

SCOTUS hears fishermen's challenge to agency powers

By KIRK MOORE
Special to the Star and Wave

Arguing on behalf of commercial fishermen from New Jersey and Rhode Island, lawyers with conservative legal activist groups made their case before the U.S. Supreme Court on Dec. 17 for reversing a 40-year precedent and sharply cutting back the regulatory powers of federal agencies.

During a three-and-a-half-hour hearing, the court's conservative majority appeared skeptical of the government's arguments in two related cases — dubbed *Relentless v. Department of Commerce* and *Loper Bright v. Department of Commerce* — brought on behalf of herring fishermen in Rhode Island and Cape May.

The fishermen challenged a National Marine Fisheries Service (NMFS) rule that required them to carry on-board observers to monitor fishing, and pay costs for the observers contracted by NMFS, at up to \$700 a day.

The cases hinge on the so-called "Chevron deference," a landmark ruling in federal administrative law dating back to a 1984 dispute between the oil giant and environmental activists of the Natural Resources Defense Council. In that Supreme

Court decision, justices ruled that the courts should "defer" to executive agencies' reasonable interpretations of federal statutes.

As part of managing the Atlantic herring fishery, NMFS told fishermen they had to pay observer costs. Fishermen protested the agency was appointing itself power without congressional authority to impose a new fee.

NMFS waived the rule in early 2023 as the agency ran short of money to administer the program. But fishermen want to make sure the observer requirement is not renewed — and their conservative legal allies are eager to see a conservative-dominated Supreme Court revisit the Chevron doctrine.

The Chevron deference has become a cause célèbre among conservative legal groups, who see it as a vast overreach by what they refer to as "the administrative state."

While the cases are focused narrowly on fishing, the Supreme Court decision could have profound effects across U.S. government and industry, setting new guardrails on regulation of energy, transportation, food and drugs and other health, safety and environmental rule-making.

On the Washington, D.C., courthouse steps after the hearing, Meghan Lapp, fisheries liaison at Seafreeze Ltd. in Point Judith, R.I., the homeport of Relentless, said the protests wound their way through fisheries council meetings and NMFS officials to no avail. So, fishermen went to court and appealed the earlier decisions against them.

"I was ignored the entirety of the time because the agency knew it would have deference if it ever got to court," Lapp said.

Pressing their appeal through the courts was the New Civil Liberties Alliance.

The Chevron decision "tilts the playing field in favor of the government and against citizens," said Roman Martinez, the lead attorney for the Relentless fishermen.

Representing the Cape May fishermen was the Cause of Action Institute, another conservative legal foundation, with a team headed by Paul Clement, a former solicitor general in the administration of former president George W. Bush.

"It's a hugely important case for small businesses," Clement said outside the courthouse. The Chevron doctrine "puts a thumb on

the scale in favor of the government," he said, crediting fishermen "who had the gumption to take this ... all the way to the Supreme Court."

"Chevron is a blatant violation of the constitutionally mandated separation of powers because it requires federal judges to defer to administrative agencies' regulatory interpretations of laws that are either silent or ambiguous on a particular issue and undermines judges' delegated authority to interpret what the law says," according to a Cause for Action statement.

A split in decisions among federal appeals courts has set the stage for possibly overturning the Chevron deference.

In its ruling on the Cape May fishermen's case, the First Circuit Court of Appeals in Washington, D.C., "decided that broad 'necessary and appropriate' language in the Magnuson-Stevens Act, which governs U.S. fisheries, augmented the agency's regulatory power," according to a nar-

ative from the New Civil Liberties Alliance. "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 Court of Appeals in New Orleans rejected similar arguments by government lawyers for NOAA in defending another agency rule requiring Gulf of Mexico charter fishing operators to submit to tracking of their vessel movements.

A ruling in the cases is expected in June. Conservative and libertarian activists relished the prospect after Wednesday's oral arguments before the court.

"It's clear from today's arguments, the court comes to bury Chevron deference, not praise it," said Caleb Kruckenberg, an attorney at the Pacific Legal Foundation, another longtime challenger of federal regulatory power. "The only question left is what mischief will remain from its legacy."

Environmental groups have been dreading a Chevron showdown.

"The cases narrowly involve the management of the Atlantic herring fishery. The stakes, though, are much broader: whether the courts will continue to respect the decisions of the expert agencies, or whether judges will be set free to impose their own preferences on agency actions and decisions," wrote David Doniger, senior strategic director of the climate and clean energy program at the Natural Resources Defense Council in a Jan. 12 post on the group's website.

"The result could put hundreds of such decisions in the hands of unelected lower-court judges rather than agency professionals who have deep expertise in their appointed fields and who are accountable to the elected branches of government — the president and Congress," Doniger wrote.

This story first appeared on the National Fisherman website.

Leaves

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ferent method of leaf disposal could be put into effect such as biodegradable bags and going away with vacuuming leaves with a truck. The township does not have the means to clean up all fallen leaves, Douglass said.

Groundwater in the township is extremely high and public works is receiving calls from residents that previously did not have water collecting in their yards, Douglass

said.

Deputy Mayor David Perry said he believes residents need to take it upon themselves to make sure their leaves are not clogging storm drains.

Mayor Frank Sippel said the current method of leaf pickup is not working and council may need to pass an ordinance and enforce the regulations.

During public comment, Roseann Avenue resident Ed Sherretta said vacuum trucks cleaned up leaves on Roseann Avenue the

day after the Jan. 9 storm. He said the leaves should be removed before storms arrive; the township should act preemptively.

Sherretta said he previously bagged his leaves and took them to the dump but he knows that's not possible for all residents. He said leaves piled in a yard would be washed into the street by heavy rain and cover storm drains.

"To me, the situation is to get rid of them before the storm," Sherretta said. He said the cost of his flood insurance is "outrageous."

Roseann Avenue resident Joe Thomas said a large portion of voters in the township are elderly.

"Fining the elderly for not doing their leaves is not an answer," he said.

Thomas said the township spent money on multiple projects and some should be spent on collecting leaves before storms carry them into storm drains.

Douglass said it was impossible to cover every area that floods with leaf pickup before a storm.

Washington Boulevard resident Ray Flickinger said some residents use nylon mesh to hold leaves in place in a pile.

Roseann Avenue resident Larry Shillington said some piles of leaves in the neighborhood have been present for two months.

"I think we should do a better job of getting them out earlier," he said. "We know they come down in the fall."

Shillington suggested a once-a-month leaf pickup from fall into December. He said public works installed a drain in his yard to deal with water draining from a neighbor's yard, which forms a river through his yard, but the drain acts as a reservoir since it is not connected to the main drainage. He said his yard is being eroded.

Sippel said fining residents is a last resort and not something the township wants to undertake. He said Douglass and Township Manager Mike Laffey would seek a solution to the leaf problem and bring a recommendation to council.

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Create Your Art Piece based on the Works of African American artist, Jacob Lawrence's The Great Migration Series: Artist – Chanelle Rene'
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Local Music Talents singing Gospel and Negro Spiritual Songs

Dance Program & Story Teller – Saturday, February 17, 2024 :
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Youth Tap Dance Performance directed by Musical Artist, Karen Callaway-Williams
Story Teller and Folklorist – Michelle Washington Wilson, "Food, Fare and Traditions during The Great Migration North"
Contact Persons: Associate Minister Nina Broadnax — ninabroadnax@yahoo.com
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