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Supreme Court Hears Oral Argument in NCLA's *Relentless* Case Seeking to Overturn *Chevron* Deference

Relentless Inc., Huntress Inc., and Seafreeze, Fleet LLC v. U.S. Department of Commerce, et al.

Washington, DC (January 17, 2024) – Today, Latham & Watkins partner Roman Martinez presented oral argument to the Supreme Court in *Relentless Inc. v. Dept. of Commerce*, calling for an end to the unconstitutional *Chevron* doctrine. The lawsuit, argued in tandem with *Loper Bright Enterprises, et al. v. Raimondo*, challenges *Chevron* and a National Oceanic and Atmospheric Administration (NOAA) and National Marine Fisheries Service rule requiring fishing companies like NCLA's clients to pay for at-sea government monitors on their fishing boats. NCLA's clients made their case in the courtroom today, and they look forward to a Supreme Court decision by the end of June that will eliminate *Chevron* deference and vacate the NOAA rule once and for all.

NCLA raised two core problems with *Chevron* deference that NCLA founder Philip Hamburger has emphasized for years. First, employing such deference abandons a judge's duty to provide independent judgment. Second, when a federal court defers to an agency's legal interpretation, the litigants opposing that agency—like the fishermen opposing NOAA in *Relentless*—do not have their case judged by an impartial adjudicator. So, *Chevron*'s systematic pro-government bias denies due process of law to those opposing the agency in that case.

During his argument, Martinez explained that lower courts frequently apply *Chevron* in a way that allows courts to avoid the duty of finding the best meaning of an ambiguous statute. Instead of performing the interpretive function themselves, courts let agencies do the work for them. In response to a question from Associate Justice Neil Gorsuch, Martinez confirmed that this leads to such anomalous results as allowing agencies to change their interpretation of statutes over time, even when a prior interpretation had been accepted by a court. As a result, *Chevron* destroys the ability to rely on what an agency says a statute means, or even on a meaning previously accepted by the court. The arguments explored why *Chevron* must go because it is unworkable, cannot be fixed, and abandons core judicial power of interpretation to the executive branch.

The government argued that interpreting ambiguous statutes in the *Chevron* context involves policymaking—not legal interpretation—even though courts can and do exercise legal judgment to resolve ambiguities in cases not involving federal agencies all the time. The government advanced the fiction that Congress implicitly delegates interpretive power to agencies when statutes contain ambiguities or are silent on a question. In fact, interpreting statutes is a traditional legal duty that Article III of the Constitution entrusts to federal courts. Congress cannot delegate such judicial power to executive agencies, because Congress does not possess that power to begin with.

The government also claimed the Supreme Court must uphold *Chevron* out of respect for precedent, but interpretive methods are not entitled to *stare decisis*. Besides, *Chevron* destabilizes the law and runs afoul of the rule-of-law values that *stare decisis* protects, because agencies can change what the law means and demand that courts defer to that new meaning. Citizens also expect to be able to rely on the protections of Article III and Fifth

Amendment due process of law in litigating against the government that exceed any *stare decisis* claims for *Chevron*. And in § 706 of the Administrative Procedure Act, Congress told courts to review agency rules *de novo*.

No matter how the Court reins in *Chevron*, the fishing boat at-sea monitor rule is unlawful under any sensible reading of the Magnuson-Stevens Act (MSA). The MSA directs fishermen to pay for monitoring in only three specific cases, and not in the New England herring fishery. This can only mean one thing: the government itself must pay, as it did for 20 years before the agencies invented this rule. The absence of express statutory authority to impose direct costs on the fishing industry renders the Final Rule at issue unlawful, and it should be set aside.

NCLA released the following statements:

"After many years, our clients were finally before a court that seemed disinclined to defer to the agency they have been fighting as to what the law is. That's what every American should get. Today, Justice Gorsuch pointed out that the *Chevron* doctrine has disproportionately hurt the vulnerable, such as veterans, the injured on Social Security, and I would add, the fishermen. We hope this problem will soon be no more."
— John Vecchione, Senior Litigation Counsel, NCLA, and Counsel of Record in *Relentless*

"We are here today because fishermen matter. Fishermen do a dangerous job to bring you seafood. But they aren't afraid of rough weather and high seas—they are terrified of the federal government. One abusive regulation like this can economically force vessels like ours out of a fishery we have sustainably harvested in for 40 years. Fishermen shouldn't be forced to pay out of pocket to expand a government program that the government doesn't have enough money to fund itself. Congress never intended that. Agencies like NOAA can take liberties with the citizens they regulate, because *Chevron* gives them an automatic win and they know it. My hope is that ends today."
— Meghan Lapp, Fisheries Liaison & General Manager, Seafreeze, Ltd.

"The Court's questions today showed that it has a thorough grasp on the constitutional questions at issue in this case, the Administrative Procedure Act issues, and why *Chevron* deference needs to be ended not improved. We are cautiously optimistic that the Court is prepared to take the final step that is necessary to restore the judicial role in legal interpretation and reverse *Chevron*."
— Mark Chenoweth, President and Chief Legal Officer, NCLA

For more information visit the case page here and watch the case video here.

ABOUT NCLA

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar Philip Hamburger to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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