

Impacts of the Chevron Doctrine Overruling

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Loper-Bright: Overruling *Chevron*

Loper-Bright : Prior Law

> *Chevron* (1984)

- Courts defer to Agency’s “reasonable” or “permissible” interpretation of “ambiguous” statute
- Concept applied to regulations through *Auer* (1997) and *Kisor* (2019)
- Outcomes:
 - Unless clearly erroneous, Agency interpretations govern application of statutes
 - Courts cannot decide law

> Virginia

- State law applies approach similar to *Skidmore* deference, not *Chevron*
 - Weight given to Agency interpretations, not automatic deference
 - Under VAPA, generally courts give deference to an agency’s findings of fact, but not interpretations of law

Loper-Bright: The Issue

- > Statute: EPA monitors fishing boats
 - No provision on costs
- > EPA Rule: Fisherman pay for cost of monitoring (\$710/day)
- > SCOTUS: Can EPA interpret silence in statute to require fisherman to pay for monitoring?

Loper-Bright: The Decision

> Ruling:

- Administrative Procedures Act requires courts to decide the law
- Deferring to EPA prevents courts from deciding law
- Reverts to *Skidmore*

> Outcome:

- Every statute has a “best reading”
- Courts decide the best reading
- *Skidmore*: Courts respect Agency interpretation
 - No obligation to follow Agency interpretation

“In an agency case as in any other there is a best reading all the same—‘the reading the court would have reached’ if no agency were involved.”

Loper Bright Enterprises v. Raimondo, 144 S. Ct. 2244, 2247 (2024) (quoting *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 n.11 (1984)).

Loper-Bright: Impacts on Agencies

> Federal Agencies:

- Rulemaking
 - More thorough
 - More support
 - More consideration of comments
 - Less discretion
 - Less incentive to stretch meanings

- Enforcement
 - Need clear statutory support
 - Less discretion
 - Easier to challenge

> In Virginia:

- > Little change: *Generally, Virginia Administrative Process Act governs judicial review of agency actions.*
- > *Approach for judicial review of agency determinations of law is similar to Skidmore*
- > Potentially empowers courts hesitant to overrule Agencies



Virginia Administrative Process Act (VAPA)

- > Virginia Administrative Process Act (VAPA)
 - Generally, the Administrative Process Act governs judicial review of agency actions
 - VAPA places judicial review of administrative agency decisions in the circuit courts
 - Appellate review by the Court of Appeals, and in rare cases, additional appellate review by the VA Supreme Court
 - Courts are limited to determining whether there was evidence in the agency record to support the case decision of the agency acting as the trier of fact
 - The burden is on the party complaining of the agency action to demonstrate an error of law subject to review.

- > Va.Code §§ 2.2-4025 to -4030.

“Under VAPA, the circuit court reviews an agency's action in a manner “ ‘equivalent to an appellate court's role in an appeal from a trial court.’ ”

Commonwealth ex rel. Virginia State Water Control Bd. v. Blue Ridge Env't Def. League, Inc., 56 Va. App. 469,479-480 (2010).

VAPA Exemptions

> Five VAPA Exemptions

1. Agency actions placed beyond the courts' control by constitutional or statutory authority
2. Actions that involve only an agency's internal management or routine;
3. Decisions resting completely on an inspection, test, or election, except when the agency lacks the authority to conduct that procedure or conducts it arbitrarily;
4. Decisions in which an agency acts as an agent for a court; and
5. Agency actions that encompass matters subject by law to a trial de novo in any court.

> Va. Code § 2.2-4025(A).

VAPA Limitations

> Judicial Review of an agency decision is limited to:

1. Whether the agency acted in accordance with law;
2. Whether the agency made a procedural error which was not harmless error; and
3. Whether the agency had sufficient evidential support for its findings of fact

– *Johnston-Willis, Ltd. v. Kenley*, 6 Va. App. 231, 242 (1988).

“[W]here the question involves an interpretation which is within the specialized competence of the agency and the agency has been entrusted with wide discretion by the General Assembly, the agenc[y]'s decision is entitled to special weight in the courts.”

Commonwealth, 56 Va. App. at 480.

VAPA Limitations(cont'd)

> VAPA Limitations:

- Court is limited to determining whether there was evidence in the agency record to support the case decision of the agency acting as the trier of fact.
- If the court finds in favor of the party complaining of agency action, the court shall remand the case to the agency for further proceedings.
- The validity of any statute, regulation, standard or policy, federal or state, upon which the action of the agency was based shall not be subject to review by the court. No intermediate relief shall be granted under § 2.2-4028.
 - This does not preclude the court from addressing the validity of the agencies action under any statute.

> Va. Code § 2.2-4025(B).

Virginia: Judicial Review of Agency Determinations

> Review of Agency Determinations of Law

- Deference is dependent on the law being interpreted
- Generally, deference is not afforded to purely statutory interpretations of law by an agency
- When an agency has been entrusted with wide discretion by the General Assembly, the court must give special weight to the agency's decision
- Judicial interference is allowed only when the agency's action is arbitrary and capricious and constitutes a clear abuse of the delegated discretion

“[O]nly if there is no credible evidence in the record to support the finding and the agency arbitrarily disregarded uncontradicted evidence.’ ”

Mazloumi v. Dep't of Env't Quality, 55 Va. App. 204, 209 (2009)

Virginia: Judicial Review of Agency Determinations (cont'd)

- > Review of Agency Determinations of Regulations
 - The courts will generally defer to an agency's interpretation of its own regulations.
- > No Deference Afforded
 - The issue falls outside the area entrusted to the agency
 - The courts have a special competence
 - Purely statutory interpretation by an agency is given no deference

“[An agency's “legal interpretations of statutes” is accorded no deference because “[w]e have long held that ‘pure statutory interpretation is the prerogative of the judiciary,’ and thus, Virginia courts ‘do not delegate that task to executive agencies.’

Commonwealth, 56 Va. App. at 481.

Relevant Virginia Cases

- *City of Virginia Beach v. Virginia Marine Res. Comm'n*, 70 Va. App. 68 (2019).
- *Virginia Dept. of Health v. Kepa, Inc.*, 289 Va. 131 (2015).
- *Virginia Marine Res. Comm'n v. Chincoteague Inn*, 287 Va. 371 (2014).
- *Commonwealth ex rel. Virginia State Water Control Bd. v. Blue Ridge Env'tl. Def. League, Inc.*, 56 Va. App. 469 (2010).
- *All. to Save the Mattaponi v. Commonwealth, Dept. of Env'tl. Quality ex rel. State Water Control Bd.*, 270 Va. 423 (2005).
- *7-Eleven, Inc. v. Dep't of Env'tl. Quality*, 42 Va. App. 65 (2003).

State/Local Level Impacts

> Impact:

- Currently it appears that the state/local level impact in Virginia will be limited
- Cases formerly decided under *Chevron* remain valid
- Virginia's approach towards statutory interpretation is already similar to *Skidmore*
- It is likely that there will be inconsistent interpretations of federal laws amongst the different jurisdictions

Takeaways

- Interpretations
 - Agencies must act within “best reading” of statutes
 - Courts determine the “best reading”
- Accountability
 - Agencies must sufficiently address comments and important problems raised
 - SCOTUS eager to police administrative overreach
- Virginia State Law
 - Little immediate impact as far as state law interpretation by the Virginia courts because of the preexisting approach towards the judicial review of agency determinations of law.
 - Potential empowerment of courts to decide law

Questions?



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