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Supreme Court Places Another Limitation on Chevron Deference

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The justices of the Supreme Court of the United States have again limited the reach of *Chevron* deference. On May 28, 2019, the Court in Smith v. Berryhill carved another exception into what has lately proven to be its least-favored precedent. It held that *Chevron* deference does not apply to the scope of judicial review.

Background

Under § 405(g) of the Social Security Act, judicial review is available for "any final decision of the Commissioner of Social Security made after a hearing." After a hearing, an administrative law judge denied Social Security benefits to the petitioner. The Social Security Administration's (SSA) final decisionmaker, the Appeals Council, dismissed the petitioner's appeal on timeliness grounds.

The petitioner appealed that dismissal to the U.S. District Court for the Eastern District of Kentucky, which ruled that it lacked jurisdiction to hear the appeal. The Sixth Circuit affirmed on the ground that "an Appeals Council decision to refrain from considering an untimely petition for review is not a 'final decision' subject to judicial review in federal court." The Supreme Court granted certiorari to resolve a conflict among the circuits on whether a dismissal by the Appeals Council was reviewable as a final decision made after a hearing.

Before the Supreme Court, it was argued that § 405(g) was ambiguous and that the SSA's longstanding interpretation was entitled to deference under *Chevron U.S.A. Inc. v. Natural Resources Defense Council,* 467 U.S. 837 (1984). The *Chevron* doctrine requires federal courts to defer to an agency's interpretation of a statute if (1) the statute is ambiguous and (2) the agency interpretation is reasonable.

The Supreme Court's Decision

The Supreme Court held that *Chevron* was inapplicable. It explained that *Chevron* deference "'is premised on the theory that a statute's ambiguity constitutes an implicit delegation from Congress to the agency to fill in the statutory gaps.' . . . The scope of judicial review . . . is hardly the kind of

question that the Court presumes that Congress implicitly delegated to an agency." In concluding that "Congress did not delegate to the SSA the power to determine 'the scope of the judicial power vested by' §405(g) or to determine conclusively when its dictates are satisfied,'" it cited *Adams Fruit Co. v. Barrett*, 494 U.S. 638, 649–650 (1990), where it declined to defer to an agency's view of whether a statute foreclosed a private right of action.

Wider Implications?

The Court's holding and its use of *Adams Fruit* might extend to other questions. One example is a statute of limitations. Although usually nonjurisdictional, statutes of limitations are often intended to cabin an agency's prosecution authority. In AKM LLC v. Secretary of Labor, 675 F.3d 752 (D.C. Cir. 2012), Judge Brown stated in a concurring opinion:

Agency interpretations of statutes of limitations . . . are . . . poor candidates for deference. In general, statutes of limitations are not the sort of technical provisions requiring or even benefiting from an agency's special expertise. Rather, much like many jurisdictional provisions, these are texts with which courts are intimately familiar, as we interpret and apply them every day.

Finally, and perhaps most compellingly, statutes of limitations are designed to constrain the government's enforcement authority.

Counsel might do well to keep this example in mind in the wake of *Smith v. Berryhill*.

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