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Newsletter

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Loper-Bright Decision & the Overturn of the Chevron Deference: Mayhem or Repose for those Regulated by MSHA

Back in June of this year, the Supreme Court of the United States (SCOTUS) opted to grant certiorari to determine whether the longstanding Chevron decision should be withheld going forward.[1] The 1984 Chevron v. Natural Resources Defense Council case completely changed the structure for how Courts' procedurally approach cases that are affected by ambiguous, whether inadvertently or with intention, Congressional acts or laws. After the Chevron decision Courts leaned heavily on an agency's expertise on a topic to determine how the act should be implemented and regulated. Obviously, this allowed a certain level of subjectivity, in favor of the federal agency. Although a federal agency would, in fact, employ individuals with extensive experience and knowledge around the topics that Congress imposes regulation for, many argued that there was no longer a separation of the judicial and legislative branches. From school, it is likely committed to memory that the legislative branch (i.e. Congress) is responsible for making federal laws/acts, whereas the judicial branch is held accountable for determining the constitutionality of said federal laws/acts. Therefore, it could be viewed as a conflict for federal agencies, matter experts or not, to postulate and interpret federal law(s) that originated in the legislative branch. Whereas, with the overturn of the Chevron decision, the Courts provide the obligatory checks and balances, by positing statutory law. For the Loper Bright decision, the

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[1,2] Harvard Law School (2024, July 18). *After Chevron: What the Supreme Court's Loper Bright Decision Changed, And What It Didn't*. Harvard Law School Forum On Corporate Governance. Retrieved August 28, 2024, from https://corpgov.law.harvard.edu/2024/07/18/after-chevron-what-the-supreme-courts-loper-bright-decision-changed-and-what-it-didnt/

Court rejected Chevron by refocusing on the Administrative Procedure Act (APA) of 1946, which "established procedures for agency rulemaking and adjudication." [2] The fundamentals of the APA set forth that the reviewing Court should determine relevant fact, questions and interpretations of federal law, as well as clarify any regulatory stipulations, instead of placing this responsibility at the proverbial feet of the federal agency. The same federal agency that was likely instrumental and contributory to the origination and development of the laws under consideration… The majority decision explicitly stated rejection to the concept that "statutory ambiguities are implicit delegations to agencies."[3]

However, there are limitations to the Loper Bright decision. The overturn of the Chevron decision will not automatically overrule any previous cases that were upheld by the Chevron, but it is a warranted assumption that appellate courts will be engaged, for a while. In addition, the Loper Bright decision ONLY applies to a case where the federal law is deemed ambiguous, needs clarity or is silent on matter. Keep in mind, the Court specifically expressed dissatisfaction with the "inherent difficulty" in determining whether a regulation/ law is vague or silent as it is subjective matter. The SCOTUS also drew conclusion in the Loper Bright dissent that the Chevron's historical importance with technical, complex and the practicality of an agency's expertise will be held in high opinion. Meaning, there have been and are going to be ambiguities that will have to be resolved by the Court, utilizing information and fact provided by an agency's expert.

So, what does this mean for MSHA, the regulatory authority over the OIAA community? This could be a slow victory, but a win, nonetheless.

1. Agency fact-finding is still going to occur. This implies that the Loper Bright decision will only affect a federal agency's conclusion of the law. Also, an agency's justification will be forced to persuade the Court, instead of the Court employing the agency to reason the intent of the law and then regulate its constituents based on the agency's interpretation alone.

2. It is expected that an agency will be more conservative and explicit in their rulemaking as they cannot count on the Court placing it back on them to fill in any gaps. This will mean the wheels will turn much slower. With the current model, prior to the Loper Bright decision, the new silica rule passed, and everyone scrambles to understand, specifically the regulating body, how it will be implemented and how to do so efficiently. Now, lobbyists and interested parties will have the opportunity to place the new silica rules under a microscope and MSHA may be forced into a court proceeding where the judge(s) will determine the constitutionality of the agency's interpretation of Congress' intent.

3. According to a recent article by Bill Doran & Margo Lopez published in Pit & Quarry[4], it could also include MSHA and federal courts issuance of opinions on a) the scope of MSHA's jurisdiction, b) the definition of "interfere" as it applies to Section 105(c) discrimination cases and

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[3] Marrota , S., & Desaulniers Stempel, D. (2024, July 11). *Loper Bright Enterprises v. Raimondo: Decision Summary*. Hogan Lovells. Retrieved August 28, 2024, from https://www.engage.hoganlovells.com/knowledgeservices/insights-and-analysis/loper-bright-enterprises-v-raimondo-decision-summary

[4] Doran, B., & Lopez, M. (2024, July 30). How a fame-changing Supreme Court decision affects MSHA. *Pit & Quarry*. https://www.pitandquarry.com/how-a-game-changing-supreme-court-decision-affects-msha/

c) the definition of “significant and substantial” as these are all interpretations of an ambiguous law.

Ultimately, the SCOTUS was showing signs of discontent towards the level at which federal agencies can easily grab congressional power, through the Chevron decision. So, the overturn was “expected”. However, what it actually means for the folks on the ground, specifically being regulated by MSHA, only time will tell. Here is to hoping for a positive outcome!

Have a Safe Labor Day Weekend

The calendar is getting ready to flip from August to September, which will soon mean the return of colorful leaves on trees, football season and bonfires. It also means Labor Day is approaching, meaning the unofficial end of summer.

During the three-day Labor Day weekend, many Americans will travel, shop and maybe sneak in one final visit to the beach.

However, the federal holiday is much more than just the summer's last hurrah. Observed each year on the first Monday of September, Labor Day is at heart a celebration of the hard-won achievements of America's labor movement and a recognition of what workers have contributed to the nation's prosperity.

Labor Day became a national holiday in 1894 when President Grover Cleveland signed a law passed by Congress designating the first Monday in September a holiday for workers.

Safepro Mine & Health Law institute Information

MINING & HEALTH LAW INSTITUTE

We have created a second session for our Law Institute 2024!

Safepro Law Institute, Fall Session will be held October 22, 23 & 24

If you would be interested in participating in a Fall session of our Law Institute,

call 1-828-385-2930 or email dbeam@safeproinc.com

The class will be presented at the:

The Kimpton Brice Hotel, 601 E. Bay Street, Savannah, GA.

Come one come all to the fall session of the Safepro Mine & Health Law institute.

Besides covering the 1977 Mine Act, Program Policy Manual etc. We will have

(Adele Abrams covering the New Silica Standard and the New Mobile equipment standard.) She will also be covering other items of interest to the mining industry.

Best Regards,
Dean Beam
828-385-2930

Scholarship Information

Scholarship application period is closed. Thank you to those that submitted. Our Scholarship committee will be making their decision shortly.

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Information for the next meeting not available at the time of this printing.