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Analysis

# Chevron Reversal May Shift Contract Dispute Outcomes

By [Daniel Wilson](#) · [Listen to article](#)

*Law360* (July 3, 2024, 6:04 PM EDT) -- The [U.S. Supreme Court](#)'s upending of its 40-year-old Chevron doctrine, which deferred to federal agencies' interpretation of ambiguous legislation, could reverberate outside the statutory realm and give government contractors an edge while contesting agencies' read of contract language, experts say.

The last four decades saw courts, including the D.C., Tenth and Eleventh Circuits, applying the high court's 1984 decision in [Chevron USA v. Natural Resources Defense Council](#) to disputes involving federal contracts, granting the same deference to agencies' reasonable interpretations of unclear contractual clauses.

The justices' [reversal](#) of the Chevron doctrine now in [Loper Bright Enterprises v. Raimondo](#) doesn't address contract disputes, but agencies can no longer rely on the doctrine for rulings in their favor during tussles over contractual language, experts say.

"I think that it's a reasonable interpretation of the court's Loper Bright decision to think it would also apply to review of regulatory and contractual interpretation issues," [Arnold & Porter Kaye Scholer LLP](#) partner Kristen Ittig said.

Case law extending Chevron to contractual disputes remains in place in the meantime, and the high court may ultimately be called upon to explicitly overturn that existing deference to agency interpretations of contracts in the post-Chevron landscape.

However, the reality that the Federal Circuit is the most active appeals court for federal contract disputes may leave the issue unsettled for some time. That circuit, which holds exclusive jurisdiction over appeals from contract appeal boards and the Court of Federal of Claims, has already implicitly rejected the extension of the Chevron doctrine to contractual interpretation.

The Federal Circuit instead applies the doctrine of contra proferentem, common in contract disputes beyond just those involving the government, where any ambiguity is construed against the party that wrote the contract.

If a petition eventually brings the contractual deference divide to the Supreme Court, the justices may be persuaded to resolve the discordance, given that Justice Neil Gorsuch already invited a challenge to the extension of the Chevron doctrine to contract disputes well before the Loper Bright decision.

Justice Gorsuch opposed the Chevron extension in an October 2017 [statement](#) when the high court rejected a related petition from nonprofit Scenic America Inc., which was challenging the Federal Highway Administration's policy authorizing digital billboards with changing messages along highways.

Scenic America had claimed that the [FHWA](#) was violating standards prohibiting flashing lights laid out in federal-state agreements issued after the passage of the 1965 Highway Beautification Act. The D.C. Circuit, building on similar previous decisions, [ruled](#) that the FHWA was entitled to Chevron-like deference for the agency's interpretation of those agreements.

In most contract disputes that involve an ambiguous clause, courts look to the "tested and pretty ancient rules of contract construction," Justice Gorsuch said. That usually means that ambiguities are resolved against the party who wrote the contract, or a judge weighs testimony from both parties to the contract, he said.

"Whatever one thinks of that practice in statutory interpretation cases, it seems quite another thing to suggest that the doctrine (or something like it) should displace the traditional rules of contract interpretation too," Gorsuch said.

Brian Iverson, a member at [Bass Berry & Sims PLC](#), noted that the last paragraph of Justice Gorsuch's statement, which was joined by Chief Justice John Roberts and Justice Samuel Alito — just one justice short of the number needed to take up a petition — "essentially says that 'this is an issue we should take up.'"

"I don't think [Justice Gorsuch] was shy about making that invitation," Iverson said.

The Scenic America case ultimately involved other "less significant and considerably more factbound questions" that made it a bad vehicle for addressing the contractual interpretation issue, Justice Gorsuch said, but "the issues lying at its core are surely worthy of consideration in a case burdened with fewer antecedent and factbound questions."

The contractual deference issue has continued to turn up in cases outside the Federal Circuit's jurisdiction in the years since Justice Gorsuch's statement — including courts in circuits where the issue has yet to be decided either way, which offer the clearest path for the issue to get to the high court.

"The Supreme Court is encouraging the lower courts and other adjudicators to weigh in on in-the-weeds technical issues, when it is appropriate to do so, and that signal may lead to changes down the road," said [Covington & Burling LLP](#) associate Andrew Guy.

--Editing by Alanna Weissman.

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