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Supreme Court's *Chevron* Decision and Its Implications for AI Regulation

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On June 28, the Supreme Court issued a landmark decision on *Chevron* deference through its rulings on *Loper Bright Enterprises v. Raimondo* and *Relentless, Inc. v. Department of Commerce.* These decisions reversed the long-standing doctrine that courts should defer to agencies' interpretation of statutes as long as that interpretation is "permissible." Instead, courts will now have a more significant role in determining how to interpret statutes that allow agencies to create relevant regulations. A deeper analysis of the specifics of this decision can be found here.

The SCOTUS ruling will likely have an outsized impact on emerging and rapidly evolving technologies like AI.

- Existing rules. Agency rules and enforcement related to AI are now more vulnerable to litigation. Congress has legislated relatively little on AI, so agencies have often had to apply older statutory authorities to this emerging technology. Agency interpretations of their statutory authority will still matter, but courts now have greater power to cut against agency interpretations and modify AI regulations and enforcement actions. Moving forward, how existing and upcoming rules compare with the agency's statutory authority, such as the Department of Commerce's reporting requirements for AI under the AI EO, will be a critical question.

- Future rules. AI-focused agency rules and enforcement actions will need to reflect Congress's intent more clearly to reduce the risk of successful court challenges. This may lead to more narrowly scoped rules or fewer agency rules on AI, as Congress's intent may not be clear regarding novel issues presented by AI.

- Guidance and voluntary commitments. Without AI legislation clearly guiding agencies, they may rely more heavily on voluntary efforts and guidance that lack the force of law. In the AI space, agencies and the White House have already used these strategies quite a bit. The Biden administration has been active in setting policy through executive orders, voluntary commitments from companies, and guidance from federal agencies — which are less likely to see court challenges post-*Loper*.

- Patchwork compliance. As with privacy, the EU and states appear more inclined to legislate on AI than federal entities, which may force industry to grapple with inconsistent rules across jurisdictions. If litigation against U.S. AI regulations increases, we may also see inconsistent rulings in different districts or circuits as judges weigh in with varying perspectives and levels of

expertise.

- <u>Congressional clarity.</u> Congress has promised action on AI in the coming session, though we're not holding our breath. Going forward, Congress will need to provide greater clarity on how it intends for agencies to exercise their statutory authority on these topics if Congress expects agencies to issue rules that don't get torpedoed by lawsuits.

- <u>State legislative efforts.</u> State legislative efforts, like those in Colorado and California, may be more impactful and enduring if federal agencies are hesitant to regulate or if their actions are overturned.

Impact on AI Policymaking and What Your Organization Should Do

Federal agencies setting new AI regulations will certainly face greater challenges in implementing new rules and guidelines, and companies will potentially face a more fractured environment for future AI policy and regulation. The Venable team closely follows state, national, and international developments and can help identify further impacts based on specific issues. If you have questions or concerns about these developments, please reach out to Harley Geiger (hlgeiger@Venable.com), Davis Hake (dyhake@Venable.com), and Heather West (hewest@Venable.com).