U.S. Supreme Court Overrules The *Chevron* Doctrine

For 40 years, the federal courts have deferred to the statutory construction adopted by administrative agencies where an authorizing statute was either ambiguous, or left a gap that required further interpretation. In such cases, who should resolve the ambiguity? A judge, who lacks subject matter expertise? Or the agency that Congress charged with administering the statute? In 1984, the U.S. Supreme Court ruled in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, that it should usually be the agency, subject to the bounds of reasonableness, who would make these decisions. Known as "Chevron deference," courts have deferred to the interpretive guidance of administrative agencies to create and enforce regulatory efforts in every phase of American life, including health care, workplace safety, financial markets, international trade, and national security, to name a few.

Not anymore. In *Loper Bright Enterprises v. Raimondo*, ___ S.Ct. ___, 2024 WL 3208360 (June 28, 2024), the U.S. Supreme Court reversed *Chevron*, stating that "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority. . . ." Writing for the majority, Chief Justice Roberts stated that the Constitution assigns to the federal courts "the responsibility and power to 'adjudicate' cases and 'controversies'—concrete disputes with consequences for the parties involved," and that "'it is emphatically the province of the judicial department to say what the law is.'" *Loper*, 2024 WL 3208360 at **8, 9, quoting *Marbury v. Madison*, 1 Cranch 137, 177. While recognizing the expertise residing in administrative agencies and the "respect" due to the interpretations of those who "were appointed to carry [a statute's] provisions into effect," "Respect is just that." *Id.* at *9. Courts are not bound to accept interpretive guidance with which they disagree.

Pivoting from the Constitution to the Administrative Procedures Act, the Chief Justice noted that the language of the statute itself supports the decisional primacy of the courts. The APA requires courts to "'hold unlawful and set aside agency action, findings, and conclusions found to be ... not in accordance with law.'" *Id.* at *12, quoting 5 U.S.C. § 706(2)(A). "The text of the APA means what it says." *Id.* at *13.

How, then, could the *Chevron* court have landed on a presumption that cedes statutory construction to an administrative agency, while still being faithful to both Art. III of the Constitution and the text of the APA? Only by adopting the "misguided" presumption that agencies possess special competence in resolving statutory ambiguities. *Id.* at *16. This presumption, the Court declares, "is a fiction." *Id.* at *18.

Chief Justice Roberts affirmed that courts "may not defer to an agency interpretation of the law simply because it is ambiguous." Interpreting the law is the court's job—and only the court's job. *Id.* at *22.

Just 18 months ago, the Ohio Supreme Court issued a decision foreshadowing *Loper*. In *TWISM Enterprises, LLC v. State Board of Registration for Professional Engineers and Supervisors*, 172

Ohio St.3d 225 (2022), the Ohio Supreme Court struck down the Ohio version of *Chevron* deference, based on many of the same reasons advanced in the *Loper* case.

The practical implications of the *Loper* decision are far-reaching. Many have felt that agencies have long over-stepped their authority, and imposed undue and at times unfair hardship on businesses and employers, who faced nearly impossible odds if they chose to challenge administrative rules in court. The *Loper* case is already being hailed as welcome relief that will help to reduce the number of onerous and arbitrary regulations that have stifled business and created impediments to growth for the past 40 years.

Others warn that the Court has needlessly abandoned reliance on administrative expertise that judges simply do not possess. Worse, *Loper* may spell doom for regulatory regimes covering virtually every facet of American life.

The *Loper* majority does not endorse a wholesale abandonment of agency regulation, or respect for the unique expertise of government-employed experts. ". . . [A]ll today's decision means is that, going forward, federal courts will do exactly as this Court has since 2016, exactly as it did before the mid-1980s, and exactly as it has done since the founding: resolve cases and controversies without any systematic bias in the government's favor." *Id.* at * 38 (Thomas, J. concurring). We'll see.