**Summary**
Next week, the US Supreme Court will hear oral arguments in *Loper Bright*/*Relentless*–a set of cases that could radically alter the ability of our federal government and overall system of democracy to deliver for the American people. The implications are broad, especially when considered in connection with other potential scenarios that could emerge as a result of the 2024 election and *Corner Post*, another Supreme Court case this term. In the Interested Parties Memorandum (IPM) that follows, you will find analysis regarding these scenarios as well as charts of the web of organizations supporting these arguments and the diversity of interests weighing in at the Court in favor of long standing law. In addition, the IPM provides details on the following:

**Major Takeaways**

1) A web of far-right legal organizations – including the same organizations behind *Dobbs* and *Students for Fair Admissions* – seek to use *Loper Bright*, *Relentless*, and other cases to undermine the public's faith in democratic institutions and subvert the tools the federal government uses to serve the people.

2) The legal theories being used to propel these attacks on government's core functions are misguided. They would transform the courts into policy making roles, taking away authority from agencies designed to gather and evaluate specialized information.

3) The diversity of interests that have submitted briefs in support of the continued functioning of federal agencies – from associations representing more than 250,000 small businesses to health advocacy organizations – demonstrate the wide-reaching impact these cases could have.

4) Combined with the possible ramifications of the upcoming *Corner Post* case, *Loper Bright*/*Relentless'* consequences could be even more pronounced.

**Toplines**

- Together, *Loper Bright*/*Relentless* and *Corner Post* could undo the stability of established regulations, from standards on the air we breathe to rules protecting our rights at work, and open up untold numbers of previously settled regulations to new attacks.

- The far right is attempting to overturn a case that is nearly 40 years old – and a principle of law that has been around for a century.

- These cases are part of a concerning trend by far-right legal organizations and the conservative legal movement to undermine the ability of the federal government to deliver for people. Just this term, *CFPB v. CFSA*; *SEC v. Jarkesy*, *FDA v. AHM*; and *Moore v. United States* are all being pushed by the same groups and have the potential to radically define fundamental elements of our federal system.

- These cases could eventually influence everything from how the government establishes baseline protections from toxic pollution in the air we breathe and the water we drink to how scientific research is used to determine which vaccines health insurers should cover.

**Interested Parties Memo**

TO: Interested Parties
FROM: Democracy Forward Foundation
DATE: January 10, 2024
RE: Background Regarding Upcoming Supreme Court Oral Arguments in *Loper Bright Enterprises v. Raimondo* and *Relentless v. Department of Commerce*: How the Far-Right Legal Movement Poses Threats to Democratic Institutions and the Ability of Government to Serve People

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On January 17, 2024, the US Supreme Court will hear oral arguments in two combined cases: *Loper Bright Enterprises, Inc. v. Gina Raimondo* and *Relentless, Inc v. Department of Commerce*. This pair of cases (together referred to as "*Loper Bright/Relentless*") could have wide-sweeping implications for the federal government's ability to deliver for the American people and for our democracy as a whole. While these cases have received modest attention from some media outlets that have characterized the cases as relevant to the so-called "administrative state," they have received far less attention than they deserve given the tremendous implications these cases would have on the lives of millions of Americans. Too often, media coverage regarding these matters is laced with wonky policy speak or discussions of administrative law. While relevant and important, that framing often fails to describe the high stakes of the matters to the millions of ordinary people in America. Fundamentally**, these cases could radically alter the ability of our federal government and overall system of democracy to deliver for the American people. The implications for people and for our democracy as a whole are broad–especially when considered in connection with other potential scenarios that could emerge as a result of the 2024 election.** In addition to *Loper Bright/Relentless*, another case, *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, which has received little to no attention to date and raises related questions of law, could make the implications of *Loper Bright*/*Relentless* even more stark. Oral arguments will be held in *Corner Post* on February 20, 2024.

This memorandum provides information **on background** regarding the *Loper Bright/Relentless* and *Corner Post* cases with a particular focus on the implications of various potential outcomes and what is at stake for the American people. Legal briefs filed in these matters highlight sweeping implications that could disrupt our health care sector, environmental sector, national security sector, and small business sector, among others, if the Court sides with petitioners in *Loper Bright/Relentless*. For media outlets and journalists, the memorandum provides unique coverage angles and highlights often overlooked connections that are important for public knowledge and exposure, including connections regarding the highly-coordinated network of far-right legal organizations behind these cases and the diverse range of interests urging the Court to reject claims by *Loper-Bright/Relentless*.

