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NCLA Asks Supreme Court to Sink *Chevron* Doctrine for Violating the Constitution in Two Key Respects

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

Washington, DC (November 20, 2023) – Today, the New Civil Liberties Alliance filed the opening [brief](#) on the merits in the U.S. Supreme Court on behalf of clients Relentless, Inc., Huntress, Inc., and Seafreeze Fleet, LLC in *Relentless v. Department of Commerce*, urging the Court to overturn the *Chevron* doctrine. The *Relentless* brief highlights two core problems with *Chevron* deference that NCLA founder Philip Hamburger has pressed for years. First, employing such deference abandons a judge’s Article III duty of judicial independence. Second, when a federal judge defers to an agency’s legal interpretation, it denies due process of law to the entity opposing the government in that case. The logic of *Chevron* deference cannot withstand this withering dual critique.

The First Circuit below used *Chevron* deference to uphold 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 asks the Court to vacate NOAA’s rule, which lacks constitutional and statutory support. NCLA will present oral argument in *Relentless* against the *Chevron* doctrine and NOAA’s rule on January 17, 2024, in tandem with the case of *Loper Bright Enterprises, et al. v. Gina Raimondo*. In both cases, the U.S. Supreme Court will consider whether to overrule *Chevron* or just limit it. Roman Martinez, a partner at Latham & Watkins, will deliver oral argument on behalf of the *Relentless* clients.

The government claims *Chevron* honors Congress’s power to delegate policy decisions to Executive Branch agencies, but interpreting ambiguity in a statute is a *legal* action constitutionally reserved for Article III courts, not a policy choice. Congress cannot delegate such judicial power—which it does not possess in the first place—to be administered by executive agencies. The government also argues that the Supreme Court must uphold *Chevron* out of *stare decisis* respect for its prior precedents. However, interpretive methods like *Chevron* are not entitled to *stare decisis*. Moreover, *Chevron* destabilizes the law and runs afoul of the rule-of-law values that *stare decisis* protects, so the Supreme Court should not worry about overruling this precedent. Finally, the text of § 706 of the Administrative Procedure Act commands courts to review agency rules like this one *de novo*.

Whether or not the Supreme Court overturns *Chevron*, the NOAA fishing boat surveillance rule must be vacated as unlawful under any sensible reading of the Magnuson-Stevens Act (MSA), which governs U.S. fisheries. The MSA directs fishermen to pay for monitoring in only three specific cases. It does not direct monitors to be paid by the regulated fishermen in the New England herring fishery. This can only mean one thing: the *government itself* must pay. That was the rule for 20 years until the administrative agencies used *Chevron* to change the law. The absence of express authority to impose costs on the fishing industry renders the NOAA rule unlawful.

NCLA is pleased to team up again with Latham & Watkins for this potentially historic Supreme Court appeal. Our joint efforts obtained a good result in [SEC v. Cochran](#) last term; we hope to replicate that success here. NCLA also represents clients in two other cases due to be argued this term: [Murthy v. Missouri](#) and [Garland v. Cargill](#).

NCLA released the following statements:

“NCLA’s clients have been threatened by unjust administrative power under this rule. *Chevron* deference has emboldened the bureaucrats to aggrandize their power at every step, leaving small businesses like Relentless, Inc. and Huntress, Inc. at the mercy of unelected regulators. Ending *Chevron* deference will both bring policymaking back to the legislature where it belongs and spare the fishermen of New England from unnatural interpretations of law dreamed up by bureaucrats in Washington.”

— **John Vecchione, Senior Litigation Counsel, NCLA, and Counsel of Record in *Relentless***

“For nearly 40 years, the *Chevron* doctrine has told judges to abandon their independent judgment and defer to the federal government’s interpretation of ambiguous statutes. That doctrine violates the Constitution and encourages unlawful overreach by government agencies. In agency cases—just like in all other cases—judges should enforce their own best understanding of a statute’s text, structure, history, and precedent. We hope the Justices seize this opportunity to overrule *Chevron* and restore the rule of law.”

— **Roman Martinez, Partner, Latham & Watkins**

“The Supreme Court has been relentless in imposing *Chevron* bias on the American people in violation of due process. Now it should be relentless in fixing that problem.”

— **Philip Hamburger, Chairman and CEO, NCLA**

“It is time for the Supreme Court to fish or cut bait on the *Chevron* doctrine. This deference charade has gone on long enough. Executive agencies cannot be allowed to serve as judges in their own cases any longer.”

— **Mark Chenoweth, President, NCLA**

“For almost a decade, our clients have told the government that it didn’t have the authority to require industry-funded monitoring on their fishing boats. Tellingly, the rule has only been upheld by judges deferring to the agency’s interpretation of the statute and abdicating their role in the process. It is time for *Chevron* to be overruled and the proper balance of powers restored.”

— **Kara Rollins, Litigation Counsel, 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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