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Chevron Deference Should Be Abandoned Says NCLA in Hospital Reimbursement Lawsuit *Amicus* Brief

American Hospital Association, et al. v. Xavier Becerra, et al.

Washington, DC (September 10, 2021) – A case on the Supreme Court's docket for its 2021-22 term could spell the beginning of the end of *Chevron* deference. In an *amicus* brief filed today in *American Hospital Association, et al. v. Xavier Becerra, et al.*, the New Civil Liberties Alliance argues that the D.C. Circuit improperly applied *Chevron* deference to HHS's interpretation of a statute that allowed the agency to set reimbursement rates for the plaintiffs, a group of hospitals that participate in the Section 340B Drug Pricing Program.

NCLA's *amicus* brief focuses on the improperly truncated nature of the appeals court's *Chevron* analysis. The district court held in December 2018 that HHS's reimbursement rates were based on an improper construction of Medicare statutes. But in July 2020, a divided D.C. Circuit panel reversed the ruling, holding that HHS's statutory construction was entitled to *Chevron* deference because it was "reasonable" and was not excluded by the statutory language. In doing so, the D.C. Circuit upheld HHS's decision to lower drug reimbursement rates for Section 340B hospitals. Rather than undertaking a thorough statutory analysis and determining which side had the stronger arguments, the D.C. Circuit simply threw up its hands and declared, "when competing readings of a statute would each occasion their own notable superfluity, that manifests the kind of statutory ambiguity that *Chevron* permits the agency to weigh and resolve." This abdication of judicial decision-making responsibility should be corrected by the Supreme Court.

Under the *Chevron* doctrine, courts defer to an administrative agency's "reasonable" interpretation of a statute, even if the reviewing court thinks that there is a better, competing interpretation. *Chevron* deference compels judges to abandon their duties of independent judgment, thereby undermining separation-of-powers principles. It has been more than five years since the Supreme Court has relied on *Chevron* deference to uphold an agency's interpretation of a federal statute. The Court should not only reverse the D.C. Circuit's decision, but also call into question the constitutional underpinnings of *Chevron* and express a willingness to consider overruling it.

NCLA released the following statement:

"It is the duty of independent judges to decide what the law is. They should determine a statute's meaning by applying all traditional rules of statutory construction, not take the easy way out by parroting an administrative agency's construction of the statute."
— **Rich Samp, Senior Litigation Counsel, NCLA**

For more information visit the case page here.

ABOUT NCLA

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar Philip Hamburger to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and

other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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