**In particular, the memorandum outlines information regarding the following major takeaways:**

1) A web of far-right legal organizations seek to use *Loper Bright*, *Relentless*, and other cases to undermine the public's faith in democratic institutions and subvert the tools the federal government uses to serve people.

2) The legal theories being used to propel these attacks on government's core functions are misguided and would transform the courts into policy-making roles.

3) This is not a case that can be characterized by dated (and inaccurate) labels of "small government conservatives" versus "big government liberals;" rather, a broad range of diverse interests are weighing in to oppose the invitation by the *Loper Bright* and *Relentless* petitioners to undermine the functioning of federal agencies, including more than 250,000 small businesses who rely on regulatory certainty and urge the Court to reject the *Loper Bright*/*Relentless* petitioners' arguments.

4) When considered in relation to the implications of a ruling for petitioners in the unpublicized *Corner Post* case that the Court will hear in February, the devastating impacts of a ruling for petitioners in *Loper Bright/Relentless* would be even more pronounced.

**BACKGROUND**

**The *Loper Bright/Relentless cases* concern the relationship between federal agencies, Congress, and the courts and address a legal doctrine known as *Chevron* deference**. *Chevron* deference, a principle of law articulated in the 1984 case *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc*, is a legal doctrine that says when Congress passes a law that contains ambiguous or unclear language, judges should defer to the expertise of federal agencies in interpreting that language as long as the agency's interpretation is reasonable.

This deferential approach, the Court reasoned, both respected Congress' delegation of authority to the agency to implement the laws it passed and the expertise of agencies themselves, which are able to develop and hold more specialized information than generalist judges. Although the Supreme Court articulated this specific doctrine in the *Chevron* matter in the 1980s, the legal principles behind it have been recognized for more than a century.

In the nearly 40 years since *Chevron*, administrative agencies have been empowered by Congress to conduct countless services and programs serving the American people like Social Security, Medicaid, overtime protections, federal grant programs, small business lending programs, environmental standards, food and drug safety protocols, and so much more. *Loper Bright*/*Relentless* threatens administrative agencies' ability to continue delivering for the American people by setting aside decades of legal precedent enabling the agencies to interpret ambiguous language in laws that Congress passes in a reasonable way in light of the agency's expertise.

In *Loper Bright*, some commercial fishing companies asked the court to overrule *Chevron* deference in response to a regulation the National Marine Fisheries Service (NFMS)(a division of the National Oceanic and Atmospheric Administration, which itself is part of the Department of Commerce) issued pursuant to a law Congress passed, the Magnuson-Stevens Act (MSA), which provides NMFS regulatory authority. A panel of the DC Circuit found that NMFS' regulation and its interpretation of the law that Congress passed was entitled to deference under long-standing principles of *Chevron* deference. The petitioners in *Loper Bright*, who are represented by a board member of the far-right Bradley Foundation and backed by a number of far-right legal interests, appealed to the Supreme Court seeking to have the Court overturn the DC Circuit's decision and to overturn precedent set out 40 years ago in *Chevron*. The petitioners in *Relentless* challenged the same federal fishing rule, and similarly requested that the Supreme

Court overturn *Chevron* deference. The Supreme Court consolidated the cases, now known as *Loper Bright/Relentless,* and oral argument will be on January 17, 2024.

While *Loper Bright* and *Relentless* bear striking similarities in terms of the questions of law, one difference lies in Justice Brown Jackson's participation. She recused herself from *Loper Bright* (presumably because she previously heard the case while sitting on the DC Circuit), but did not recuse herself in *Relentless* (which arose from the First Circuit). Accordingly, with the addition of the *Relentless* challenge to the Court's docket, all nine justices will have the opportunity to opine on the continued viability of *Chevron* deference.

