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5 SPEAKERS

Hannah McCarthy
Nick Capodice
Robin Kundis Craig
Archival
Mustafa Santiago Ali

START OF TRANSCRIPT

[00:00:02] Hannah McCarthy

Hi, Nick.

[00:00:03] Nick Capodice

Hello, Hannah.

[00:00:05] Hannah McCarthy

This is Civics 101. But today, Nick, we're going to dip a toe into 202.

[00:00:13] Nick Capodice

Oh, boy. All right.

[00:00:18] Hannah McCarthy

Today we are talking about something that is wonky. And by that, I mean it's actually about being wonky. As in preoccupied with arcane details, especially arcane policy details.

[00:00:35] Nick Capodice

All right. Hannah. Oh.

[00:00:39] Hannah McCarthy

I think we are all going to come out of this one semi understanding something that a lot of us don't understand at all. And Nick, isn't that the point of this show?

[00:00:48] Nick Capodice

Yeah. Hannah. Fine.

[00:00:50] Hannah McCarthy

All right. Let's get to it.

[00:00:56] Robin Kundis Craig

Uh, hi. My name is Robin Kundis Craig. Greg. I am the Robert H. Schroeder Distinguished Professor at the University of Kansas School of Law. I teach environmental law subjects and write about administrative law and climate change.

[00:01:16] Hannah McCarthy

I called Robin up to talk about something called the Chevron Doctrine. And the reason I wanted to talk about it is because the Supreme Court recently overturned it in a case called *Loper Bright Enterprises v Raimondo*.

[00:01:32] Nick Capodice

You mentioned this one before on the episode on the Supreme Court docket. This is the case that's about fisheries.

[00:01:38] Hannah McCarthy

Yes, fisheries and federal regulation. But for the purposes of this episode, here is what I want you to keep in mind two basic principles. One, I.

[00:01:50] Robin Kundis Craig

Mean, there's no question that the courts have the basic authority to interpret statutes. Congress has statutes that's, you know, laid out in article three. It's recognized in the Federal Administrative Procedure Act.

[00:02:02] Hannah McCarthy

Courts can interpret laws. That's pretty straightforward. All right. And two, the.

[00:02:07] Robin Kundis Craig

Issue that people worry about is the court's expertise. Because in some of these statutes, you're getting into some pretty technical issues.

[00:02:19] Hannah McCarthy

Judges are not experts of all agency minutiae. Now, this one is, I think, a little bit trickier, but on its face should seem kind of clear. So the Chevron doctrine.

[00:02:33] Robin Kundis Craig

Okay, so the Chevron doctrine came in in a fairly early Clean Air Act case, Chevron versus NRDC.

[00:02:42] Hannah McCarthy

Okay, Nick, I think it is fairly common for the details of a Supreme Court case to feel a little obtuse. You get just below the surface and you find yourself in a sea of legal arcana. But with Chevron, the surface itself is, well, listen for yourself.

[00:03:01] Robin Kundis Craig

And what was going on in that case was that the EPA had decided that the term stationary source, which is a defined term in the Clean Air Act, but it's defined ambiguously, particularly because it refers to both a facility and a emission source, like a smokestack. So the question was, what if you have a big facility like a factory that has multiple smokestacks, do you count that as one stationary source, or do you count it as ten stationary sources? And so it was a matter of interpreting the statute to figure out what Congress would have wanted or whether it had left discretion to the EPA.

[00:03:51] Nick Capodice

When Robin says so, the question was, Does she mean? Like the question like this is the question before the Supreme Court how to define smokestacks? Because when I think about the questions the court is answering, they tend to be a little more straightforward. Like, does the segregation of public education based solely on race violate the Equal Protection Clause of the 14th Amendment? That kind of thing? I can wrap my mind around that.

[00:04:19] Hannah McCarthy

Yeah, I think the trick with Chevron is not letting your eyes glaze over at the details of this case, because it is so inside baseball, which Nick is actually the point. Congress passed a law that said that states needed a permit for something. The EPA, the Environmental Protection Agency, said, actually, we have a rule based on that law that says you don't. And so the Supreme Court had to decide whether the EPA was allowed to do that.

[00:04:52] Nick Capodice

So, in short, and correct me if I'm wrong here, they had to decide whether a federal agency was allowed to interpret a federal law.

