



Chevron v. Natural Defense Resource Counsel (NRDC)

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Chevron v. NRDC

- Landmark administrative law decision by the US Supreme Court that set forth the legal test (known as *Chevron* Deference) for when federal courts **MUST** defer to a federal agency's interpretation of a law/statute.
- Cited by over 17,000 lower Federal Court decisions and 70 Supreme Court decisions.
- **General Concept:** In a dispute, between an agency's interpretation of a statute and a 3rd party, federal courts were required to give deference to the agency's interpretation if such interpretation was "reasonable."



A Little Bit of Baseball

- **“Tie goes to the runner”**
 - **Concept:** A forced runner, usually the batter-runner, who arrives on base at the same time as the ball is safe.
 - **Practical:** Umpires generally reject this concept and make a ruling that one or other arrived first.



Post-Chevron: Judges will make the determination on the interpretation of a statute, without relying on deference.



Historical Timeline of Chevron

- **Pre-1940s:** Federal Courts utilized a ten-factor consideration test. No deference to agency interpretations.
- ***Skidmore v. Swift & Co. (1944):*** Supreme Court developed a four-part test for agency deference: (1) thoroughness of agency actions, (2) validity of agency reasoning, (3) consistency of its interpretation over time, and (4) other persuasive powers.
- ***Chevron (1984):*** Supreme Court developed a two-step process for when courts must defer to agency's interpretation of a statute they administer.





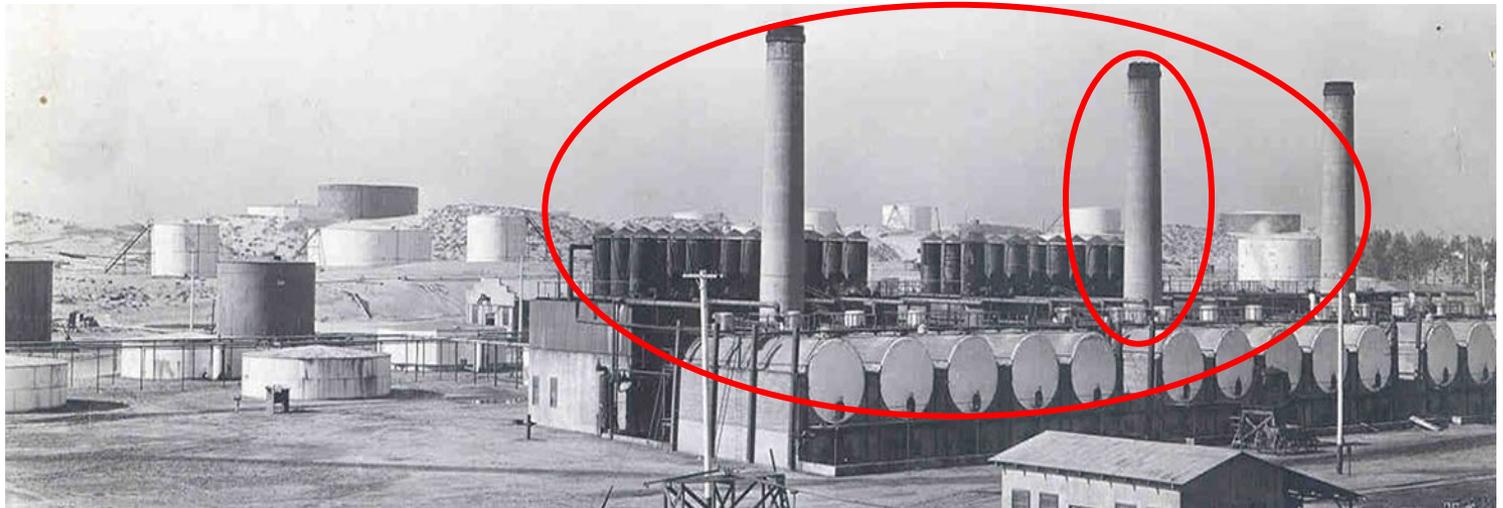
Chevron Two-Step Test

- **Step 0: Does the agency administer the statute it is interpreting?**
- **Step 1: Has Congress spoke directly to the precise issue at question? (i.e. is the statute ambiguous?)**
 - If Congress' intent was clear, then no deference is afforded to the agencies.
 - Case law illustrates that “clarity” is based on both the (1) the amount of effort to find the meaning, and (2) the amount of confidence that meaning is correct.
- **Step 2: If no, is the agency's interpretation based on a permissible (“reasonable”) construction of the statute?**
 - Reasonableness is based on the specific factual circumstances present in the case.
 - Overwhelmingly the federal courts found agency interpretations to be reasonable.



