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July 25, 2023

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WLF Urges Supreme Court To Eliminate *Chevron* Deference

(*Loper Bright v. Raimondo*)

“*Chevron* gives executive agencies the power to say what the law is and also disproportionately harms small businesses.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Yesterday, Washington Legal Foundation (WLF) urged the U.S. Supreme Court to eliminate so-called *Chevron* deference and hold that the Constitution gives only the Judiciary the power to interpret the law. WLF joined the amicus brief of the Independent Women’s Law Center, authored by Kathryn E. Tarbert, Gene C. Schaerr, and Annika Boone Barkdull of Schaerr | Jaffe LLP.

The case arises from a National Marine Fisheries Service’s regulation that requires fishing companies to pay for the costs of observers who monitor compliance with fishery management plans. In other words, not only must fishing companies pay money to comply with federal fishing regulations, but they must also pay the federal government for the privilege of having federal employees check their compliance with the law. The fishing industry challenged this regulation because Congress did not give NMFS the authority to make fishing companies pay for monitors. A divided D.C. Circuit panel, however, invoked *Chevron* deference and upheld the regulation. The Supreme Court has now agreed to decide whether to overrule or narrow *Chevron*.

In its brief supporting *Loper Bright*, WLF details how agencies frequently encroach on the legislative and judicial powers by wielding the *Chevron* sword. Recently, agencies have tried to rewrite the federal student loan program, attempted to bar landlords from collecting rent on their properties, and forced workers nationwide to receive a vaccine. Each time, a regulatory agency far exceeded its statutory powers because it felt emboldened by *Chevron*.

WLF’s brief also explains the devastating consequences that regulation has on small and women-owned businesses. Large businesses can shoulder the costs of increased regulation because they have in-house counsel and large compliance programs. Small businesses, however, face disproportionately higher costs when they attempt to comply with regulatory requirements. And many of the smaller owned businesses in America are owned by women. Allowing agencies to use *Chevron* deference, therefore, hurts these businesses because they are unable to handle the increased regulatory costs.

Celebrating its 46th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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