While *Loper Bright/Relentless* focuses on one regulation–the National Marine Fisheries Service regulation (NMFS)–issued by one particular administrative agency, the cases could have far-reaching impact because the Court is being asked to overturn its precedent set forth in *Chevron* in considering the legality of the NMFS regulation. **If petitioners successfully convince the court to overturn *Chevron*, the authority and expertise of all administrative agencies and the thousands of programs and services they run could be at risk.** Overturning *Chevron* would likely lead to an avalanche of litigation challenging federal agency programs brought by groups associated with the conservative and far-right legal movements, such as the Pacific Legal Foundation, the Chamber of Commerce Litigation Center, the Alliance for Defending Freedom, America First Legal, and many more. In this way, *Loper Bright/Relentless* is akin to cases in other contexts like *Dobbs v. Jackson Women's Health* in terms of its potential that the Court will radically alter the legal and policy landscape with sweeping implications for millions of Americans. (Also like in *Dobbs*, the appeals courts here issued decisions in line with decades of precedent – and yet the Supreme Court accepted an invitation from conservative groups to take the cases and reconsider years of precedent).

In addition to *Loper Bright* and *Relentless*, the Supreme Court has also agreed to hear a third case: *Corner Post v. Board of Governors of the Federal Reserve System. Corner Post* concerns the statute of limitations for bringing claims challenging final actions from federal agencies under the Administrative Procedure Act ("APA"), which is the law that most litigants use when challenging the actions of federal agencies. The Court will consider a specific question with far-reaching consequences for the entire regulatory landscape: Should a plaintiff be able to challenge a regulation within six years of the regulation's issuance, or within six years of when the regulation first "injures" the plaintiff? Every federal court of appeals that has considered the matter, except for one, has interpreted the six-year statute of limitations period in the APA as beginning when an agency issues a regulation. This allows for challenges to regulations but then, after a period of those challenges and judicial decisions, it promotes relative regulatory stability. Yet, petitioners in *Corner Post* seek to expand the time horizon for bringing challenges to agency action by enabling actions to be filed within six years of when a regulation first "injures" a plaintiff. This would enable longstanding federal regulations to be challenged years after they are implemented, including by entities that come into existence simply for the purpose of challenging federal regulations, leaving the door open to much opportunistic mischief. It would create a situation where courts all over the country could strike down or reinterpret regulations years after the fact, creating an unworkable regulatory environment.

The *Corner Post* case, when considered in light of *Loper/Relentless*, could mean that the Court overturns *Chevron* deference (thereby opening up greater possibilities for challenging agency action) while at the same time extending the time frame for parties to challenge agency action. **Together, *Loper Bright/Relentless* and *Corner Post* could undo the stability of established regulations, from standards on the air we breathe to rules protecting**

**our rights at work, and open up untold numbers of previously settled regulations to new attacks.**

In a scenario where the Court issues a more nuanced ruling in this case (perhaps striking down the challenged regulation but declining to adopt all of the *Loper Bright/Relentless* petitioner's arguments), it is still very likely that special interests and far-right legal organizations will continue to push its limits, creating uncertainty for people and communities relying on a range of federal programs.

## MAJOR TAKEAWAYS

1) **A web of far-right legal organizations are seeking to use *Loper Bright*, *Relentless*, and other cases to undermine the public's faith in democratic institutions and subvert the tools the government uses to serve the people.**

While some may seek to characterize *Loper Bright/Relentless* as a disagreement over the size of government or federal agencies, the litigation is being driven by interests that are seeking to undermine faith in our democratic institutions across a range of issues. The challengers in these cases each attack the authority of a different federal agency, but their goal is the same: to undermine and functionally dismantle administrative agencies – one of the federal government's most useful tools for carrying out important programs and services that help people across the country, every day. The entities advancing these claims include far-right legal actors who are employing anti-democratic tactics to create an American government that works only for those who align with their view.

Notably, Paul Clement, who is counsel of record in the *Loper Bright* matter, serves on the board of the Bradley Foundation, which is a foundation that has been linked to funding the "Big Lie" and other far-right causes.[1] Indeed, the same organizations behind *Loper Bright* and *Relentless* have also been active in undermining the right to vote, the right to abortion, the ability of the government to protect consumers, initiatives to advance equity, and perpetuating baseless legal theories that seek to prop up the "Big Lie." They also include a number of organizations with ties to Donald Trump and former Trump administration officials have authored multiple amicus briefs in the case. John Eastman – the attorney who advised Trump and orchestrated a scheme to overturn the 2020 election results and has been indicted – submitted a brief in support of the petitioners. These organizations seek to use *Loper Bright*, *Relentless*, and other cases to subvert the tools the government uses to do its job of serving the and meeting the needs of people and communities.

