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Gavel to Gavel: Supreme Court decision will impact Oklahoma industry

By Brooks A. Richardson / January 31, 2024



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In January, the U.S. Supreme Court heard oral arguments in two cases with the potential to overturn a cornerstone of administrative law.

The Chevron doctrine, established in 1984, mandates judicial deference to reasonable interpretations of ambiguous statutes by federal agencies. The Supreme Court appears likely to overturn the Chevron doctrine or at least scale it back significantly. The decision

may create opportunities for industry to secure more favorable rulings in regulatory battles but will also create regulatory uncertainty.

Overruling Chevron has pros and cons. On one hand, it could reduce executive power, restore judicial responsibility, and limit agencies' interpretative leeway. This aligns more closely with the constitutional design of separation of powers. Agencies will adhere more closely to statutes, leading to more incremental policy interpretations instead of the wide policy swings we have experienced with recent changes in administration.

Conversely, an overruling of Chevron could undermine agency expertise, impede effective regulation, increase legal complexity, and decrease regulatory certainty. Further, the judicial system may become overburdened, and established legal frameworks might face disruptions that lead to more widespread instability in the regulatory framework.

For Oklahoma, where energy production, healthcare, finance, and agriculture are all integral to the state's economy, the stakes are high. These sectors navigate an extensive array of federal regulations—more than 65,000 federal regulations govern these industries.

Regulatory uncertainty hinders long-term planning and investments. This is particularly true in healthcare, finance, and energy industries heavily impacted by environmental management because those regulations are closely tied to technological advancements and public policies.

As the Supreme Court deliberates the fate of Chevron deference, Oklahoma businesses should watch closely and prepare for a new paradigm. What can you do? First, increase your ability to scan the regulatory environment. Receiving updates on announced regulatory changes will no longer be adequate; you also will need to scan for pending litigation that challenges existing regulations. Second, seek legal counsel from those who understand your industry and the regulations that impact it. Your choice of counsel impacts the width of your lens, extends your field of vision, and will allow you to foresee the most likely alternative outcomes. Third, pick your battles and rally your industry allies. An overruling of Chevron means you have a better chance to defeat long-standing regulations that defy common sense and their statutory origins but survived past legal challenges under the doctrine of Chevron deference.

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