Why People Wanted Chevron Removed

- Agencies received deference to their interpretations even among administrative changes, so much so *Chevron* became a political tool to advancing policy issues. Seen as giving agencies too much power.
- Example in *Chevron* itself:
 - *Chevron* – What is a “stationary source” for pollutant? I.e. is the whole factory one stationary source, or is each individual pipe a stationary source?
 - Both interpretations were reasonable based on the statute. Agency felt individual pipes would actually achieve the goals of the Clean Air Act.





Loper Bright Enterprises v. Raimondo

- Together with *Relentless v. Dept. of Commerce*, overturns *Chevron v. NRDC*, issued June 2024
- Ruling: The *Chevron* deference test conflicts with the Administrative Procedure Act. (APA)
- Holding: The APA requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous.
 - The APA (Congress) did not prescribe any deferential standard for courts to employ.
 - Courts may still defer to agency interpretations under a now weakened *Skidmore*.



Loper Bright Enterprises v. Raimondo

- **Prospective holding: No prior administrative actions or court decisions are overturned, because it would require “particularly special justification.”**
- **Dissent: Removal of *Chevron* shifts power to judges who do not have the same level of expertise as agencies.**
 - **Congress does not write perfectly complete regulatory statutes.**
 - **“Sometimes that is intentional”**
 - **Will overwhelm the judicial system with agency matters.**
 - **Statutory ambiguities are a policy question rather than a law question.**
 - **“There can be two reasonable interpretations of the law,” therefore the policy portion is inherently important to consider.**
 - ***Chevron* has been “fine-tuned” to reduce agency “power-grabs,”**
 - **In reference to the many cases (including Step 0 cases) that limits when *Chevron* may be used.**



Short & Long Term Implications

- **Agency Caution.**
 - Agencies likely to proceed with greater caution in their rulemaking (ex: less formal rulemaking), statutory interpretations, and/or enforcement.
 - Applicants will need to develop stronger record for contentious issues, delaying projects or taking certain alternatives off the table.
 - Agencies will need clearer authority to modify programs (ex: USDA)
- **Uncertainty in Judicial Scrutiny.**
 - Expect longer, more costly, and more complex litigation on federal projects as judge begin to adjudicate more of these cases.
 - Long term goal – is to create uniformity and reduce certainty of agency decisions.
- **Testing of Agency Authority.**
 - Will see more lawsuits from groups testing the power of long-standing agency interpretations (Ex: NEPA, ESA, Clean Water) changes **WILL** impact our federal projects, even years into the project. (See *Corner Post*)



Short & Long Term Implications

- **Uncertainty in Regulatory Compliance.**
 - Potential reassessments in the regulatory compliance realm as changes emerge in both agency enforcement and interpretation of regulations.
- **Increased Forum Shopping at the Federal Level.**
 - Groups will be looking for favorable federal judges to move projects along, some courts will become more amiable to certain interpretations than others.
- **Continuous Changes to Regulatory Landscape.**
 - Projects will likely experience delays in permitting process and project timelines as the agencies will need more time to “firm up” their decision-making records.
 - Expect permitting to take longer as judge opinions come down from groups challenging agency authority.



What about Texas?

- *Chevron* was federal case law that applied to federal agency interpretations, but most states have their own version of *Chevron* that provides deference to state agencies.
 - Texas *Chevron* case is the *Railroad Commission of Texas v. Texas Citizens for a Safe Future & Clean Water (Texas Citizens)*
- In 2011, the Texas Supreme Court established elements that vary to a degree from the federal *Chevron* deference.
 - *Citizen's* test is a four-step process (with two sub-steps)
 - The heart of federal deference is reasonableness, the heart of Texas deference is ambiguity.
- Will *Citizens* be overturned too? No.
 - *Citizens* is founded in Texas case law, not federal law.



General Takeaways

- **The sky is not falling on BRA projects!**
- **The overturning of *Chevron*, will create a degree of uncertainty for federal regulations and projects across the US as groups begin testing the bounds of agency authority and forum shopping.**
- **Likely to see more Supreme Court cases that revise or rollback long established case law and expect big changes in the administrative law sphere.**
- **BRA needs to be more proactive than ever before when it comes to federal projects, including:**
 - **Investing more in establishing a strong record – by hiring additional consultants and having heavily entrenched legal support.**
 - **Preparing for costly and contentious legal battles.**
 - **Reviewing statutory sources early in Federal Projects to determine potentially contentious sources of law.**
 - **Becoming more involved in the federal legislation impacting BRA/BRA projects.**