

CLOSING STATEMENT

An Opportunity for Rethinking Environmental Protection



We all seem to be relearning how government works these days, and nowhere is that more true than in administrative law. With three recent decisions in particular, the Supreme Court has thrust us into uncharted territory. But with these changes come new opportunities to rethink, retool, and reshape the future of environmental protection.

At the end of its term, the Court decided *Loper Bright Enterprises v. Raimondo*, overruling the long-standing *Chevron* doctrine of judicial deference to federal agencies, and sending shockwaves through the environmental and legal community. Now courts will no longer bow to agency interpretations of ambiguous statutes, but instead use their “independent judgment” to supply their own “best reading.” Many are reeling from the decision and scrambling to understand what it will mean when applied to various areas of law. At a minimum, it has created significant uncertainty.

That decision alone would have made for a monumental term, and yet other cases will also have lasting consequences. Discovering the right to a jury trial in a Securities and Exchange Commission fraud action, *SEC v. Jarkesy* may limit other agencies’ ability to use administrative law judges to resolve enforcement actions, possibly including EPA. While not all defendants will opt for a jury trial, the decision may chill enforcement generally, with agencies deterred by the

time and costs associated with going to federal court.

And agencies may now find themselves in court defending actions that go back decades. *Corner Post v. Board of Governors of the Federal Reserve System* upended how the statute of limitations within the Administrative Procedure Act has long been understood. Instead of six years for filing facial challenges to agency actions, *Corner Post* effectively erased that deadline by starting the clock at the time of injury, even for brand-new entities. As a result, any challenge governed by the APA, on any issue, can be brought by any plaintiff alleging harm. While *Loper Bright* alludes to the importance of *stare decisis*, its new standard of review may invite plaintiffs and courts to consider fresh challenges, with no deference to the agency.

It will take time for the dust to settle and to understand the ultimate impact of any one of these decisions, much less their combined effect. The upshot is that administrative law and environmental protection are in the spotlight, with long-standing approaches being undermined, and an unsettled future. On the one hand, there is a great deal of uncertainty, which we are likely to see play out in the courts in coming months and years; on the other, there may be room for new legislative, executive, and judicial norms to emerge. And that means that ideas surfaced today have the potential to influence the new scaffolding of administrative law for the future.