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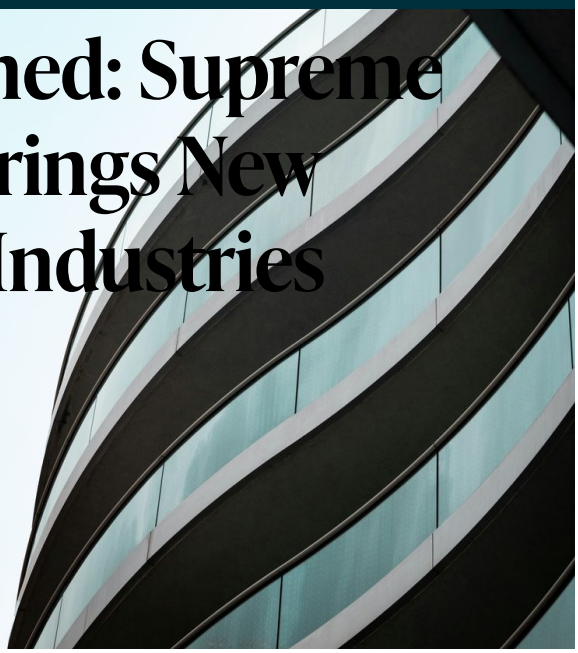
# The Floodgates Have Opened: Supreme Court Scuttles Chevron, Brings New Uncertainty to Regulated Industries



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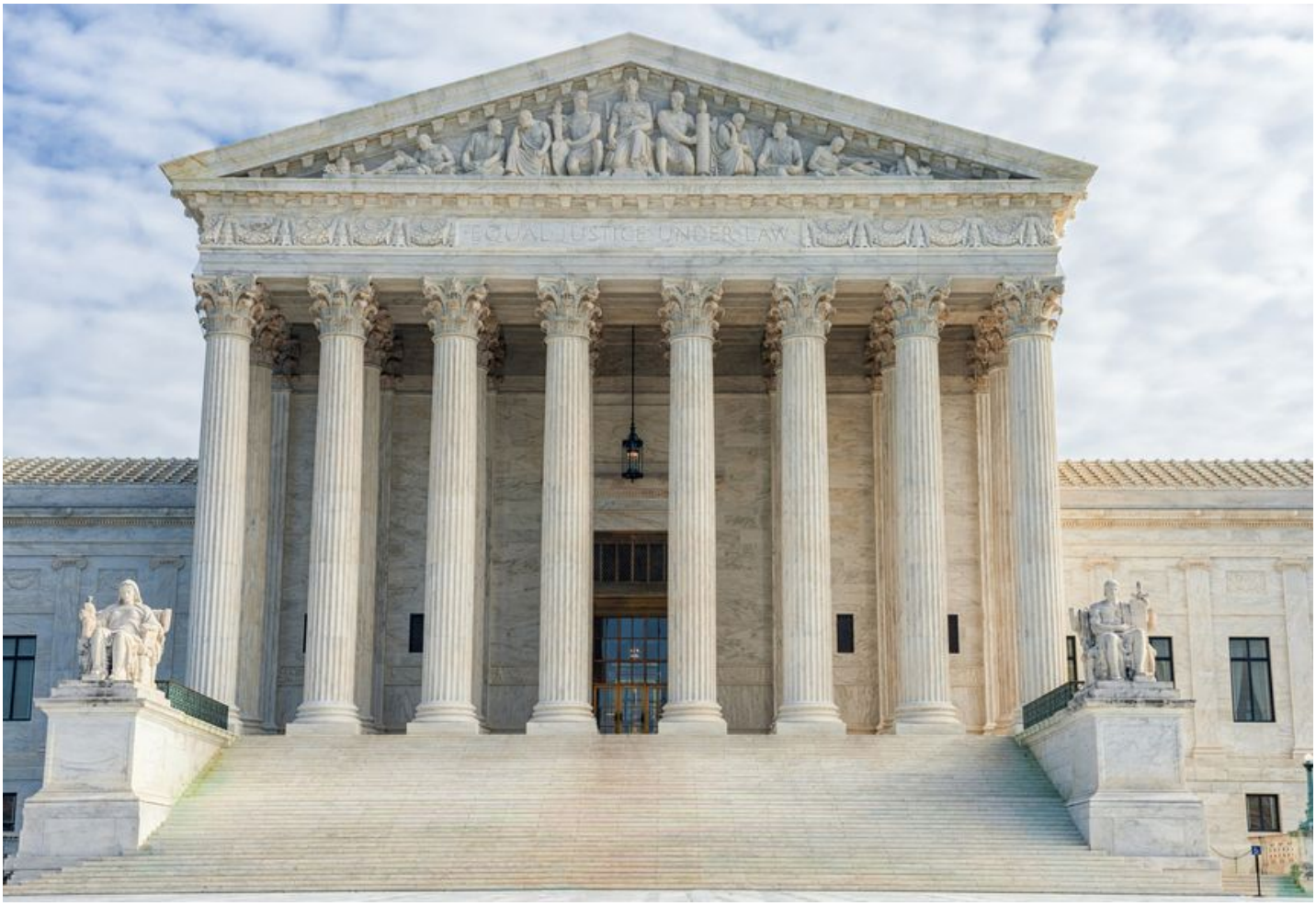
June 28, 2024, 11:30 AM
By: Aaron Z. Savit, PhD, Ian Swan

For forty years, *Chevron* has put a thumb on the scales in favor of the executive agencies whenever their decisions were challenged in court. Now, the Supreme Court has overturned that longstanding precedent, issuing its opinion in the two cases that will define judicial deference to executive agencies going forward. In today's decision in *Loper Bright* and *Relentless*, the Supreme Court scuttled *Chevron*, holding that the precedent could not be squared with the Administrative Procedure Act (APA), which requires that courts decide "'*all* relevant questions of law' arising on review of agency action." The Court criticized the underlying reasoning for *Chevron*, which assumed that any statutory ambiguities implicitly delegate interpretive authority to Executive Agencies. The Court also determined that common justifications for agency deference, such as agency expertise or the promotion of uniformity in the law, could not displace the judiciary's interpretive role. Importantly, the Court confirmed that holdings in previous cases decided under *Chevron* will remain in effect.

As we explained more fully in another article, those two cases, *Loper Bright Enterprises v. Raimondo* and *Relentless, Inc. v. Department of Commerce*, have broadly similar facts. Both cases involve the application of the *Chevron* doctrine to fisheries rules requiring that fishing vessels pay for fees associated with on-board monitors. Those rules were upheld by lower courts, and the Supreme Court granted certiorari to consider "[w]hether the Court should overrule *Chevron* or at least clarify that statutory silence concerning controversial powers

expressly but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency."

In recent years, the Supreme Court has not directly cited *Chevron* in multiple cases regarding agency deference. *See e.g., Am. Hosp. Ass'n v. Becerra*, 142 S. Ct. 1896 (2022). As such, many observers expected that the Court would take this opportunity to either narrow *Chevron* deference or replace it entirely. Now that *Chevron* has been definitively overturned, FDA will likely find its determinations are more frequently challenged in court. This will lead to greater uncertainty for regulated industry and may ultimately affect the Agency's approach to its decision-making processes generally, including potentially slowing down the speed with which FDA renders its decisions.

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