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A New Era in Healthcare Regulation & Compliance

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***Loper Bright* Shifts Statutory Interpretation Powers Back to the Courts.**

On June 28, 2024, the Supreme Court overturned the *Chevron* doctrine with its decision in *Loper Bright Enterprises* v. *Raimondo*. Under *Chevron*, courts have historically deferred to a federal agency's interpretation of ambiguity in statutes that the agency administers.
Courts premised *Chevron* deference on the notion that Congress implicitly delegated the interpretation to the agency.

In contrast, *Loper Bright* rejects *Chevron*'s assumption of implicit delegation: "When the best reading of a statute . . . delegates discretionary authority to an agency, the role of the reviewing court under the APA is, as always, to independently interpret the statute and effectuate the will of Congress."

Loper Bright's requirement for independent judicial judgment as to whether an agency acted within its authority granted by Congress will necessarily require courts to review agency interpretations on a case-by-case basis. A court may still defer to or "seek aid from" an agency's interpretations and consider the agency's "body of experience and informed judgment," but courts will also employ far more discretion to disagree with an agency's interpretation of statutory ambiguity. Now, more readily, a court may weigh "other information at its disposal" and potentially give increased weight to the perspectives of litigants and amici over agency expertise. Even where a court finds an agency's interpretation reasonable, the court may still replace the interpretation with its own.

Some caution is in order, though, because the post-*Chevron* landscape will not be the same for all agencies. The Supreme Court acknowledged that there are statutes calling for greater degrees of deference in specific circumstances. For example, banking agencies receive great deference for their interpretations of federal banking law. This is not due to the across-the-board presumption, from *Chevron*, that the Supreme Court overturned. Rather, it was a judicial reaction to the specific concerns that Congress addressed in federal banking law. These statute-specific forms of deference tended to merge into *Chevron* over the years. But the underlying precedents are still there, and courts may revive these statute-specific deference doctrines. This possibility is particularly pertinent in healthcare, because, for example, the lower courts have long deferred to CMS interpretations of the Medicare Act, in a manner that might survive *Loper Bright*.

***Corner Post* Expands the Timeline to Challenge Agency Actions.**

Another highly significant decision from the end of the Supreme Court's term, *Corner Post Inc.* v. *Board of Governors of the Federal Reserve System* , exposes many federal agency decisions to fresh challenges. Before *Corner Post*, litigants and courts widely understood that the clock—the six-year statute of limitations for actions against the government—began when an agency issued a rule or order. Now, the six-year window does not begin to accrue until the agency's action harms a challenging party.

In *Corner Post*, a truck stop challenged a rule from 2011 that placed a cap on transaction fees. The truck stop did not open for business until 2018, and the business did not test the rule until 2021—a decade after the regulation took effect. Because the truck stop began incurring its injury only two years earlier—well within the statute of limitations—the Supreme Court held that the business could contest the decade-old rule.

This decision is a monumental expansion of the timeline for parties to litigate against regulations. For instance, there is no apparent barrier to forming a new company to incur a now-timely injury to challenge a regulation that negatively affects an industry. The expansion of the deadlines will undoubtedly increase litigation and create new avenues to challenge federal agencies for better or worse. Past FDA drug approvals are a particular area that is likely to see contentious litigation based on *Corner Post*.

Jarkesy Diminishes Agencies' Adjudication and Enforcement Powers.

The day before announcing *Loper Bright*, the Court released another consequential opinion that further empowers the judiciary over agencies. In *SEC* v. *Jarkesy*, an investment adviser challenged the Securities and Exchange Commission's use of an administrative law judge to adjudicate a $300,000 civil penalty against the adviser and his firm. In finding that the SEC violated the adviser's Seventh Amendment right to a jury, the Court emphasized that Congress cannot "withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity."

Jarkesy holds noteworthy implications beyond the SEC. The decision calls into question the statutory authority of many other agencies to impose civil penalties. The ruling may also prevent agencies from enforcing statutes that exclusively depend on agency adjudication as an enforcement tool—limiting agency enforcement actions to situations in which Congress has empowered an agency to file claims in courts. Aside from a few "public rights" exceptions, such as tax and immigration, *Jarkesy* establishes that most administrative proceedings for a statutory claim akin to a common law claim—those involving private parties—is a matter for Article III courts rather than an administrative law judge. Litigants will undoubtedly begin asking courts to evaluate the level of similarity needed between a statutory claim and a common law claim to demand an Article III court.

The new limitations on administrative proceedings have various implications for the healthcare industry. For many programs that conduct enforcement through administrative adjudication, the question now arises whether those adjudication programs are unconstitutional, and a respondent has a right to defend in court. Another implication may be a decline in agency enforcement actions because litigation in courts is more time consuming and expensive. It seems inevitable that, because agency enforcement resources are finite, the overall scale and tempo of enforcement will decrease.

Conclusion

Loper Bright, *Corner Post*, and *Jarkesy* have remade the regulatory landscape. In an industry that faces a web of enforcement at all levels of government, healthcare and insurance providers alike face changes ahead as the gravity of regulatory oversight and compliance shifts from the agencies to the courts.

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