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U.S. Supreme Court Agrees to Hear NCLA Relentless Case Challenging Chevron Deference

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

Washington, DC (October 13, 2023) – Today, the U.S. Supreme Court agreed to hear the New Civil Liberties Alliance’s *Relentless Inc., et al. v. Dept. of Commerce, et al.* lawsuit challenging the *Chevron* precedent and an unconstitutional federal rule requiring fishing companies to pay for at-sea government monitoring of their herring catch. The case will be argued before the U.S. Supreme Court during the January 2024 argument session in tandem with the case of *Loper Bright Enterprises, et al. v. Gina Raimondo*, which challenges the same at-sea monitor rule. NCLA thanks the Court for granting a *writ of certiorari* in *Relentless*, which presents an important opportunity to sweep away the fatally flawed *Chevron* doctrine and vindicate fishermen’s fundamental rights.

The U.S. Department of Commerce’s National Oceanic and Atmospheric Administration (NOAA) and its National Marine Fisheries Service (NOAA Fisheries) implemented a [Final Rule](#) in 2020 to force fishing companies like Relentless Inc., Huntress Inc., and Seafreeze Fleet LLC, to pay for human 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 Magnuson-Stevens Act (“MSA”), which governs U.S. fisheries, does not support such a rule.

In *Relentless* and *Loper Bright*, the U.S. Supreme Court will consider whether to overrule *Chevron*. It might instead take the lesser step of saying that statutory silence does not create an ambiguity to which *Chevron* deference may be applied.

The U.S. Supreme Court already granted certiorari earlier this year in *Loper Bright*, which had unsuccessfully challenged the same at-sea monitor rule in the D.C. Circuit. By arguing the same question in *Relentless*, NCLA will 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. Neither the doctrine nor NOAA’s unconstitutional rule should survive.

NCLA released the following statements:

“Our clients have persevered in this suit relentlessly, you might say, and we are eager to reverse the error of the lower courts and remove the unfair and unnecessary thumb on the scale for bureaucracy against citizens that *Chevron* deference inflicts on them when they face their government in court.”

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

“For nearly 40 years *Chevron* has violated judicial independence and denied due process of law for people litigating against the government. When litigating against the United States, no one should face a judge who is forced to defer to the government's interpretation of the law. NCLA was founded to right this wrong, and we look forward to doing so at the U.S. Supreme Court for our clients and all Americans.”

— **Mark Chenoweth, President and General Counsel, NCLA**

For more information visit the case page [here](#) and watch the case video [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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