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Supreme Court issues long-awaited regulatory decisions

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In June 2024, the Supreme Court issued a trio of notable decisions further curtailing the powers of federal administrative agencies and the reach of federal statutes. The expansion of the administrative state and the growth of regulatory bureaucracies over the latter half of the 20th century gave rise to legal doctrines under the Administrative Procedure Act whereby courts came to rely on regulators both to interpret the bounds of their own statutory authority, and to adjudicate administrative cases enforcing their own regulations.

The overturn of Chevron*, Justice Kagan wrote, "is yet another example of the Court's resolve to roll back agency authority, despite congressional direction to the contrary."*

Similarly, as the reach of the federal criminal code expanded to rein in corruption and other misconduct by officials, courts recognized broad federal prosecutorial discretion to punish conduct not only by federal officeholders, but those at the state and local level as well. The Court has significantly rolled back these trends, reasserting the independence of the courts in reviewing agency actions, reducing the scope of agencies' adjudicative authority, and narrowly construing federal criminal statutes, particularly relating to public corruption.[1]

In a pair of cases, the Supreme Court overruled the long-standing *Chevron* doctrine under which courts extended deference to agency interpretations in cases involving ambiguities in Congress' grant of regulatory authority. The Court thereby restored to federal district courts the ability to independently resolve ambiguities in disputes over agency action.

In a second decision, the Court held that enforcing securities fraud claims in an in-house SEC tribunal violated defendants' Seventh Amendment right to a jury trial, removing administrative adjudicative authority over certain types of misconduct (like fraud) that were recognized at common law.

Last, the Court held that a federal bribery statute proscribed bribes to state and local officials, but did not make it a crime for those officials to accept gratuities for past acts, narrowing the scope of state and local conduct subject to federal prosecutorial authority. We will discuss each of the decisions below in greater detail and conclude with views on what they portend for the enforcement climate.

The court overturns *Chevron* deference

For nearly 40 years, federal courts have employed the *Chevron* doctrine, named for the Supreme Court's 1984 decision in *Chevron v. Natural Resources Defense Council*, to extend deference to agency interpretations in cases involving statutory questions of agency authority. Under *Chevron*, district courts were required to defer to an agency's interpretation of Congress' statutory delegation of regulatory authority, as long as the agency's interpretation was not unreasonable.

The doctrine came to be challenged in a pair of cases before the Supreme Court — *Loper Bright Enterprises v. Raimondo and Relentless, Inc. v. Department of Commerce* — where the District of Columbia Circuit and the First Circuit, respectively, upheld a regulation issued by a federal agency as a reasonable interpretation of a federal statute. On June 28, 2024, the Supreme Court overturned the lower courts' decisions and held in a 6-3 vote: "*Chevron* is overruled."

Writing for the majority, Chief Justice Roberts found that *Chevron* cannot be reconciled with the Administrative Procedure Act ("APA"), which governs federal administrative agencies, and in fact "is the antithesis of the time honored approach the APA prescribes." While the APA requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, *Chevron* asks the court "to *ignore*, not follow, 'the reading the court would have reached'" if no agency were involved.

The Court further criticized *Chevron* deference as "misguided" by presuming that agencies had special competence or necessary subject matter expertise in resolving statutory ambiguities. "The very point of the traditional tools of statutory construction," the Court observed, "is to resolve statutory ambiguities," and those are the tools that courts — not agencies — use every day and should use particularly when the ambiguity concerns the scope of agency power.

Although the Court found that past judicial decisions have shown *Chevron* to be unworkable and unreliable as a result of inconsistent

applications, it did not call into question prior cases that relied on the *Chevron* framework. Rather, the Court found that the holdings of those cases — including the Clean Air Act holding of *Chevron* itself — are still subject to statutory *stare decisis* despite the Court's change in interpretive methodology.

While the impact of the Court's ruling remains to be seen, Justice Kagan warned in her dissent that it "is likely to produce large-scale disruption." The overturn of *Chevron*, Justice Kagan wrote, "is yet another example of the Court's resolve to roll back agency authority, despite congressional direction to the contrary."

