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NCLA Cert Petition Joins Effort Asking U.S. Supreme Court to Overturn *Chevron* and Scrap Fishy Rule

Relentless Inc., Huntress Inc., and Seafreeze Fleet LLC. v. U.S. Department of Commerce, et al.

Washington, DC (June 14, 2023) – The U.S. Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) and its National Marine Fisheries Service (NOAA Fisheries) have imposed an unconstitutional rule requiring fishing companies to pay for at-sea government monitoring of their herring catch. Unfortunately, relying on *Chevron* deference to do the heavy lifting, the First Circuit Court of Appeals upheld that rule. Today, the New Civil Liberties Alliance petitioned the U.S. Supreme Court for a *writ of certiorari* in *Relentless Inc., et al. v. Dept. of Commerce, et al.*, seeking to overturn the *Chevron* precedent and vacate the rule.

NOAA implemented a Final Rule in 2020 to force fishing companies like Relentless Inc., Huntress Inc., and Seafreeze Fleet LLC, to pay for human at-sea monitors aboard their vessels. This would be like forcing motorists to pay for ride-along state troopers to monitor their speed. Not surprisingly, Congress never gave the agency authority to launch such a program. NCLA's clients are small businesses that commercially fish for Atlantic herring (as well as mackerel, Loligo and Illex squids, and butterfish). Paying for monitors would cost them more than $700 per day, substantially cutting into—or even exceeding—their daily fishing profits for herring.

The U.S. Supreme Court already granted certiorari on the first question presented in NCLA's cert petition in a case called *Loper Bright* earlier this year, which had unsuccessfully challenged the same at-sea monitor rule in the D.C. Circuit. By seeking certiorari on that same question in *Relentless*, NCLA hopes to be able to fully brief two core problems with *Chevron* deference that NCLA's founder, Philip Hamburger, is famous for first positing. Namely, when a federal judge defers to an agency's interpretation of law, doing so denies due process of law to the entity opposed to the government in that litigation. Employing such deference also abandons a judge's Article III duty of judicial independence. The logic of *Chevron* deference cannot withstand this devastating dual critique.

In addition, NCLA is asking the U.S. Supreme Court to resolve a split between two U.S. courts of appeal, the First and Fifth Circuits. When the First Circuit upheld the Final Rule, it decided that broad "necessary and appropriate" language in the Magnuson-Stevens Act ("MSA"), which governs U.S. fisheries, augmented the agency's regulatory power. It then relied heavily on *Chevron* deference to uphold the agency's ostensibly reasonable interpretation of a supposedly ambiguous federal statute. However, the Fifth Circuit rejected similar government arguments in the *Mexican Gulf Fishing Company, et al. v. NOAA, et al*. case. That court eschewed *Chevron* and set aside a different NOAA Fisheries rule in February that required constant GPS tracking of recreational charter fishing vessels. The Court should examine this conflicting treatment of key MSA language.

NCLA released the following statements:

"When the Supreme Court decides the question presented in *Loper Bright*, it must confront two central problems with *Chevron* deference: its denial of due process of law and its destruction of independent judicial judgment. If the Court grants cert in *Relentless*, it will have the full benefit of briefing on these defects of *Chevron* deference.

But even if the Court does not grant cert in *Relentless*, NCLA still anticipates the Court will decide the *Chevron* question in *Loper Bright*'s favor. It will then grant, vacate, and remand our clients' case to the First Circuit."
— Mark Chenoweth, President and General Counsel, NCLA

"We're glad the Supreme Court decided to grant certiorari in the case of *Loper Bright*, and we think it should also take our second question on what 'necessary and appropriate' means in the Magnuson-Stevens Act, so that the Administrative State cannot use such broad language to assume powers Congress never bestowed on it."
— John Vecchione, Senior Litigation Counsel, NCLA

"This case concerns the core conflict between what Congress has permitted NOAA and the National Marine Fisheries Service to do and what those agencies wish to do. For decades, *Chevron* deference has emboldened agencies to twist statutory text to generate all manner of regulations Congress never authorized. More troubling, however, is that *Chevron* has caused courts themselves to abandon their judicial independence and abdicate their duty to determine what the law is to executive branch agencies. That is why the Court should overturn *Chevron*."
— Kara Rollins, 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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