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NCLA Reply Brief in *Relentless* Case Counters Government's Claims on Judicial Deference to Agencies

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

Washington, DC (January 5, 2024) – Today, the New Civil Liberties Alliance filed a reply brief in *Relentless Inc., et al. v. Dept. of Commerce, et al*., a potential landmark case before the U.S. Supreme Court, calling for an end to the unconstitutional *Chevron* doctrine. NCLA addresses two core problems with *Chevron* deference that NCLA founder Philip Hamburger has emphasized for years. First, employing such deference abandons a judge's Article III duty of judicial independence. Second, when a federal court 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 breaks apart under this devastating dual critique. *Chevron* also violates the Administrative Procedure Act (APA).

Relentless is set for oral argument on January 17. The Department of Commerce, the National Oceanic and Atmospheric Administration and the National Marine Fisheries Service created the challenged rule requiring fishing companies like NCLA's clients to pay for at-sea government monitors on their fishing boats. NCLA urges the Court to vacate Respondents' rule, which lower courts only upheld by applying *Chevron* deference. Roman Martinez, a Latham & Watkins partner, will argue on behalf of the *Relentless* clients. *Relentless* will be argued in tandem with *Loper Bright Enterprises, et al. v. Raimondo*, as the Supreme Court considers overruling *Chevron*.

The government's response brief argues that interpreting ambiguous statutes in the *Chevron* context involves policymaking—not law—even though courts can and do exercise legal judgment to resolve ambiguities in every other interpretive context. It further argues that Congress—without saying so and contra the APA's text—implicitly delegated this interpretive power to agencies. In fact, interpreting statutes is not policy choice, but a traditional legal duty that Article III of the Constitution entrusts to federal courts. Congress cannot delegate or reallocate such judicial power—which it never possessed in the first place—to executive agencies like NOAA.

The government also contends the Supreme Court must uphold *Chevron* out of *stare decisis* 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* is meant to protect, because agencies can change what the law means and demand that courts defer to that new meaning. Citizens also have reliance interests in expecting the protections of Article III and Fifth Amendment due process of law in government litigation that exceed any *stare decisis* claims for *Chevron*. Finally, § 706 of the APA commands courts to review agency rules *de novo*. The Supreme Court has never considered any of these arguments against *Chevron* before, so *stare decisis* simply does not apply.

No matter how the Court rules on *Chevron*, the fishing boat at-sea monitor rule has to be vacated as 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 omission 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 authority to impose direct costs on the fishing industry renders the Final Rule at issue unlawful.

NCLA released the following statements:

"*Chevron* has tempted every actor in our tripartite Government structure to act badly. It allows Congress not to write clear statutes. It leads the Executive to make law rather than execute it and administrators to seize power not granted to them. And it requires the Judiciary to abandon its duty to say what the law is. *Chevron* must fall."
— John Vecchione, Senior Litigation Counsel, NCLA

"Under the Constitution, courts have a duty to apply their independent judgment and interpret federal statutes to faithfully reflect their text, structure, and history. *Chevron* departs from that principle, forcing judges to enforce agency interpretations that the judge believes are wrong. We hope the Court overrules *Chevron* and vindicates the essential role judges play in upholding the rule of law."
— Roman Martinez, Partner, Latham & Watkins

"It has been a years-long voyage for our clients to get to the Supreme Court. Throughout this journey they have remained steadfast even with the odds stacked against them because of *Chevron* deference. We look forward to oral argument and the chance to restore a balanced approach to judicial review of agency rulemaking."
— Kara Rollins, Litigation Counsel, NCLA

"Overruling *Chevron* is overdue. Many administrative state pathologies can be traced to the malign influence that *Chevron* has in encouraging unlawful administrative power grabs. By putting this genie back in the bottle, the Supreme Court can restore federal court oversight to ensure that agencies execute the law as Congress wrote it."
— 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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