



***Loper Bright and Corner Post:* Scope and Consequences**

At the end of its 2023-2024 term, the U.S. Supreme Court issued two decisions with far-reaching implications for federal regulatory agencies and the rules on which we rely to protect workers, consumers, and the environment: *Loper Bright Enterprises v. Raimondo* and *Corner Post v. Board of Governors of the Federal Reserve System*. This memorandum analyzes the likely consequences of those two decisions.

Loper Bright

In *Loper Bright*, the Court overruled a 40-year-old decision addressing how judges should approach review of agency regulations. That decision established what became known as “*Chevron* deference”—the principle that a court should defer to the relevant agency as to the best reading of a statute if the statute doesn’t spell out the answer and the agency’s view is reasonable.

Now, the Supreme Court has instructed lower courts to put their own views above those of the agency to whom Congress delegated authority: Instead of considering whether the agency’s view of a statute that it is charged by Congress with implementing is reasonable, courts will decide what they think is the best answer. Of course, it’s not possible for statutes to provide the answer to every issue: details inevitably must be worked out during implementation and new issues often emerge over time. The result of overruling *Chevron*, then, is that courts will necessarily become policymakers.

Lower courts cited *Chevron* thousands of times in deciding cases over the past 40 years. The impact of overruling that precedent will therefore, without doubt, be significant. At the same time, the Court’s about face should not affect all cases challenging agency action.

First, as the majority opinion concedes, while *Chevron* deference applied to statutory interpretations of ambiguous terms or broadly worded provisions, many statutes *unambiguously* give agencies broad discretion to make policy decisions about how best to implement the law. For instance, the Motor Vehicle Safety Act charges the Department of Transportation with issuing motor vehicle safety standards that are “reasonable, practicable, and appropriate.” The ruling in *Loper Bright* should not impact either how agencies implement such statutes or the level of respect that courts afford to agencies’ decisions in doing so, because the best reading of these statutes is that Congress delegated to the agency the discretion to make those decisions.



Second, *Chevron* deference was limited to judicial review of an agency’s view about a legal question—what a statute meant—not to an agency’s factual findings. An agency’s factual findings and decisions based on them (such as findings concerning product safety, health hazards, or cost-benefit balance) should be unaffected by the Court’s new decision. Instead, those aspects of the agencies’ work should continue to be reviewed under an “arbitrary and capricious” standard.

Third, the decision does not speak to the deference that courts give to agencies’ interpretations of their own regulations. The Court largely affirmed that deference in 2019.

Fourth, eliminating *Chevron* deference does not mean courts will necessarily overturn agency decisions about implementing laws. Courts will give those questions a fresh look, but they may often agree with the agency’s assessment.

Corner Post

In the second case, *Corner Post*, the Supreme Court upended the 6-year statute of limitations that applies to most agency regulations. Disagreeing with the long-held view of the courts of appeals, the Supreme Court held that the 6-year limitations period does not accrue for any particular person or entity until that particular person or entity is injured.

In other words, before *Corner Post*, a lawsuit challenging a regulation issued in 2010 could not be filed after 2016. After *Corner Post*, a company formed in 2024 that is affected by the

What kinds of questions does *Loper Bright* affect?

In her dissent in *Loper Bright*, Justice Kagan provided examples of the kinds of interpretive issues that the case impacts. Her examples illustrate why deferring to the agencies’ answers to such questions was sensible:

- Under the Public Health Service Act, does an alpha amino acid polymer qualify as a “protein”? Must it have a specific, defined sequence of amino acids?
- Under the Endangered Species Act, what makes one wildlife species population segment “distinct” from another? Must the Fish and Wildlife Service treat the Washington State population of western gray squirrels as “distinct” because it is geographically separated from other western gray squirrels?
- Under the Medicare program, how should the Department of Health and Human Services measure a “geographic area” for establishing reimbursement rates? By city? By county? By metropolitan area?
- By what degree must the Department of the Interior and the Federal Aviation Administration reduce aircraft flying over the Grand Canyon to “provide for substantial restoration of the natural quiet”?
- Under the Clean Air Act, does the term “stationary source” refer to each pollution-emitting piece of equipment within a plant or to the entire plant?



regulation has until 2030 to file a lawsuit to challenge it. So if you want to challenge an old regulation, just form a new trade association, start a new corporation, or open a new store. If the new entity can show that the regulation harms it in some way, its lawsuit will fall within the statute of limitations.

Again, the impact of this decision will be substantial and substantially disruptive, allowing repetitious challenges to many regulations issued by, for example, the Food and Drug Administration, the Consumer Financial Protection Bureau, and the Centers for Medicare & Medicaid Services.

Importantly, though, the decision does not open up the time within which to challenge every regulation. The 6-year limitations period addressed in *Corner Post* comes from a statute of limitations that applies in the absence of a specifically applicable one. The statutes concerning a number of agency rules, however, specify a 60-day limitations period that runs from when the agency issues the rule. For example, regulations under the Clean Air Act and Clean Water Act, motor vehicle safety standards, and occupational health and safety standards can be challenged only within 60 days after the agency issues the rule. Therefore, while *Corner Post* may restart the clock, unendingly, to challenge a range of agency rules, it does not open up every previous agency action to a new lawsuit.

The Combined Effect of *Loper Bright* and *Corner Post*

Combined, these decisions create a special problem for older regulations. In *Loper Bright*, the Court stated that its decision does not alter the precedential value of earlier court decisions that applied *Chevron* deference. However, most challenges to agency regulations are decided in the lower courts, not the Supreme Court, and the precedential value of decisions from those courts is limited to those courts themselves. For instance, the Fifth Circuit is not bound by precedent of the DC Circuit (and vice versa).

Because *Corner Post* empowers corporations to bring new challenges to long-settled rules, an agency regulation upheld decades ago in a court decision that gave the agency's views *Chevron* deference could potentially be challenged anew in a different court. In that new lawsuit, the regulation would be reviewed without *Chevron* deference. So as to those regulations to which a 6-year statute of limitations applies, the 6-year period may restart, unendingly.

Both individually and together, *Loper Bright* and *Corner Post* will make it harder for regulatory agencies to do their jobs and easier for corporations to challenge, delay, and sometimes defeat public protections. The decisions do *not*, however, make it impossible for federal agencies to regulate, and they do *not* mean that agencies will always lose in court. The decisions therefore should not deter the agencies from doing their jobs.