

THOUGHT LEADERSHIP

LEGAL UPDATES

PUBLISHED: JUNE 28, 2024

Services

Appellate

Securities & Corporate Governance

White Collar, Internal Investigations, & Compliance

Professional

JOSEPH S. DIEDRICH

MILWAUKEE:

414.978.5425

WASHINGTON:

202.378.2300

MADISON:

608.255.4440

JOSEPH.DIEDRICH@

HUSCHBLACKWELL.COM

Landmark Supreme Court Decisions Restrain Federal Administrative Agency Power

“Landmark” perhaps gets applied too often to court decisions these days, but the Supreme Court of the United States this week decided a pair of cases—*Loper Bright Enterprises v. Raimondo* and *Securities and Exchange Commission v. Jarkesy*—that deserve their landmark status. The long-term impact of these cases is hard to quantify, but it will be vast and enduring.

Both cases had garnered significant attention, but *Loper Bright* was widely considered the one to watch as soon as the Court granted certiorari back in May 2023. *Loper Bright* involved a challenge to the Department of Commerce’s broad interpretation of the Magnuson-Stevens Fishery Conservation and Management Act—specifically, an administrative rule mandating industry to pay for required federal monitors on fishing boats. The arguments put forth in the case struck at the heart of the so-called *Chevron* deference doctrine. For nearly 40 years, *Chevron*—named after a 1984 Supreme Court case upholding a Reagan-era EPA rule—required federal courts to defer to administrative agencies’ interpretations of ambiguous statutes whenever the agencies’ interpretations are reasonable or permissible. The Court has unambiguously ended this practice in *Loper Bright*, overturning *Chevron* in a 6-to-3 opinion. *Chevron* deference, the Court explained, cannot be squared with the Administrative Procedure Act (APA), which requires that courts reviewing agency actions “decide all relevant questions of law.”

Chevron had long been a target of civil libertarians and certain business-friendly interests, especially as the scope of federal administrative authority has grown over time. For many, *Loper Bright* represents a welcome change and empowers courts to more easily restrain federal agency action. At the very least, it will provide a more level playing field on which to dispute agencies’

interpretations of ambiguous statutory language. Yet not all heavily regulated industries may welcome the decision: business-friendly agency rules and decisions will also now receive the same neutral adjudication on questions of law.

As sweeping as the *Loper Bright* decision is, *Jarkesy* could ultimately be as impactful in the long-term. In this case, the Securities and Exchange Commission (SEC) pursued a securities-fraud enforcement action against an investment adviser named Jarkesy, resulting in a \$300,000 civil penalty. Under the relevant law, the SEC had the option to proceed either in federal court before a jury or in its own in-house adjudicatory forum before an administrative law judge; against Jarkesy and most targets, the SEC chose the latter option. Unsurprisingly, the SEC's ability to secure wins before agency tribunals was far higher than matters tried before Article III courts.

Agreeing with Jarkesy's challenge, the Supreme Court held 6-3 that the Seventh Amendment's guarantee of a jury trial requires the SEC to pursue civil penalties for securities-fraud violations before a jury in federal court. No longer can the SEC rely on its own in-house tribunal to secure penalties. Although *Jarkesy* applies only to the SEC, the Court's reasoning could have far-reaching implications across a number of agency enforcement matters, particularly when "the 'public rights' exception to Article III jurisdiction does not apply."

Together, *Loper Bright* and *Jarkesy* continue a Roberts Court trend of restraining federal administrative authority. Although neither majority opinion directly relies on the separation of powers to reach its conclusion, both cases clearly reallocate federal power. The President and administrative agencies come away with lesser power; Congress and the courts win back more. At the same time, neither case restrains federal power *writ large*. Congress can still enact broad laws, so long as it decides the important questions. And the SEC can still enforce securities laws to the max, so long as it convinces a jury in federal court.

What this means to you

The implications of these decisions will be felt broadly. Overall, many (but not all) businesses will be pleased that *Loper Bright* and *Jarkesy* have removed from the government's toolbox certain enforcement practices that have chafed litigants for some time; however, the full impact of the cases will not be known until tested in subsequent litigation. It is useful to remember that a generation ago even *Chevron* was hailed by many as a pro-business decision, even though it handed significant new powers to administrative agencies. It remains to be seen how these decisions will play out over the long term, but for now, they are a welcome limitation on administrative overreach.

Contact us

If you have questions regarding how these decisions impact your business or pending litigation, please contact Gregg Sofer, Joseph Diedrich, or your Husch Blackwell attorney.

Listen to The Justice Insiders podcast episode 7 and episode 18 for more background on these decisions featuring guest, Richard Epstein, Laurence A. Tisch Professor of Law at NYU School of Law.