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How the Supreme Court's decision to overturn *Chevron* could affect public schools and higher education

High school sports, programs for students with disabilities, and college-debt forgiveness are among the areas likely to be affected.

(AP Photo/Seth Wenig, File)

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Last month's reversal of so-called *Chevron* deference by the Supreme Court could open up the Education Department to a slew of legal battles over its oversight of the nation's schools and colleges.

The department previously had the primary authority to guide federal regulations on education policy when Congress was unclear about its legislative intent or if the law was purposely broad. But that changed when *Chevron*, a 40-year-old legal precedent that gave federal agencies the power to shape, interpret, and carry out ambiguous congressional statutes, was overturned as part of the high court's ruling last month in *Loper Bright Enterprises v. Raimondo* (https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf).

The doctrine allowed the Education Department the power to impose regulations in April that revised Title IX by expanding the definition of sex discrimination to protect LGBTQ+ students.

But now, the department will have to tread carefully because the overturning of *Chevron* increases the likelihood that it will face court challenges over its interpretation of statutes any time a plaintiff believes the executive branch has overstepped its bounds.

The Court's ruling does not apply to cases previously decided. But Republican lawmakers already have requested that the department provide a list of final agency rules and decisions issued since President Biden's inauguration, detailing which are pending judicial challenges, which could be challenged in court, and which rely on *Chevron* deference prior to the Court's decision in *Loper Bright*.

"[W]e assure you we will exercise our robust investigative and legislative powers not only to reassert forcefully our Article I responsibilities but also to ensure the Biden administration respects the limits placed on its authority by the Court's *Loper Bright* decision," House Education and the Workforce Committee Chair Virginia Foxx and House Oversight and Accountability Committee Chair James Comer wrote in a letter (https://edworkforce.house.gov/uploadedfiles/2024070_ew_oa_loper_bright_letter_to_sec_cardona.pdf) this month to Education Secretary Miguel Cardona.

Sen. Bill Cassidy, the top Republican on the Health, Education, Labor, and Pensions Committee, is also urging the department to comply with the ruling, requesting an explanation of how the agency will adapt.

"Despite the Court's decision, given your agency's track record, I am concerned about whether and how the Department will adapt to and faithfully implement both the letter and spirit of this decision," Cassidy wrote in a June letter (https://www.help.senate.gov/imo/media/doc/loper_bright_letter_edpdf.pdf) to Cardona. "The Department has flagrantly and repeatedly violated the law."

Title IX

One such instance, Cassidy said, was when the department redefined sex to include gender identity under Title IX.

DAILY

After 'botched' rollout of federal student-aid system, Biden administration aims to fix the relaunch

Glitches in FAFSA system have driven down college enrollment as uncertainty over available aid has made thousands hesitant to pursue higher education.

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"Bureaucracies have moved beyond interpreting ambiguity into creating law that Congress never intended to be passed," Cassidy told *National Journal*. "So overturning the *Chevron* doctrine is a pushback upon agencies, which are impatient with a constitutional process of going through Congress in a power grab to implement their version of what rights should be. Title IX is a clear example of that."

Cassidy's approach is part of a larger strategy he's employing to curtail executive authority in the absence of *Chevron*. His Upholding Standards of Accountability Act (/s/725712/outlook-netanyahu-protesters-skeptical-of-harris-candidacy/?mkt_tok=NTU2LVlFRS05NjkAAAGUm0w1i-ZmVF5MCEkFQnF7BWpfBn5IVI3fKn8rsyMrYdgu5T50UivxkXlltLKKlupIPqgopcVS274-ItsqPEWhnFm9hS3bC9G3kFdep9zaHSVTkQ) would require federal agency heads to appear in front of a committee 30 days before publishing a "major rule." It also would mandate federal agencies retrospectively review cost-benefit analyses related to major rulemakings, and require them to respond to congressional requests in a timely manner.

Legal scholars say courts were already reviewing cases about the oversight of federal agencies even before *Loper Bright*. But last month's decision will push courts to provide their own independent interpretations of statutes to a greater degree than they already have.

"I think that it was always possible that the courts would say that the 2024 regulations go beyond Title IX," said R. Shep Melnick, Title IX expert and professor of American politics at Boston College. "Overturning *Chevron* has increased the possibility that those regulations won't survive."

Eight lawsuits, signed onto by 26 Republican-led states, are challenging the Biden administration's new Title IX revision.

The rule is set to take effect Aug. 1, but a temporary ruling by a federal judge has placed it on pause in at least 15 states. With *Chevron* no longer in play, the rule now faces a much tougher hurdle to survive a legal challenge, experts say.

Student-loan relief

The ruling also will make it more difficult for the Biden administration to continue its efforts to forgive student-loan debt.