All told, more than 20 groups or interests associated with the far-right legal movement filed briefs in *LoperBright*/*Relentless*. This coalition of groups features ties to other anti-democratic movements and causes. The link between these organizations and their role in *Loper Bright/Relentless,* as well as their role in other anti-democracy causes, are important for the public to understand.

[1] Clement served as Solicitor General under President George W. Bush.

*Non-Exhaustive List of Organizations That Submitted Friend of the Court Briefs ("Amicus Briefs") in Loper Bright/Relentless and Their Ties to the Far Right*

| **Organization Submitting a Brief and Link to Brief** | **Description of Organization's Ties to The Far-Right Legal Movement** |
|---|---|
| Advancing American Freedom | Advancing American Freedom was founded by former Vice President Mike Pence, who has promoted false claims about election interference. |
| America First Legal Foundation | America First Legal Foundation's President and Executive Director is Stephen Miller, a former Trump official and white nationalist sympathizer. The Foundation's other extremist ties can be found here. |
| America First Policy Institute | AFPI was founded by Larry Kudlow, President Trump's Director of the National Economic Council. Its President and CEO is Brooke Rollins, former Acting Director of the Domestic Policy Council under President Trump. |
| Alliance Defending Freedom | ADF is a long-standing far-right religious legal advocacy group active in rolling back abortion rights and LGTBQ+ rights, among other issues. ADF wrote a draft of the law that was at issue in the *Dobbs* case and has been actively trying to undermine the FDA's approval of mifepristone. ADF is active in cases that undermine equity in education and access to health care by minors (dubbing these cases "parental rights" cases) in Florida, Massachusetts, Iowa, Virginia, and Wisconsin, among other states. In 2021, ADF received over 100 million dollars in funding, including over 15 million from the Servant Foundation, the "[n]on-profit trying to rebrand Jesus for Gen Z." They received 100 thousand dollars from the Heritage Foundation in 2022. Notably, according to 2021 data, ADF also funds a variety of other far-right organizations, including anti-trans and anti-LGBTQ+ groups. |
| Cato Institute | Similar to the Pacific Legal Foundation, the |

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|---|---|
| | Cato Institute has received funding from the Bradley Foundation and the Koch Foundation. One of the Cato Institute's founders is Charles G. Koch. The Kochs have funded anti-abortion activism, among other things. |
| Claremont Center for Constitutional Jurisprudence | The organization's counsel of record is John Eastman, who was recently indicted alongside former-President Trump for allegedly undermining Georgia's 2020 elections. |
| Manhattan Institute | The Manhattan Institute is funded by Harlan Crow and Paul Singer, who have been reportedly connected to Justice Clarence Thomas and Justice Alito. |
| Pacific Legal Foundation | The Pacific Legal Foundation has received contributions from far-right foundations including the Bradley Foundation, Koch-affiliated organizations, and others. The organization has also taken legal action to undermine efforts to make education accessible and equitable. |

2) **The legal theories being used to propel these attacks on government's core functions are misguided and would transform the courts into policy making roles.**

Petitioners seek to argue that the Court in *Chevron* disturbed the balance of power among the federal branches, contending that the doctrine transfers both the authority of Congress in legislating and the Judiciary's power in determining "what the law is" to the Executive Branch. Yet, in affirming *Chevron* deference, the Court noted that the principle of administrative deference pre-dated the case itself. In a 1961 Supreme Court case, the majority wrote that deference to administrative interpretations was long-standing and applied "whenever…a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations." Going even further back, administrative law experts characterize deferring to agencies as a "pillar" of Supreme Court administrative law doctrine for over a century.

Similarly, in 2000, the Court explained that "*Chevron* deference is premised on the theory that a statute's ambiguity constitutes an implicit delegation from Congress to the agency to fill in statutory gaps."

In short, *Chevron* deference has been a settled area of law for nearly four decades. And the wisdom of deferring not only to Congressional decisions around delegations of authority but to the expertise of administrative agencies has been widely agreed upon for a century. The far-right

legal actors behind *Loper Bright*/*Relentless* are making novel legal claims to disrupt the status quo.