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Only time will tell how this plays out in practice, but regulatory agencies' statutory interpretation may not always maximize their regulatory authority. Indeed, the *Chevron* decision itself affirmed the Reagan-era EPA's permissive interpretation of the Clean Air Act that had the effect of easing restrictions on emissions. Depending on the outcome of the upcoming presidential election, one could envision a scenario where district courts advance more expansive interpretations of regulatory authority than agency heads pursuing a more limited approach to regulation.

In-house SEC tribunals violate securities fraud defendants' Seventh Amendment right

On June 27, 2024, the Supreme Court held that the SEC's adjudication of an enforcement action seeking civil penalties for alleged securities fraud in an in-house tribunal before an administrative law judge violated defendants' Seventh Amendment right to a jury trial in *SEC v. Jarkesy*. A 6-3 Justice majority affirmed the Fifth Circuit's judgment.

The SEC initiated an enforcement action against an investment fund founder and an investment adviser seeking civil penalties and other remedies, alleging that defendants had violated the antifraud provisions of the Securities Act, the Securities Exchange Act, and the Investment Advisers Act. Administrative adjudication of such claims has historically been utilized as a means to efficiently and expeditiously enforce regulations without the full scope of procedural rights and formalities attendant to litigation in federal court.

The in-house proceedings resulted in a final order against defendants with a civil penalty of $300,000. Defendants petitioned for judicial review and a divided Fifth Circuit panel vacated the final order, holding that adjudicating the matter in-house violated defendants' Seventh Amendment right to a jury trial.[2] After the Fifth Circuit denied rehearing *en banc*, the Supreme Court granted certiorari.

Writing for the majority, Chief Justice Roberts affirmed the Fifth Circuit's decision as consistent with the Court's Seventh Amendment rulings in *Granfinanciera, S.A. v. Nordberg*,[3] and *Tull v. United States*.[4] The Court concluded that this action implicates the Seventh Amendment because the antifraud provisions at issue "replicate common law fraud, and it is well established that common law claims must be heard by a jury," considering the Seventh Amendment's guarantee that in "suits at common law the right of trial by jury shall be preserved."

Under *Granfinanciera*, the Seventh Amendment "extends to a particular statutory claim if the claim is legal in nature." The Court explained in *Tull* that "[t]o determine whether a suit is legal in nature, we directed courts to consider the cause of action and the remedy it provides." The Court continued, that "[s]ince some causes of action sound in both law and equity, we concluded that the remedy was the more important consideration." Noting that in this case, "the remedy is all but dispositive," the Court pointed out that civil penalties were sought and that only courts of law issue monetary penalties as a punitive measure.

Thus, the Court stated that "civil penalties are a type of remedy at common law that could only be enforced in courts of law." Summing up, the Court stated that "the civil penalties in this case are designed to punish and deter, not to compensate. They are therefore a type of remedy at common law that could only be enforced in courts of law." The Court explained that its conclusion effectively decided that this suit implicated the Seventh Amendment and that a defendant would be entitled to a jury on these claims.

The Court also concluded that the "public rights" exception did not apply. This exception has been held to permit Congress to assign certain matters to agencies for adjudication. The Court found that the principles in *Granfinanciera* largely resolve this case, as it did not fall within any of the areas involving governmental prerogatives where the Court has concluded that a matter may be resolved without a jury.

Emphasizing the importance of considering the substance of the action — not where it was brought, who brought it, or how it was labeled — the Court concluded that this action involved a matter of private rather than public right and that Congress may not withdraw it from judicial cognizance.

Although the SEC had already begun to restructure its enforcement docket in the years prior to last month's ruling, moving most categories of cases away from administrative courts, the Court's decision will materially accelerate the trend of litigating disputed SEC cases (whether alleging fraud or otherwise) in federal court.

Beyond those immediate ramifications, *Jarkesy* may have sweeping implications not only for the SEC, but for other federal agencies that have made use of administrative tribunals in a similar fashion — the Commodity Futures Trading Commission, the Federal Trade Commission, and the Federal Communications Commission among them. Because such cases can no longer be brought in the relatively efficient forum of an in-house tribunal, agencies like these may face

difficult choices in allocating finite enforcement resources, given the resources necessary to litigate each of them fully in federal court.

