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Rhode Island Herring Fishermen Encourage Supreme Court Review of NMFS's at-Sea Monitor Rule

Loper Bright Enterprises, et al. v. Gina Raimondo, in her official capacity as Secretary of Commerce, et al.

Washington, DC (December 16, 2022) – Relentless Inc., Huntress Inc., and Seafreeze Fleet LLC, corporations operating in the herring fishery off the coast of New England, have filed an [amicus curiae brief](#) in support of Loper Bright Enterprises' petition for a *writ of certiorari* in *Loper Bright Enterprises, et al. v. Raimondo, et al.* These Rhode Island small businesses urge the Supreme Court to review this case to (1) resolve the circuit split in how *Chevron* deference applies to agency actions under the Magnuson-Stevens Act (MSA); and (2) halt a regulation which allows the National Marine Fisheries Service (NMFS) to charge fishermen unlawfully for a government function Congress has not approved and apparently does not believe to be worth spending Americans' tax dollars on. The New Civil Liberties Alliance represents *amici* here as parties in [Relentless Inc., et al. v. U.S. Dept. of Commerce, et al.](#), now pending in the U.S. Court of Appeals for the First Circuit.

Without statutory language authorizing it, NMFS implemented a rule forcing regulated fishers to pay the salary of federal observers who track their catch. A divided panel of the D.C. Circuit ruled in *Loper Bright* that Congress silently empowered NMFS to promulgate this at-sea monitor regulation. The D.C. Circuit wrongly applied *Chevron*, ruling that statutory silence produced an ambiguity that justified deferring to the agencies. A circuit split exists between the Fifth Circuit and the D.C. Circuit on the application of *Chevron* in interpreting the MSA. The Supreme Court should grant *certiorari* to ensure the MSA is interpreted uniformly in all the nation's fisheries.

More fundamentally, agencies must not be allowed to circumvent congressional appropriations by forcing the regulated to pay government salaries. Incredibly, the agencies being sued here admit that the regulation at issue was implemented precisely because Congress would not fund the statutorily designated "observer" program at the levels the agencies wanted. This disturbing development may metastasize if not stopped by the Supreme Court now. In this area of law, lower courts like the one below in this matter are confusing legitimate regulatory "costs," such as providing berths for observers, with paying the salaries of those paid to perform government functions. The Supreme Court should grant *certiorari* to clarify that incidental "regulatory costs" do not include the salaries of the government agents enforcing the regulations without explicit Congressional authorization. Agencies may not use *Chevron* deference to infer such novel authority from statutory silence.

NCLA released the following statements:

"*Chevron* deference ought to go, as the Petitioners ask. But at a minimum, agencies cannot fund themselves with money from the regulated for things Congress is unwilling to pay for. That reflects a new level of agency hubris."

— **John J. Vecchione, Senior Litigation Counsel, NCLA**

“In the nearly 40 years since *Chevron* was decided, one thing has become abundantly clear: when courts apply *Chevron* deference, the government wins at staggering rates, and almost exclusively to the detriment of ordinary Americans and small businesses like Petitioners and NCLA’s clients. Whatever question the ‘bare quorum of the Court’ that decided *Chevron* thought it was answering all those years ago, it has morphed into a threat to individuals’ civil liberties and the federal judiciary’s core duty to determine the nation’s laws impartially.”

— **Kara Rollins, Litigation Counsel, NCLA**

For more information visit the *amicus* brief 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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