3) **This is not a case that can be characterized by dated (and inaccurate) labels of "small government conservatives" vs "big government liberals;" rather, a range of diverse interests are weighing in to oppose the invitation by the *Loper Bright* and *Relentless* petitioners to undermine the functioning of federal agencies, including more than 250,000 small businesses who rely on regulatory certainty and urge the Court to reject *Loper Bright* and *Relentless'* arguments.**

Should the attacks on government's ability to serve people through administrative agencies in *Loper Bright*, *Relentless*, and *Corner Post* succeed, all Americans will face the consequences of a less effective government. More broadly, *Loper Bright*/*Relentless* and *Corner Post* are part of a concerning trend by far-right legal organizations and the conservative legal movement to undermine the ability of the federal government to deliver for people. Other cases this term including *Consumer Financial Protection Bureau v. Community Financial Services Association of America, Limited*; *Securities and Exchange Commission v. Jarkesy*, *Food and Drug Administration v. Alliance for Hippocratic Medicine*; and *Moore v. United States* are being pushed by the same groups and have the potential to radically define fundamental elements of our federal system.

Overturning *Chevron* would transfer much of the authority over decisions related to government-funded programs and services from issue-area experts in agencies to judges who lack the same knowledge or experience. From issues like establishing baseline protections from toxic pollution in the air we breathe and the water we drink to using scientific research to determine which vaccines health insurers should cover, judges without the specific expertise could be charged with making the final decisions over regulatory actions without adequate consideration of experts' assertions. Moreover, under our federal system, judges are not politically accountable, as they enjoy life-time appointments. This means there would be little accountability for expansive policymaking the judiciary would be empowered to engage in if *Chevron* is overturned. Groups like the Alliance for Defending Freedom, which have sought to undermine a wide range of federal programs including the approval of FDA medications, file cases in single-district courts seeking to substitute the expertise and authority of federal agencies with those of hand-picked federal judges.

The real-world implications of undermining the government's ability to deliver for people could open up government programs and standards to baseless litigation, create uncertainty, and give judges enhanced power to impose their ideology on a wide range of issues.

The potential for such wide-sweeping changes and uncertainty within the regulatory landscape is why such a broad coalition of interests have weighed in supporting the continuance of *Chevron* deference in *Loper Bright*/*Relentless*. Health advocacy groups like the American Cancer Society, labor organizations including the AFL-CIO (which represents 12.5 million workers), coalitions of scientists including the American Association for the Advancement of Science, hundreds of thousands of small businesses, environmental advocacy groups like the Environmental Defense Fund, and many others have all voiced support for maintaining *Chevron* deference in friend of the court briefs in this case.

Notably, even the organization that challenged administrative agencies' authority in the original *Chevron* case has filed a friend of the court brief in *Loper Bright*/*Relentless* supporting the now long-standing precedent of agency deference. "We are the party that lost *Chevron*," the

organization's brief states. "...But we respect the principles of deference on which the Court based its decisions, and we urge the Court to exercise caution before abandoning them."

### ***Overturning* Chevron*: What* Loper Bright/Relentless *Could Mean for the FDA***

Should the attacks on the government's ability to serve people through the agencies in *Loper Bright/Relentless* succeed, all Americans will face the consequences of a less effective government—including potential destabilization of the U.S. Food and Drug Administration's (FDA) proven process for ensuring the safety and effectiveness of drugs and medical devices. In addition to these varied advocacy organizations, Democracy Forward submitted a friend of the court brief in *Relentless* on behalf of two leading experts in pharmaceutical and regulatory policy which explains that the FDA's regulation of drugs and medical devices is highly technical, relies on scientific expertise, and requires complex policy judgments; all decisions to which judges should continue to defer, not substitute their own non-expert assessments.

The logic behind *Chevron* deference is that "[j]udges are not experts in the field," as the *Chevron* court put it. Many of the decisions the FDA makes interpreting the Federal Food, Drug, and Cosmetic Act require expert analysis to reach scientifically-sound results. For instance, the FDA is responsible for: approving new drugs and medical devices, evaluating whether new drugs seeking FDA approval meet various safety standards, overseeing the labeling of drugs to ensure health care professionals understand their usage and patients can too, and more.

