Administered by the National Marine Fisheries Service (NMFS)
- Marine fisheries ultimately get managed at the regional level

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History of the Case, cont.

16 USC 1853(b)(8)- allows regional fishery management entities to require that **observers** be allowed onboard certain vessels during fishing trips

- Observers monitor crew's compliance with federal law, including catch limits for fish species
- Observers are professionals who must be paid for their work
 - Estimated cost: \$710 per day, per observer

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History of the Case, cont.

The MSA clearly says the following groups must shoulder the cost of these observers:

- Certain foreign fishing vessels
- Vessels participating in limited access privilege programs
- Vessels operating in the north Pacific region

... but who is missing from this list in the MSA?

- Other groups, including **Atlantic herring fishing companies**
- Nevertheless, NMFS regulations say these groups could be required to pay for observers, too

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Atlantic Herring — *Clupea harengus*

History of the Case, cont.

Loper Bright Enterprises, Inc.- an Atlantic herring fishing company- takes issue with this

- Loper Bright Enterprises and several other companies sue NMFS
- Argument: MSA does not authorize the NMFS to adopt a regulatory scheme that requires these Atlantic herring fishing companies to pay for observers

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Lower Court Decisions

District Court rules in favor of NMFS; D.C. Circuit affirms

- Both courts reference the "Chevron doctrine"
- Also known as "Chevron deference"
 - Comes from 1984 U.S. Supreme Court (SCOTUS) decision
 - Comes into play when Congress's instructions to a federal agency to adopt regulations- the "statutory scope of authority" for the agency- are unclear and contested
 - **Chevron** required courts to defer to an agency's interpretation of an ambiguous statute as long as that interpretation was "reasonable"

Next up: the case is appealed to SCOTUS

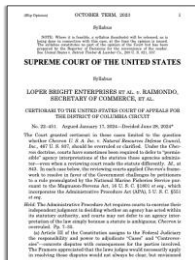
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Questions for SCOTUS

1. Does the MSA authorize NMFS to create regulations requiring the fishing industry to pay for observers?
2. Should SCOTUS clarify, or even overturn, the ruling from *Chevron*?

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The Outcome

SCOTUS overrules *Chevron*

- Vote is 6-2, with majority opinion written by Chief Justice Roberts
- Concurring opinions from Justices Thomas and Gorsuch
- Dissent by Justice Kagan, joined by Sotomayor
- Justice Jackson does not participate

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The Outcome, cont.

The majority's argument, summarized:

- Administrative Procedure Act (APA) of 1946 requires courts to “decide all relevant questions of law” when reviewing agency actions
- This directive from the APA is in tension with *Chevron* deference, which says court should defer to agencies’ reasonable interpretations of statutes
- *Chevron* deference has been applied inconsistently in the past; it’s confusing and unworkable
- *Chevron* has also been limited by recent cases

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The Outcome, cont.

Conclusion: *Chevron* overturned, and courts now “must exercise their independent judgment in deciding whether an agency has acted within its statutory authority”

- Agency input may inform, but not determine, a court’s interpretation of the statute at issue

Note: SCOTUS says overturning of *Chevron* ≠ overturning of all past cases decided using the *Chevron* doctrine.

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The Dissent

"In one fell swoop, the majority today gives itself exclusive power over every open issue—no matter how expertise-driven or policy-laden—involving the meaning of regulatory law."

"Agencies often know things about a statute's subject matter that courts could not hope to. The point is especially stark when the statute is of a 'scientific or technical nature.' [...] Agencies are staffed with 'experts in the field' who can bring their training and knowledge to bear on open statutory questions. [...] Consider, for example, the first bulleted case above. When does an alpha amino acid polymer qualify as a 'protein'? [...] I don't know many judges who would feel confident resolving that issue."

- Justice Kagan dissent, pgs. 3, 8

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SCOTUS
The Supreme Court renders federal regulations, overturning *Chevron* of *Chevron* decision

How the Supreme Court's blockbuster *Chevron* ruling puts countless regulations in jeopardy

Justices Limit Power of Federal Agencies, Imperiling an Array of Regulations

After a landmark 2024 decision had required courts to defer to agencies' reasonable interpretations of ambiguous statutes, overturning regulations on health care, safety and the environment.

Big blow to big government: Major SCOTUS decision strips power of faceless leviathan of federal agencies

WHAT OVERTURNING CHEVRON MEANS FOR THE WAY CONGRESS DOES ITS BUSINESS

The Public's Reaction

Disagreement over whether the *Loper Bright* decision was good or bad- but seeming consensus that it's significant

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The End of *Chevron* Deference and a New Era

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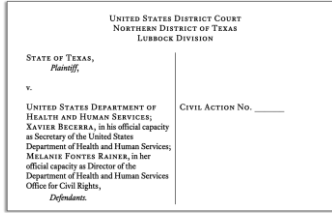
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Challenges to Agency Regulations

Anticipated uptick in litigation

Recent example: lawsuit out of Texas challenging HHS's statutory authority to make 2024 amendment to the HIPAA Privacy Rule, which created additional protections for health information related to reproductive health care

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The Corner Post Decision

Corner Post, Inc. v. Board of Governors Federal Reserve System, 603 U.S. __ (2024)

- Holding: statute of limitations (SOL) for a claim under federal APA begins to run when the plaintiff is injured by the agency's action (not when the agency took its action)
- Expands the opportunity for someone harmed by the implementation or enforcement of a federal regulation to bring a lawsuit
- Paired with *Loper Bright* decision, may make it easier to challenge agency regulations

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But for now...

Federal agency regulations are still good law, until or unless a court says otherwise!

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What Does This Mean for North Carolina?

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Do Federal Regulations Impact NC State and Local Government Work?

