

While You Were Sleeping...

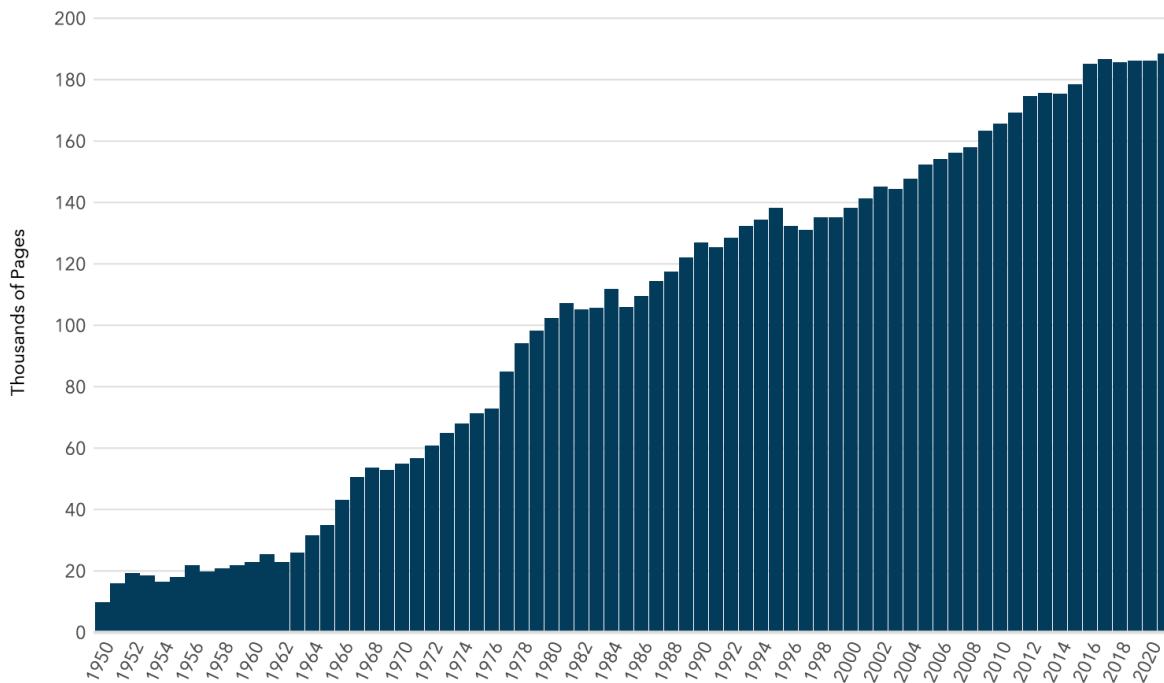
With the national media – and seemingly everyone in the nation – focused on the Biden-Trump debate two weeks ago and the upcoming presidential election this November, the Supreme Court quietly released a major ruling on Friday, June 28th.¹ In *Loper Bright Enterprises v. Raimondo*, the Court sharply curtailed the power of federal agencies to interpret laws they administer and implement related regulations. By a 6-3 vote, the majority overturned the Court’s landmark 1984 decision in *Chevron v. Natural Resources Defense Council*, which held that a federal court must uphold an agency’s reasonable interpretation of ambiguous statutes.

The judicial deference to federal agencies came to be known as the Chevron Deference, and in the 40 years since the *Chevron* decision federal courts have cited it over 18,000 times.² Writing for majority, Chief Justice Roberts argued that the Chevron judicial deference to agency rulemaking was incompatible with federal courts’ fundamental responsibility to interpret the law. Citing Chief Justice John Marshall in the foundational 1803 *Marbury vs Madison* case, Roberts wrote: “it is emphatically the province and duty of the judicial department to say what the law is.”³

While you can get your legal analysis elsewhere, we wanted to highlight two key takeaways: 1) Given the conservative bent to the federal judiciary, the effect of courts substituting their judgment for agencies on regulatory matters should have a deregulatory bent. 2) The *Loper* decision should materially reduce the number of agency regulations going forward, as it essentially restricts new regulations to instances where statutory language is clear.