Each of the FDA's responsibilities have large ramifications on the country's public health. The Court should avoid the potential for destabilizing a regulatory regime that the FDA has capably used for nearly a century to foster scientific and medical innovation, while also ensuring that dangerous or ineffective drugs and medical devices do not routinely threaten public health, as they once did.

The specific implications for FDA are stark when one considers the role that groups such as the Alliance for Defending Freedom, which recently put access to the medication abortion drug mifepristone in the balance with its lawsuit challenging FDA's authority, have weighed in at the Court to urge adoption of the *Loper Bright/Relentless* petitioners arguments. Chief Justice Roberts wrote in an opinion released on the shadow docket concerning the FDA's regulation of medication abortion in 2021 that "*courts owe significant deference to the politically accountable entities with background, competence, and expertise to assess public health*" and declined to uphold an injunction a district court had issued concerning FDA's regulation of mifepristone. Yet, far-right legal organizations are seeking to undermine this balance of authority between federal agencies and the courts. Should the Court accept their invitation to do so in *Loper/Relentless*, there could be wide-sweeping implications for the public health.

### ***Losing Administrative Deference: How Small Businesses Would Be Impacted and Economic Implications for the US Economy***

Public health and environmental concerns are just small slices of the disruption overturning *Chevron* could cause. Small businesses represent another. More than 250,000 small business and small business interests have weighed in at the Court urging it to reject the petitioner's arguments and to affirm decades of precedent set forth in *Chevron*. While overturning *Chevron* deference would cause widespread regulatory uncertainty, small businesses would be particularly vulnerable to the drawbacks of an unpredictable regulatory landscape.

Regulatory stability is particularly important because compliance—particularly setting up new systems—is largely a fixed cost and so will be proportionately higher for small businesses.

Therefore, the unpredictability of an environment where new regulations are challenged and changed regularly would require small businesses to expend money they may not have to understand and comply with an ever-changing set of rules. Predictable regulatory environments allow small businesses to confidently plan and prepare for the future. In the absence of predictability, small businesses may face a range of negative outcomes, from forgoing critical investments to outright failure. This unpredictability will not be evenly felt: An uncertain regulatory environment will make it harder for small businesses to compete against larger, more well-resourced corporations.

Moreover, this effect on small businesses will ripple throughout the American economy. Small businesses are critical to our country's economy. The vast majority—99.9 percent—of businesses in the United States are small. Small businesses also employ nearly half of the nation's workers. Likewise, small businesses have created the majority of new jobs in the United States since 1995. A chaotic regulatory environment ushered in by the loss of *Chevron* deference would therefore harm small businesses, the American economy, and American workers.

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From small businesses to everyone who relies on the safety of medications that the FDA governs to those relying on clean water regulations and environmental safety standards, *Chevron* deference plays a large role in the lives of all Americans – whether they know it or not. These challenges in *Loper Bright*, *Relentless*, and *Corner Post* to *Chevron* also challenge the federal government's ability to deliver for the American people. Just like when the Court overturned years of precedent in *Dobbs* and *Students for Fair Admission*, the implications will be widespread and devastating if the Court accepts the petitioners' invitation.

The table below demonstrates the breadth of organizations that submitted friend of the court briefs in support of *Chevron* deference, as well as why deference to administrative agencies is important for the people and causes they serve.

*Non-Exhaustive List of Diverse Organizations That Submitted Friend of the Court Briefs ("Amicus Briefs") Supporting Chevron Deference in Loper Bright/Relentless*

| **Organizations Submitting a Brief in Support of *Chevron* Deference** | **Description of Organization and Why it Supports *Chevron* Deference** |
|---|---|
| Administrative Law Scholars | This group of legal scholars who are focused on administrative law characterized deference to administrative agencies as a pillar of the Supreme Court's administrative law jurisprudence in its brief. |
| AFL-CIO | AFL-CIO is one of the largest labor organizations in the United States, representing 12.5 million workers. Its frequently works with federal agencies like the National Labor Relations Board and the Occupational Safety and Health |