Answer: **yes!**

Myriad federal regulations directly govern or otherwise impact the work of state and local governments

Here is a (non-exhaustive) list of examples →

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Federal Regulations Impacting NC State and Local Government Work:

Select Examples

Social services:

- Indian Child Welfare Act (ICWA) regulations at 25 CFR 23 (state child custody proceedings that involve Indian children)
- Child support enforcement regulations at 45 CFR 301-310 (administration of the federal/state Title IV-D program)

Public health:

- Health Insurance Portability and Accountability Act (HIPAA) regulations at 45 CFR 160, 162, and 164 (protection of certain health information)
- Title X regulations at 42 CFR 59 (administration of federally funded programs providing low- or no-cost family planning services)
- Confidentiality of Substance Use Disorder Patient Records regulations at 42 CFR 2 (protection of certain substance use disorder treatment records)

Public education:

- Family Educational Rights and Privacy Act (FERPA) regulations at 34 CFR 99 (governing access to student education records)
- Individuals with Disabilities Education Act (IDEA) regulations at 34 CFR 300 and 34 CFR 303 (governing education access for children with disabilities)
- Title IX regulations at 34 CFR 106 (prohibiting sex-based discrimination in education and other programs receiving federal funds)

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Federal Regulations Impacting NC State and Local Government Work: Select Examples

- Juvenile Justice:**
 - Juvenile Justice and Delinquency Prevention Act formula grant program regulations at 28 CFR 31 (eligibility requirements for funding)
- Procurement and grants:**
 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards regulations at 2 CFR 200 (requirements for non-federal entities receiving federal awards)
- Economic and community development:**
 - Community Development Block Grant regulations at 24 CFR 570 (use of federal funds by municipal and county governments to support access to housing and economic opportunities for low- to moderate-income individuals)
- Environmental:**
 - Water quality classification regulations at 40 CFR 131
 - Stormwater and other National Pollutant Discharge Elimination System permit (including sedimentation and erosion control regulations) at 40 CFR 122 and 123
- Other:**
 - Americans with Disabilities Act Title II regulations at 28 CFR 35 (nondiscrimination on the basis of disability in state and local government services)
 - Family Medical Leave Act regulations at 29 CFR 825 (requiring employers, including many government employers, to ensure job-protected leave for employees in certain situations)

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Does Loper Bright Change Rules* in NC?

Answer: No! Or at least, not directly. NC has its own rulemaking processes and legal standards, which are not directly altered by Loper Bright.

*In NC, we call the regulations promulgated by agencies "rules," not regulations.

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North Carolina Rules



Similar to federal system we discussed earlier-

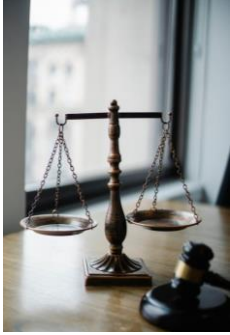
- Legislature enacts laws and may give an agency statutory authority to adopt rules
- Authority can be broad or specific/narrow
- Agency cannot act without, or outside the scope of, its statutory authority
- Agencies adopt rules using process in G.S. 150B, the NC Administrative Procedure Act

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North Carolina Rules + the Courts

How have NC courts approached situations where the legislature's directions to an agency (in statute) are ambiguous and contested?

- Courts should give a state agency's interpretation of a statute that it administers "great weight," but the agency's interpretations are not binding
- N.C. Acupuncture Licensing Bd. v. N.C. Bd. of Physical Therapy Exam'rs*, 371 N.C. 697, 700 (2018)

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North Carolina Rules + the Courts, cont.

Another consideration: NC has a different process for contesting agency rules

- Federal system: party challenges agency action by going straight to federal district court
- NC: administrative decisions typically appealed to administrative law judges (ALJs) with the NC Office of Administrative Hearings (OAH); these are called "contested cases"

Why does this matter?

- G.S. 150B-34(a) says ALJ must "giv[e] due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency"
- ALJ decision can be appealed to superior court and is typically reviewed under a two-part approach: questions of law get de novo review (where the judge considers the issue anew) and questions of fact are addressed with deference to the ALJ's findings using the "whole record" test

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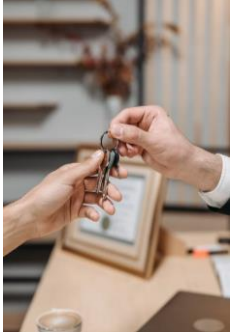
What's Next in North Carolina?

Even though the *Loper Bright* decision did not directly impact North Carolina rules and rulemaking agencies, we could see NC courts follow the approach set by SCOTUS in *Loper Bright* and begin giving less deference to rulemaking agencies

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Key Takeaways

- SCOTUS's 2024 decision in *Loper Bright* overturned the *Chevron* doctrine and 40 years of legal precedent
- After *Loper Bright* and *Corner Post*, it may be easier to successfully challenge federal agency regulations
- This could impact NC state and local government, whose work is shaped by myriad federal regulations
- For now, all federal regulations are still good law!
- *Loper Bright* does not directly impact NC rules and rulemaking agencies- but could inform how state courts approach deference to rulemaking agencies

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Image References

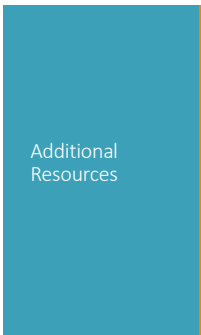
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Additional Resources

Jim Joyce and Kirsten Leloudis, "What the End of *Chevron* Deference Means for North Carolina Governments," July 25, 2024, available at: <https://canons.sog.unc.edu/2024/07/end-of-chevron-deference/>

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Questions?

Thank you for your time.
If you have additional questions at a later date, please send me an email or give me call.

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