Regardless of one’s personal opinion, the end of Chevron Deference is a positive development for U.S. businesses. Since the *Chevron* decision, the size of the Code of Federal Regulations has nearly doubled – increasing the cost and complexity of operations in the private sector.⁴

Total Pages Published in the Code of Federal Regulations



Regulatory
Studies Center

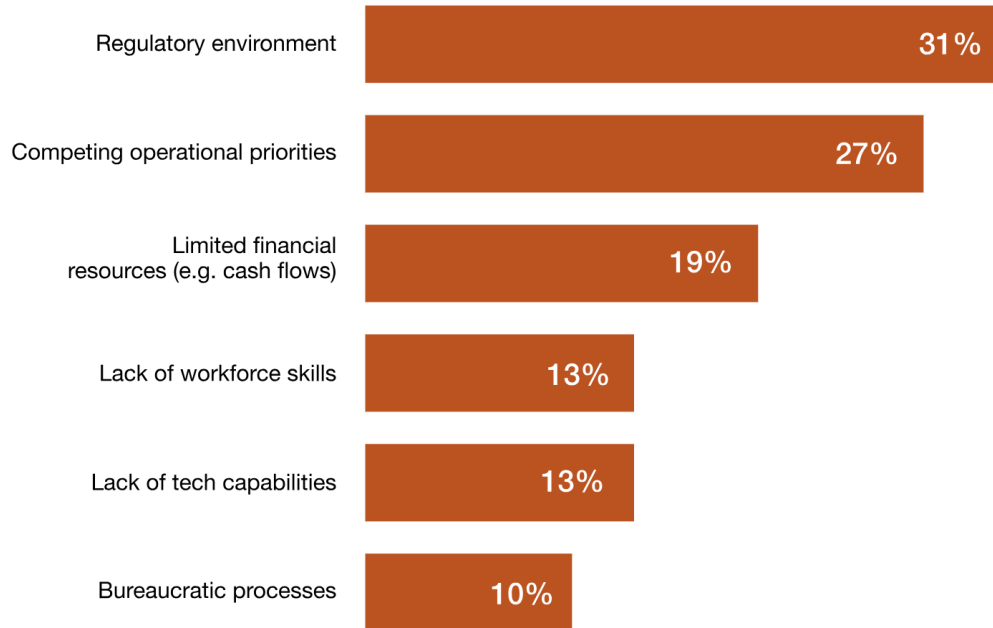
THE GEORGE WASHINGTON UNIVERSITY

Sources: Federal Register Statistics

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In PwC’s most recent annual global CEO survey, U.S. chief executives cited the regulatory environment as their top impediment to creating value.⁵ A more stable regulatory landscape, as a result of the *Loper* decision, should clear up time and energy for firms to focus on core business operations.

Many US CEOs say regulations are the biggest impediment to creating value



Q: To what extent, if at all, are the following factors inhibiting your company from changing the way it creates, delivers and captures value? (Showing "to a large extent" and "to a very large extent")
 Source: PwC's 27th Annual CEO Survey, base of 4,702, US base of 231

While most investors are handicapping the odds for who will win the presidency, house and senate right now, we think they are overlooking a far more enduring and – arguably impactful – development. Despite one’s feelings on the state of politics or the country at-large (we are long-term U.S. optimists, by the way), the *Loper* decision is another reason to remain constructive on U.S. businesses into the future.

We are living through an unprecedented time of technological innovation – from energy to AI, from biotech to engineering. Unlike in the E.U., where firms have become bogged down by an expansive regulatory regime, U.S. businesses will be relatively less encumbered by distracting legal considerations going forward. We expect this will, on the margin, increase the pace of innovation and attract more capital and talent into the greatest source of prosperity the world has ever known: the U.S. economy.

Sincerely,



Peter Karmin
 Managing Member



Stuart Loren
 Director

Citations and Disclosures

¹ Loper Bright Enterprises v. Raimondo, 603 U.S. ____ (2024), available at: https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf.

² SCOTUSblog, *Supreme Court strikes down Chevron, curtailing power of federal agencies* (June 28, 2024), available at: <https://www.scotusblog.com/2024/06/supreme-court-strikes-down-chevron-curtailling-power-of-federal-agencies/>.

³ Loper Bright Enterprises v. Raimondo, 603 U.S. ____ (2024), available at: https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf.

⁴ GW Regulatory Studies Center, available at: <https://regulatorystudies.columbian.gwu.edu/reg-stats>

⁵ PwC, US CEO views from PwC's 27th Annual Global CEO Survey (Jan. 15, 2024), available at: <https://www.pwc.com/us/en/library/ceo-survey.html>.

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