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|---|---|
| | Administration.<br><br>Its brief notes that the original *Chevron* decision cited three prior labor law cases (ranging from 1944 to 1953) that all espouse a similar principle of deferring to administrative agencies (see brief, page 3).<br><br>The organization also emphasizes that labor relations is an ever-changing field, and that administrative agencies have the expertise and ability to keep up while courts do not: "In the dynamic context of labor relations, this Court has long recognized that '[t]he responsibility to adapt the Act to changing patterns of industrial life is entrusted [by Congress] to the Board.' *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251, 266 (1975). *Chevron* permits that necessary adaptation. Overturning *Chevron* would prevent it and thereby gradually render the NLRA and many other statutes obsolete, contrary to Congress' intent" (see brief, pages 16-17). |
| American Association for the Advancement of Science (AAAS) | AAAS is the world's largest general scientific organization and notes that agencies often have scientific and technical knowledge that judges do not. Its brief states:<br><br>"...Therefore, AAAS respectfully provides this brief to the Court to say that the long-standing *Chevron* doctrine should be reaffirmed, as agencies with scientific and technical expertise are often best placed to handle the rapidly changing nature of science and technology—as well as to take into account and balance the input of myriad stakeholders—in order to develop programs and regulations for fulfilling their statutorily-based missions (e.g., public safety, health, environmental protection, etc.) in the public interest. Indeed, AAAS and the thousands it represents urge the Court to consider that it is precisely because scientific information is both essential to much decisionmaking (by agencies and courts) and ever-evolving as a field of knowledge that a certain amount of judicial, as well as scientific, humility is prudent" (see brief, pages 3-4). |

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|---|---|
| American Cancer Society | This health advocacy organization, alongside others, authored a brief showing how critical *Chevron* deference has been in managing federal programs like Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). |
| Environmental Defense Fund (EDF) | An environmental non-profit, EDF advocates for agencies' continued implementation of various federal environmental statutes such as the Clean Air Act, the Food Safety Modernization Act, and the Toxic Substances Control Act (see brief, page 1). |
| Natural Resources Defense Council | The Natural Resources Defense Council is an environmental advocacy organization. It is also the organization that originally challenged deference to administrative authority in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (1984) – and now it wrote a brief in favor of *Chevron* deference. |
| Small Business Associations | These associations, which together represent over a quarter million businesses, wrote a brief supporting *Chevron* deference because of the regulatory certainty it provides small businesses. Rapidly changing regulations, the brief states, are easier for large businesses to keep up with but could put smaller companies out of business (see brief, pages 10-11). |

### 4) The Implications of *Loper Bright/Relentless* Could Be Even More Devastating in Light of *Corner Post*.

As noted in the background section above, the ramifications of *Loper Bright*/*Relentless* could be more pronounced if the Court endorses petitioner's arguments in the *Corner Post v. Board of Governors* case that would expand the interpretation of the six-year statute of limitations on bringing administrative challenges under the Administrative Procedure Act ("APA"). The *Corner Post* case, when considered in light of *Loper/Relentless*, could mean that the Court overturns *Chevron* deference (thereby opening up greater possibilities for challenging agency action) while at the same time extending the time frame for parties to challenge agency action. Together, *Loper Bright*/*Relentless* and *Corner Post* could undo the stability of established regulations, from standards on the air we breathe to rules protecting our rights at work, and open up untold numbers of previously settled regulations to new attacks.

In a scenario where the Court issues a more nuanced ruling in this case (perhaps striking down the challenged regulation but declining to adopt all of the *Loper Bright/Relentless* petitioner's arguments), we nevertheless expect that special interests and far-right legal organizations will continue to push its limits, creating uncertainty for people and communities who rely on a range

of federal programs. Democracy Forward is monitoring the work of far-right legal organizations and have seen these organizations seek to expand decisions such as *West Virginia v. EPA* (major questions), *Dobbs v. Jackson Women's Health* (abortion), and *Students for Fair Admission v. North Carolina/Harvard* (affirmative action) beyond their scope in order to push the law towards their goals in new areas. We anticipate that we will see the avalanche of litigation post-*Loper* if the Court sides with the *Loper Bright/Relentless* petitioners, even in a narrow or nuanced way. For details on prior trends and the work of these legal organizations, experts from Democracy Forward can provide information and trend analysis from its tracking system.

***Legal experts from Democracy Forward are available for interviews. Please send media inquiries to [team@feldmanstrategies.com](mailto:team@feldmanstrategies.com).***