Federal bribery statute does not criminalize gratuities for state or local officials' past acts

On June 26, the Supreme Court overturned the bribery conviction of a former Indiana mayor who accepted a $13,000 check after the city awarded two contracts to a local truck company.[5] The Court held — again 6-3 — that the federal bribery statute at issue, 18 U.S.C. § 666(a)(1)(B), does not criminalize "gratuities" paid to state or local government officials in recognition for past acts. The decision continues the Court's recent pattern of restricting the use of federal statues to prosecute state and local public corruption cases.

For federal officials, Congress has established two separate provisions prohibiting acceptance of *bribes* for an official act under § 201(b) and acceptance of *gratuities* after an official act under § 201(c). For state and local officials, § 666 makes it a crime — punishable by a maximum term of 10 years — to "corruptly" solicit, accept, or agree to accept anything of value "intending to be influenced or rewarded in connection with" certain official acts.

Pointing to the distinction between the two § 201 provisions, the Court concluded in *Snyder* that § 666 is a bribery statute like § 201(b) and not a gratuities law because the text, the statutory history, and the statutory structure all suggest that § 666 is modeled on and resembles § 201(b), intending to proscribe only the crime of bribery.

In the majority's opinion, reading § 666 to create a federal prohibition on receipt of gratuities by state and local officials would significantly infringe on bedrock federalism principles. Noting the variety of local approaches to regulating gratuities, Justice Kavanaugh wrote, "[t]he carefully calibrated policy decisions that the States and local governments have made about gratuities would be gutted if we were to accept the Government's interpretation of § 666."

In other words, the Court framed its decision as restoring power to the states vis-à-vis federal prosecutors. Kavanaugh's opinion emphasized the consistency of the Court's ruling with its long-standing position that "[a] 'narrow, rather than a sweeping, prohibition is more compatible with the fact that' this statute 'is merely one strand of an intricate web of regulations.'"

This concern of overregulation, according to the dissent, appears to be "the real bone the majority has to pick with § 666." But *Snyder* preserves the enforcement authority of state and local prosecutors to enforce any state laws or regulations prohibiting gratuities to state and local officials, so it should not be read as granting *carte blanche* to such conduct: in its wake, awareness of state and local anti-corruption laws and regulations becomes all the more important.

Conclusion

With these opinions, the Supreme Court has decisively signaled an era of limiting regulatory and prosecutorial discretion, diminishing the power of the administrative state and shrinking the swath of conduct potentially covered by criminal statutes. Accompanying these changes are shifts in power, from federal regulatory agencies and federal prosecutors' officers to the judiciary.

With the Roberts Court's majority set to apply this jurisprudential approach for the foreseeable future, one can expect these trends to continue regardless of what transpires in this year's presidential elections, with the Supreme Court and lower courts further chipping away at administrative and prosecutorial power for years to come.

Notes:

[1] Though somewhat more limited in its ramifications, the Court's June 2024 decision in *Fischer v. United States*, which narrowed the scope of an obstruction statute used to prosecute certain criminal defendants charged in connection with the events at the U.S. Capitol Building on January 6, 2021, can be seen as of a piece with the cases discussed here. That opinion limited the types of obstructive conduct constituting obstructive conduct under the statute to those behaviors that tend to impair the Government's use of records, documents, or other objects in an official proceeding, rather than conduct that simply impairs the proceeding as a whole. It may be that many of the January 6 cases that involved this statute survive this new reading. Nevertheless, *Fischer* fits the trend as a narrowing the scope of criminal statutes by the Court.

[2] *Jarkesy v. SEC*, 34 F. 4th 446 (5th Cir. 2022).

[3] 492 U.S. 33 (1989).

[4] 481 U.S. 412 (1987).

[5] *Snyder v. United States*, No. 23-108 (2024) (Kavanaugh, J.).

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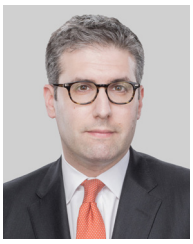

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