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## Justices Pick Up Second Chevron Deference Case

By **Katie Buehler**

Law360 (October 13, 2023, 2:55 PM EDT) -- The U.S. Supreme Court on Friday added another case to its docket that challenges a decades-old doctrine instructing lower courts to defer to federal agencies' interpretations of ambiguous laws, a case the court said it will hear in tandem with an almost identical appeal brought by Rhode Island herring fishers.

The justices granted a petition for review filed by Seafreeze Fleet LLC and its subsidiaries Relentless Inc. and Huntress Inc. that challenges a First Circuit panel's March ruling applying the deference doctrine first established in the Supreme Court's 1984 decision in [Chevron v. Natural Resources Defense Council](#). The case asks the exact same question the high court agreed to take up in May in [Loper Bright Enterprises et al. v. Raimondo et al.](#)

The high court granted review only on the first of Seafreeze's two questions, which copies verbatim Loper Bright's question of whether the high court should overrule, or at least clarify, Chevron. Seafreeze's petition for review was filed in June and acknowledged posing the same question as Loper Bright, according to a footnote.

Friday's grant of certiorari was likely a way to allow Justice Ketanji Brown Jackson to participate in what could be a landmark decision over the fate of Chevron.

Justice Jackson recused herself from Loper Bright because of her previous involvement in the case as a D.C. Circuit judge before her 2020 appointment to the Supreme Court. She sat on the three-judge circuit court panel that heard arguments in the Loper Bright suit, but didn't participate in issuing the case's ruling.

Seafreeze's attorney, John Vecchione, a senior litigation counsel at the New Civil Liberties Alliance, told Law360 he would like to believe the high court granted review because his "briefs were so gripping," but realizes it was probably to allow Justice Jackson to participate in one of the court's biggest cases this term.

"They like all the justices to be able to say their piece," Vecchione said.

George Washington University Law School professor Jonathan Siegel told Law360 that the court have strategically granted review of Seafreeze's case to ensure the future of Chevron doesn't end in a 4-4 tie.

While several conservative members of the court, including Justices Clarence Thomas and Neil Gorsuch, have written before about their belief that Chevron should be overruled, other justices might not be so set on that outcome, Siegel said.

"It's not clear that [the belief] embraces all of the conservative justices," he said, adding having the full court "lessens the risks that they won't reach a decision."

But Vecchione said he is not sure Justice Jackson's participation will have a major impact on the court's ultimate decision.

Last term, Justice Jackson recused herself from the Harvard affirmative action case but participated in the related University of North Carolina affirmative action case.

Both cases saw the court's conservative bloc determine the outcome, but Justice Jackson was able to

join her colleagues Justices Elena Kagan and Sonia Sotomayor in one of the term's sharpest dissents.

Ultimately, Vecchione said he is "very happy" his clients will get their proverbial day in court.

Both the Loper Bright and Seafreeze cases center around challenges filed by Rhode Island fishing companies to a National Marine Fisheries Service rule based on the Magnuson-Stevens Fishery Conservation and Management Act that requires fishers to pay part of the cost of having federal compliance monitors aboard their ships. The justices called for a special briefing schedule to allow both cases to be argued in its January 2024 session.

Seafreeze's second question, which the justices declined to take up, asked whether the phrase "necessary and appropriate" in the Magnuson-Stevens Act "augments agency power to force domestic fishing vessels to contract with and pay the salaries of federal observers they must carry."

The federal government has told the Supreme Court that a decision overruling Chevron would be a "convulsive shock to the legal system." The case's deference doctrine has been a "bedrock principle of administrative law," the government said, although some courts have moved away from it.

But the circuit panel rulings in both cases show that the doctrine wrongly protects federal agencies from judicial review of decisions that may stretch a statute's text, the fishing companies argue.

Seafreeze and its subsidiaries are represented by John J. Vecchione, Mark S. Chenoweth and Kara M. Rollins of the New Civil Liberties Alliance.

The federal government is represented by Todd Kim, Rachel Heron, Daniel Halainen and Dina B. Mishra of the U.S. Department of Justice.

The case is Relentless Inc. et al. v. Department of Commerce et al., case number 22-1219, in the Supreme Court of the United States.

--Editing by Jill Coffey.

*Update: This story has been updated to include comments from counsel and additional information about the case.*