

CAUSE of ACTION INSTITUTE

Pursuing Freedom & Opportunity through Justice & Accountability

LOPER BRIGHT ENTERPRISES V. RAIMONDO

The Supreme Court Reconsiders the Future of *Chevron*



Stand
Together

The Supreme Court Reconsiders the Future of *Chevron*

Cause of Action Institute (“CoA”), part of the Stand Together Community, represents a group of herring fishermen from Cape May, New Jersey. They are the classic American story: family businesses grown and passed down to the next generation. But now they face an existential threat: their own government.

The Supreme Court agreed to hear the case, which has a chance to restore accountability to the federal bureaucracy, affordability for American families, and trust in American democracy.

The Magnuson-Stevens Act gives the government the authority to place “observers” on the fishermen’s boats. These government minders watch the fishermen work to make sure they don’t break any laws. It’s like carrying a state trooper in your car to make sure you don’t speed. But when the agency ran out of money to pay for third-party monitoring

in Atlantic herring fisheries, the government decided to shift the cost to small businesses—the fishermen themselves—without any authorization from Congress. This can be \$700 per day, which can potentially exceed a captain’s take for the trip and could drive the boats out of the fishery.

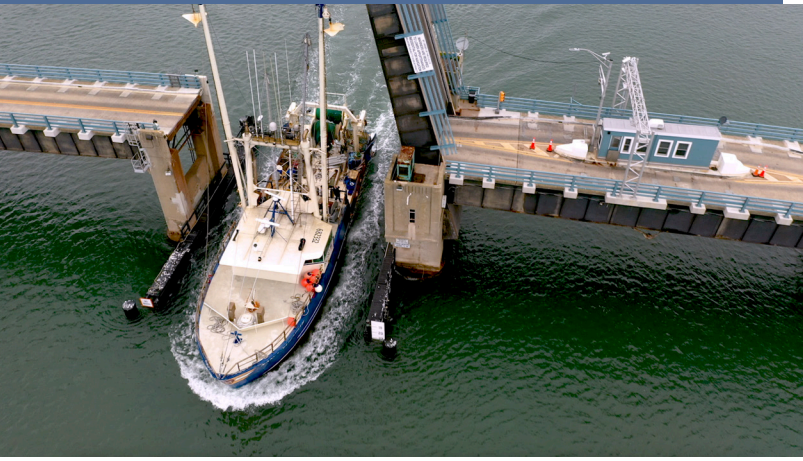
If the story sounds familiar, that’s because [the Academy Award Best Picture](#), CODA, talked about a regulation just like this. A heritage industry already beleaguered by overlapping state and federal regulations plus ever-decreasing fishing quotas now must take on this additional cost. As a result, family-run fishing boats in Cape May, New Jersey face an existential threat to their way of life.

Case: Several fishermen, represented by the CoA and former U.S. Solicitor General Paul Clement, have successfully petitioned the Supreme Court to review this case. The lower court relied on *Chevron* deference—a doctrine that requires courts to defer to the *government’s* interpretation of a statute if the law is “ambiguous.” Thankfully, the Supreme Court agreed to hear the case and limited its review to one question: should *Chevron* be overturned or clarified?

“When you look at the statute, it says nothing about this momentous authority to force regulated parties to pay for the regulators...that’s something we think Congress would put in there [if they wanted it]. And if they didn’t want to put it in there, the agencies can’t just put it in there for themselves.”

– Paul Clement, Former U.S. Solicitor General





What does it matter? Chevron deference allows government agencies to push their regulatory authority well beyond what Congress intended in statutes—with a thumb on the scales of justice, the government almost always wins.

This doctrine gives unelected bureaucrats incredible power – and it takes power from the American people. Nobody voted these bureaucrats in, and nobody can vote them out. *Chevron* erodes the checks and balances essential to our democracy. Congress, not the administrative state, has the power to write laws. This case could reset the separation of powers to what our founders intended.

While the Supreme Court has stopped citing *Chevron*, lower courts still routinely will—it must be overturned or modified to curb this regulatory abuse.

What impact could this have? *Chevron*'s empowerment of unelected bureaucrats is directly responsible for the over-regulation that's driving inflation, increasing costs, and hurting families, job creators, and communities. If the Court rules silence in a statute cannot create ambiguity, for example, then agencies would no longer be able to simply do whatever they want unless they can point to a delegation of authority from Congress.

The American people are paying for *Chevron* every single day. Repealing this doctrine paves the way for voters to have more control over the laws and rules that govern their lives.

And if *Chevron* is entirely overruled, that will mean that *judges* will always interpret what the law means, not agency bureaucrats. This will serve as a significant restraint on agency overreach and put lawmaking and law interpreting back into the hands of the proper constitutional actors: Congress and the Supreme Court, respectively.



How did we get here? The [D.C. Circuit held](#) that because the Magnuson-Stevens Act was silent on the issue of industry funding of monitors, it is “ambiguous” whether Congress intended to give regulators the authority to force the herring fishermen to pay for the monitors. Bluntly put, this

Thus far, the case has followed a familiar blueprint: Congress gave regulators no authority; the agency acted anyway; the courts blessed it; and now fishermen are left paying the tab.

means that because Congress never told an agency it can't do something, then it can do whatever it wants. The government argued, and the lower courts agreed, that *Chevron* deference justified this abuse of power.

What's Next? We are now in the merits briefing cycle, and the case will likely be argued later in the Fall of 2023. We expect there will be a decision by Spring or Summer of 2024.

What is Cause of Action Institute?

Cause of Action Institute is a 501(c)(3) oversight group advocating for economic freedom and individual opportunity advanced by honest, accountable, and limited government.

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Stefan Axelsson is a third-generation commercial fisherman. He was born and raised in Cape May, NJ. His daughter loves fishing, and he wants her to possibly take over the family business someday.



William Bright is a first-generation fisherman who has been fishing for 40 years.



Wayne Reichle is the President of Lunds' Fisheries and has been working there for 30 years. Lunds employs over 200 employees across fishing industry jobs.

“We are fighting for... a future that is being unfairly targeted by federal overreach.”

Stefan Axelsson

THIRD GENERATION FISHERMAN & CAPTAIN

