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3 Judicial Approaches To Applying Loper Bright, 1 Year Later

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For nearly 40 years, federal courts applied so-called Chevron deference to administrative agency action. Chevron deference — named after Chevron USA Inc. v. Natural Resources Defense Council Inc., a 1984 U.S. Supreme Court decision upholding a Reagan-era regulatory rulemaking — required federal courts to defer to agencies' interpretations of ambiguous statutes whenever the interpretations were reasonable or permissible.

The Supreme Court's June 2024 decision in Loper Bright Enterprises v. Raimondo **overturned** this doctrine and promised to exert far-reaching influence on the future course of administrative law.[1]

One year after Loper Bright, the contours of its impact are coming into view. A look at lower court decisions over the past 12 months reveals three distinct kinds of cases applying Loper Bright. These three case archetypes include (1) cases holding agency action unlawful, (2) cases holding agency action lawful and (3) cases involving Chevron-based precedent.

Below, we take each in turn and explore how courts are applying Loper Bright to the real world.

3 Archetypes

1. Cases Holding Agency Action Unlawful

In several cases, courts have relied on Loper Bright to hold agency action unlawful where the action conflicts with the corresponding statute or exceeds the agency's delegated powers.

In Texas Medical Association v. U.S. Department of Health and Human Services I, for example, HHS published a rule purporting to direct the way arbitrators should weigh certain factors when deciding disputes under the No Surprises Act.[2]

This was improper, the U.S. Court of Appeals for the Fifth Circuit **held** in August 2024, because "[t]he No Surprises Act did not delegate to [HHS] the authority to set substantive standards for the independent arbitrators to observe." Rather, those standards were "fully determined by the text of the Act itself." The most HHS was empowered to do was "establish by regulation one independent dispute resolution process."

And so, by "leapfrog[ging] from the purely administrative authority conferred by this provision to a broader claimed delegation that allows them to fill the gaps in the arbitration process," HHS' actions were "a lily pad too far."

The upshot of Texas Medical I, for Loper Bright purposes, is that agencies may not "impose[] ... extrastatutory requirements" unless Congress expressly permits them to do so. This represents a stark departure from Chevron deference — a departure which critics of Chevron had long

encouraged.

2. Cases Holding Agency Action Lawful

On the flip side, when agencies stick to text of statutes and stay within their delegated functions, courts will typically uphold their actions. This is best illustrated in Texas Medical Association v. HHS II, the successor case to Texas Medical I.[3] There, the Fifth Circuit in October 2024 **upheld** HHS' rule outlining the methodology used to calculate median rates for in-network healthcare services.

In upholding the rule, the Fifth Circuit first observed that HHS' statutory authority over this particular issue was "fairly broad," unlike in Texas Medical I. It further found that "this provision of the Rule d[id] not conflict with the Act." And even if there were some perceived tension between HHS' rule and the statutory language, that tension was alleviated by the fact that the No Surprises Act "itself grant[ed] [HHS] discretion" over the issue.

Nonetheless, the Fifth Circuit emphasized that Congress' broad "delegation of authority [to HHS] d[id] not give [HHS] license to alter the Act's unambiguous terms." It therefore invalidated one of HHS' rules on the basis that the rule was "a blatant departure from the Act's plain language."

Texas Medical II thus shows that, even where an agency enjoys broad rulemaking authority, courts will not brook agency actions that rewrite the statutory text.

3. Cases Involving Chevron-Based Precedent

One of the challenges courts and litigants now face is how to handle agency action that, although previously found lawful under Chevron, is now seemingly unlawful under Loper Bright.

The Supreme Court was explicit in Loper Bright that all cases decided under Chevron's framework remain good law and are subject to statutory stare decisis — that is, prior precedent interpreting the same statute. But what constitutes adequate precedent for binding effect is a much more difficult question.

The case of Tennessee v. Becerra provides an interesting example of how courts might tackle Chevron-based precedent.[4] In Becerra, Tennessee challenged an HHS rule conditioning states' receipt of Title X funds on the provision of nondirectional counseling on all family planning options, including abortion, which Tennessee had just criminalized in almost all cases.

The U.S. Court of Appeals for the Sixth Circuit had decided a nearly identical case before Loper Bright, in which Ohio challenged the very same HHS rule. In that case, the Sixth Circuit upheld the rule by applying Chevron deference.

Despite the prior holding being grounded in Chevron, the Sixth Circuit in its March 2025 Becerra decision declined to depart from its original analysis. Because the very same rule was at issue, statutory stare decisis kicked in, regardless of Chevron.

In the Sixth Circuit's view, Loper Bright applies only to "new agency actions interpreting statutes" — it does not undermine prior case law about the same agency actions.

The line between new agency actions and old agency actions is not always clear, though. For instance, the Sixth Circuit in Becerra distinguished its holding from its January decision in In re: MCP No. 185, in which it **invalidated** a Federal Communications Commission rule concerning the classification of telecommunication services that, at least on the surface, addressed the same subject matter as a rule that the Supreme Court upheld under Chevron decades earlier.[5]

Although the two rules spoke to the same issue, the FCC had "changed its previous construction" of the relevant statute. This fresh construction constituted a new agency action, and thus was subject to Loper Bright. So, applying Loper Bright, the Sixth Circuit invalidated the FCC's rule.

The main takeaway from these cases appears to be that Chevron-based holdings create statutory stare decisis only as to new challenges to the very same agency actions, e.g., rules. If the agency action is different or new, even if the same statutory scheme is at issue, then courts appear reluctant

to rely on previous Chevron-based holdings.

This is evident in the U.S. Court of Appeals for the Ninth Circuit's February decision in Murillo-Chavez v. Bondi, where the court eschewed a line of Chevron-based precedent because the underlying holdings were about different agency interpretations of the relevant statute.[6]

The Murillo-Chavez court acknowledged that those holdings "remain precedential until overruled," but it reasoned that it was "not compelled to use them as analytical building blocks in every case," except where the holdings directly controlled the outcome.

The Long Game's Early Innings

Although the judiciary's application of Loper Bright is still in its infancy, important patterns have already emerged in the early case law. The three archetypes identified above will likely serve as useful categories for examining future decisions relying upon Loper Bright, even as its effects evolve.

As businesses explore Loper Bright's impact on their operations, careful attention should be given to how and when courts draw lines regarding agency action, because while Loper Bright represents a vastly different approach from the old Chevron deference, it is still far from settled how it will be applied in specific cases.

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[1] https://www.huschblackwell.com/newsandinsights/landmark-supreme-court-decisions-restrain-federal-administrative-agency-power.

[2] https://www.hortyspringer.com/wp-content/uploads/2024/08/Texas-Medical-Association-v.-United-States-Department-of-Health-and-Human-Services.pdf.

[3] https://www.ca5.uscourts.gov/opinions/pub/23/23-40605-CV0.pdf.

[4] Tennessee v. Becerra , 131 F.4th 350 (6th Cir. 2025), https:/www.opn.ca6.uscourts.gov/opinions.pdf/24a0199p-06.pdf.

[5] In re MCP No. 185 , 124 F.4th 993 (6th Cir. 2025).

[6] https://cdn.ca9.uscourts.gov/datastore/opinions/2025/02/13/21-1422.pdf.
