Impact of the U.S. Supreme Court overturning of the Chevron Doctrine on Commercial Space Regulation

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In 1984, the **Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.** decision established the **Chevron Doctrine**, a cornerstone of administrative law in the United States. This doctrine directed courts to defer to federal agencies' reasonable interpretations of ambiguous statutes. Its influence extended across various sectors, including emerging fields like **commercial space**, where regulatory frameworks were still evolving or absent.

However, the regulatory landscape underwent a seismic shift on **June 28, 2024**, when the U.S. Supreme Court handed down a landmark decision in **Loper Bright Enterprises et al v. Raimondo, Secretary of Commerce, et al**, effectively overturning the **Chevron Doctrine**. This decision marked a departure from decades of judicial precedent, asserting that courts must independently evaluate whether agencies acted within their statutory authority. No longer bound by automatic deference to agency interpretations, courts now wield enhanced oversight over regulatory decisions.

Justice Kagan, in dissent joined by **Justices Sotomayor and Jackson**, criticized this shift, arguing that it empowers courts excessively at the expense of agency expertise and Congress's intent in delegating interpretive discretion.

The **Chevron Doctrine** operated under a straightforward two-step

framework: first, determining if **Congress** explicitly addressed the issue; if not, agencies' interpretations of ambiguous statutes were upheld if deemed reasonable.

For **commercial space regulation**, this decision holds profound implications. Agencies such as the **Federal Communications Commission (FCC)**, **Federal Aviation Administration (FAA)**, and **National Oceanic and Atmospheric Administration (NOAA)**, responsible for overseeing satellite communications, space tourism, and environmental monitoring in space, face a new and more restrictive regulatory environment. Without the **Chevron deference**, agencies' flexibility to adapt regulations to technological advancements and evolving industry practices is diminished. Courts now play a pivotal role in scrutinizing and potentially challenging agency decisions, which could lead to increased litigation and regulatory uncertainty.

The removal of **Chevron deference** not only alters the dynamics of regulatory authority but also impacts **judicial review**. Courts will now take a more active role in interpreting statutes, ensuring closer alignment with legislative intent but potentially lacking the specialized knowledge and nuanced understanding of technical issues that agencies traditionally provided.

The implications extend to **regulatory certainty**. While clearer **legislative mandates** might offer stability, the absence of **Chevron deference** introduces uncertainty. This uncertainty could deter investment in the **commercial space sector**, where rapid technological innovation and global competitiveness are paramount. Companies may hesitate to innovate or expand operations in an unpredictable regulatory climate where agency decisions are subject to judicial second-guessing.

Real-world examples illustrate these challenges vividly. The **FCC**, for instance, faces heightened scrutiny over its regulation of **satellite constellations** and the burgeoning **space tourism industry**. Previously, the FCC enjoyed

significant latitude in adapting regulations to accommodate technological advancements and new market entrants. Now, each regulatory decision is subject to judicial review, potentially slowing down approvals and stifling innovation critical for industry growth. This also has potential implications vis-à-vis the FCC's assumed power to regulate space debris given the FCC's "statutory authority" – as per the Communications Act of 1934 – is the regulation of interstate and international communications.

Similarly, the **FAA**'s oversight of **commercial human spaceflight** is now under increased judicial scrutiny. Safety standards and operational guidelines, which previously evolved in tandem with industry advancements, may now face delays or inconsistencies due to judicial interpretation of agency actions.

Furthermore, **mission authorization and supervision** now face significant obstacles, hindering industry efforts to achieve streamlined processes for mission authorization. The lack of specific **congressional action** has the potential to further complicate the authorization and supervision by the executive branch of new commercial space ventures. **Article 6 of the Outer Space Treaty** requires State signatories to conduct continuing authorization and supervision of its national space activities, including commercial activities.

In November 2023, the **Commercial Space Act of 2023** was introduced in Congress and outlines a certification process for mission authorization under the ambit of the Department of Commerce. A few days later, the White House published a proposal to split mission authorization under the **Department of Commerce and the Department of Transportation**. Simultaneously, the National Aeronautics and Space Administration (NASA) has consistently emphasized the need for their agency to maintain mission authorization.

Looking ahead, the post-**Chevron era** demands precise

legislative guidance to navigate these complexities effectively. Congress must play a proactive role in providing clear and detailed statutes that empower regulatory agencies while ensuring accountability and alignment with national priorities. Harmonizing **U.S. regulations** with international standards, including obligations under treaties like the **Outer Space Treaty**, becomes more challenging without the deference framework that previously guided agency discretion.

The evolving **space regulatory landscape** also underscores the need for adaptive governance structures that balance the expertise of regulatory agencies with the oversight of the judiciary. This balance is crucial to fostering an environment that supports innovation, safety, and responsible growth in the **commercial space sector**.

In conclusion, the Supreme Court's decision to overturn the **Chevron Doctrine** represents a watershed moment in **U.S. administrative law** and **regulatory policy**. As **Wasel & Wasel** continues to monitor these developments closely, we are committed to assisting clients in navigating the evolving **space industry** landscape. For guidance on understanding and navigating the complexities of **U.S. space industry**, please contact **Abdulla Abu Wasel**, Deputy Managing Partner at **(awasel@waselandwasel.com)**.

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