Parts of Biden's plan for debt relief have already undergone a wave of legal challenges.The Supreme Court last summer struck down the administration's sweeping student-debt-relief plan in a 6-3 decision,

ruling in favor of six GOP-led states contending that the administration had overstepped its authority.

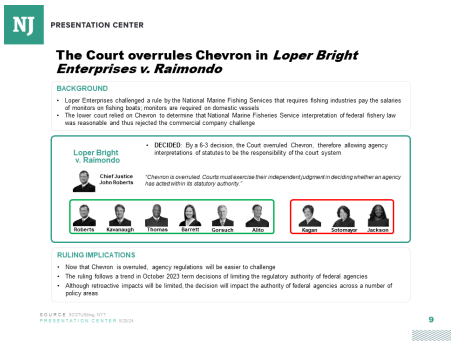
Despite that ruling, Biden has been trying to cancel student debt through alternative avenues such as the recently announced Saving on a Valuable Education (https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/22/fact-sheet-the-biden-harris-administration-launches-the-save-plan-the-most-affordable-student-loan-repayment-plan-ever-to-lower-monthly-payments-for-millions-of-borrowers/) (SAVE) plan.

A federal appeals court this month issued an order temporarily blocking the entire SAVE plan.

"Today's ruling from the 8th Circuit blocking President Biden's SAVE plan could have devastating consequences for millions of student loan borrowers crushed by unaffordable monthly payments if it remains in effect," the Education Department said in a statement (https://www.ed.gov/news/press-releases/statement-us-secretary-education-miguel-cardona-8th-circuit-court-appeals-ruling-biden-harris-administrations-saving-valuable-education-save-plan) last week. "It's shameful that politically motivated lawsuits waged by Republican elected officials are once again standing in the way of lower payments for millions of borrowers."

Legal experts say it is likely SAVE legal challenges will make their way to the Supreme Court, which will force the Education Department to defend the plan's legality under the Higher Education Act

(https://www.congress.gov/bill/102nd-congress/senate-bill/1150).



PRESENTATION

Supreme Court overrules Chevron

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SAVE, which discounts loan balance and calculates the payment plans of borrowers based on their family size and income, has been at the center of legal disputes.

Two separate injunctions last month from federal judges temporarily halted much of the plan. A successful appeal from the Biden administration on one of the injunctions allowed it to resume lowering borrowers' payment amounts, but these efforts could be blocked again.

"The Supreme Court's overruling of *Chevron* will now make it even more difficult for the Education Department to justify the SAVE plan," student-loan attorney Adam Minsky wrote in a *Forbes* article (https://www.forbes.com/sites/adamminsky/2024/06/28/student-loan-forgiveness-and-idr-plans-in-serious-danger-after-new-supreme-court-decision/). "The Education Department will then have the unenviable task of trying to argue, in the shadow of *Chevron* being overturned, that legislation Congress passed more than 30 years ago is not open to interpretation."

Other experts say the plan might not be at risk because Congress gave the department the authority to modify student-loan-repayment plans under the Higher Education Act.

SAVE has canceled over $5.5 billion of student debt for the more than 400,000 people signed up for the plan.

In total, the Biden administration through a variety of programs has cleared roughly $170 billion in student-debt forgiveness, providing relief for around 4.8 million borrowers.

Students with disabilities

Loper Bright might also prompt school districts to challenge the Education Department's interpretations of statutes that pertain to students with disabilities.

The department has been guiding local school districts to implement the Individuals with Disabilities Education Act (https://sites.ed.gov/idea/) (IDEA), which guarantees students with disabilities receive free and appropriate public education. Now it'll ostensibly be up to Congress and courts. IDEA outlines how schools are required to serve students with disabilities, the environment in which they learn, and the level of aid and services they receive. Experts say the *Loper Bright* ruling opens the door for increased litigation on how the law is carried out.

“We anticipate that some courts will find certain regulations invalid, that those rulings will be appealed, and that eventually the high court will be considering pieces of the regulatory framework affecting students with disabilities and the schools that serve them,” said Sonja Trainor, the executive director of the National School Attorneys Association. “Ten years from now, we may see some changes in the regulatory framework after such decisions.”

Legal experts say parts of Section 504 of the Rehabilitation Act (https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/section-504-rehabilitation-act-of-1973) and the Americans with Disabilities Act (https://www.ada.gov/), which prohibit discrimination against individuals with disabilities in public life and federally funded programs and activities, also could be vulnerable.

The Autistic Self Advocacy Network (ASAN), a disability-rights organization for the autistic community, condemned the *Loper Bright* ruling in June, warning it will lead to inconsistent adjudication of cases involving disabled individuals.

“The overturning of *Chevron* and the deference it gives to the courts will have devastating impacts on all marginalized people, including disabled people and particularly disabled people of color,” read a statement (https://autisticadvocacy.org/2024/06/asan-condemns-overturning-of-chevron-doctrine/) from ASAN.