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Congress and courts enable energy and climate fantasy and tyranny

Supreme Court should end "Chevron deference" to restore checks, balances and reality.

By Paul Driessen

The left end of the political spectrum is relentlessly pursuing the transformation of America's society, history, economy, speech, borders, governing systems, healthcare, energy and living standards. What it cannot secure via the ballot box and alliances with the legacy media and academic institutions, it works to impose through rule by unelected, unaccountable Executive Branch bureaucrats, collusive sue-and-settle legal actions, and court decisions that too often rubberstamp agency rules.

Instead of three co-equal divisions of government, the powers and functions of America's Legislative and Judicial Branches have steadily been subsumed into an ever expanding, progressive and aggressive Executive Branch. Many legislators and judges have acquiesced or actively participated.

The federal workforce has swollen to two million non-military employees, who "liberally" interpret, apply and enforce laws and policies. The Federal Register of regulations, explanations and justifications has ballooned from 50,998 pages in 1984, to a Jabba-the-Hutt 90,402 pages in 2023. Few can read, much less comprehend and comply with the intricate edicts.

Members of Congress want to be seen "doing something" to address perceived problems, often by passing new laws and spending more money. However, instead of actually tackling difficult, controversial issues, they frequently make policy declarations, enact deliberately ambiguous statutory provisions, and rely on Executive Branch

cohorts to interpret, stretch or even rewrite the vague language, mostly advancing agency powers and agendas.

The US Supreme Court's landmark 1984 decision in *Chevron v. Natural Resources Defense Council* expanded this centralization of power even more significantly.

The "*Chevron* deference doctrine" holds that – when faced with regulations that are based on ambiguous, or nonexistent, statutory text – lower courts should always defer to administrative agencies' interpretations of the text, as long as the interpretations are "reasonable."

Chevron deference has let federal agencies expand their domain and control in hundreds of instances. Affected citizens often have little recourse, as long as the impact of an individual rule can be viewed as small and the agency interpretation as not patently unreasonable.

In those situations, the 2022 Supreme Court decision in *West Virginia v. EPA* is of little help, because it only addresses "major questions," agency decisions that have "major" economic or political significance.

However, the Court recently heard oral arguments on two cases that give it an opportunity to curtail or end this wholesale deference to federal agencies. Both cases ask whether small fishing boats can be required to pay $700 per day to take observers along with them, to ensure the boats are following fisheries rules. Relevant law allows the government to require fishing boats to *carry* observers – but does not say the boats must *pay* for them, and Congress never appropriated any funds to cover observers.

So, on its own, the National Marine Fisheries Service decided it had the authority to compel boats to shoulder the cost. The case could have enormous implications for the perpetually expanding Deep State.

The Justices could rule in favor of NMFS, even though monetary impacts that are small by federal governing and budgetary standards are major, even potentially ruinous for fishing boats.

They could hold that the agency interpretation in this single instance was "unreasonable" – and overturn this single rulemaking out of thousands issued since 1984, while leaving the *Chevron* doctrine intact and available for future abuse.

Or they could overturn *Chevron*. Doing so would end the appalling deference to powerful government agencies; reduce the growing imbalance between the Executive and Legislative Branches; and make it harder for circuit and appellate courts to support activist regulators.

A reversal might even prod Congress to enact laws that tackle hard questions, use precise language, and tighten the reins on unelected regulators, especially when they serve presidents who want to "fundamentally transform" our energy use, immigration system, economy and military.

The third option would also help America curb climate and energy fantasy and tyranny.

It's certainly true that most federal actions taken to "save our planet from the existential threat of manmade climate change" are "major" or "significant" in their societal, economic, ecological and national security impacts – and thus subject to the Supreme Court's "major questions doctrine."

However, that Court has not defined "major." Moreover, even actions that most Americans would call "major" can end up being upheld, and agencies can claim significant actions are actually "minor" or can simply ignore court decisions that don't apply explicitly to the agency or action in question.

Even in the climate and energy arena alone, hundreds of "minor" decisions can coalesce into massive disruptions and costs. It's certainly reasonable to argue that questions of *Chevron* deference should examine the totality of impacts – and whether a decision can actually pass a rational, evidence-based "reasonableness" test. To cite just a few examples, is it reasonable to defer to federal agencies that:

* Impose government-wide mandates to terminate America's coal, oil and natural gas extraction and use, based on computer models whose scary forecasts: (a) are built on the assumption that climate change and weather events are driven by fossil-fuel-related carbon dioxide and methane, which together represent barely 0.042% of Earth's atmosphere; and (b) are not supported by actual, real-world data on temperatures, tornadoes, hurricanes, floods, droughts and sea levels?

* Keep oil and gas locked in the ground before they have any workable plan for replacing feed stocks for plastics, pharmaceuticals, fertilizers and thousands of other vital products?

* Compel families and businesses to replace gasoline vehicles and gas ovens, stoves, furnaces and water heaters with electric models – while regulators replace reliable, affordable fossil fuel power with intermittent, weather-dependent wind and solar power?

* Close down coal and gas-fired generators before sufficient, reliable, affordable replacement electricity is available – and before a single project anywhere in the world has demonstrated that wind, solar and battery electricity alone can power even a small village?

* Demand that families purchase supposedly energy- or water-efficient washing machines and dishwashers, even though the new machines must run longer or even twice to get clothes or dishes clean – thereby requiring *more* electricity and water?

* Effectively mandate electric vehicles before there are sufficient charging stations, electricity for those stations, or even metals and minerals to manufacture all the EVs, charging stations, wind turbines, solar panels and transmission lines?

* Assert that wind, solar and battery power are clean, green, renewable and sustainable, while ignoring the monumental amounts of mining and processing – and attendant habitat and wildlife destruction, toxic air and water pollution, and child labor – involved in obtaining the nonrenewable metals and minerals for those technologies?

* Insist that the United States slash or eliminate its fossil fuel use, while China, India and 100 other countries (including Germany) are extracting and burning *more* oil, gas and coal every year?

Courts should not view government actions in a vacuum. Many agency decisions are reasonable only in an alternative universe where individual and cumulative economic, ecological and social realities play no role. The era of Chevron deference should be brought to a close.

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