[00:05:02] Hannah McCarthy

So yeah, Congress says something and the EPA says this something means this. And then Scotus says, okay, EPA, you are allowed to do that. Congress was vague, and the EPA is within its rights to interpret the law that way.

[00:05:21] Nick Capodice

And that is the Chevron doctrine.

[00:05:24] Robin Kundis Craig

What the Supreme Court said in Chevron is that if Congress has not spoken to an issue, or if it's actually ambiguous, when you try to apply the statute in place, which was the case in Chevron, again, a stationary source could be either the factory or the smokestack. Um, then what we're going to do is defer to the agency that's in charge of fulfilling that statute or in charge of implementing that statute.

[00:05:57] Nick Capodice

Defer to the agency when Congress hasn't been specific about something.

[00:06:02] Hannah McCarthy

Yes. And we also call the Chevron doctrine the Chevron deference and that deference part that is coming from the judiciary. They are the ones deferring, like when an agency rule is challenged in a court, a court cannot swap out its own interpretation of a federal law for the agency's interpretation if that agency's interpretation seems reasonable. Now, this is law. So it's a little more complicated than that. But that is the gist.

[00:06:34] Robin Kundis Craig

So the EPA, effectively, when Congress was being ambiguous, got to interpret the Clean Air Act to do what it thought made the most sense or was most logical or whatever.

[00:06:46] Nick Capodice

And we're talking about this because Chevron isn't actually a doctrine anymore, right?

[00:06:53] Hannah McCarthy

That's why.

[00:06:55] Archival

Carl. That's right. This is a sweeping decision by the Supreme Court to overturn what's called the Chevron precedent here. The reason it's significant is because it has enormous implications for the administrative state in the United States of America and all federal agencies and their ability to interpret the law. What the Chevron precedent.

[00:07:12] Robin Kundis Craig

The problem that developed and that was addressed in Loper Bright is that meant that courts were basically ceding interpretive authority to agencies. And that's what finally led to the Loper bright decision. Now, there were a lot of connections in between. I won't go into those details unless you want me to.

[00:07:33] Hannah McCarthy

So I think we can skirt around the conniptions for the most part. But here's another gist. Congress makes a law. Something shifts in the world, and that law was made before that shift. Like, I don't know, let's just say the climate changes or we have a global pandemic or something like that. What do you do?

[00:07:55] Robin Kundis Craig

So you get those kinds of issues where a problem Congress was not thinking about could not have been thinking about because it didn't exist at the time, suddenly lands in the agency's lap and they have to decide, does the statute extend this far or not?

[00:08:12] Nick Capodice

Can I make this kind of silly for a sec?

[00:08:14] Hannah McCarthy

Hannah, please.

[00:08:16] Nick Capodice

All right. Okay. Congress passes a law that says horses must be protected. And then years later, we discover unicorns. And it's like, oh, nuts. Is a unicorn a horse? Do unicorns fall under the Horse Protection Act? At what point is a horse not a horse anymore?

[00:08:43] Hannah McCarthy

Okay. Incredible. And Robin says the debate about such a question goes a little bit like this, except she used proteins as an example.

[00:08:55] Robin Kundis Craig

The Food and Drug Administration has to decide whether a compound that has helpful properties is a biologic or a drug.

[00:09:08] Hannah McCarthy

The Horse Protection Agency has to decide whether a unicorn is a horse or something else. And that hinges on horse leanness.

[00:09:18] Robin Kundis Craig

That turns on whether it's a protein or not. Well, I mean, what does Congress know from proteins? Um, uh, so, you know, if you've got a string of amino acids, when does it switch from being a string of amino acids to being a protein?

[00:09:34] Nick Capodice

When does it switch from horse to magic? Congress doesn't know.

[00:09:41] Robin Kundis Craig

The FDA has to make those kinds of calls. And, um, that actually is defining a term, but it requires some deeper understanding of medicine, of biochemistry, of what Congress is trying to accomplish, of why we have a distinction between biologics and drugs in the first place.

[00:10:06] Hannah McCarthy

Leave it to the people who know animals versus mythology, Middle Ages, Renaissance writing, and the Bible. Okay. They are the ones equipped to decide when something is a horse and when it just looks like one, but is magic. There's a reason we make the distinction.

[00:10:21] Robin Kundis Craig

And so what people are worried about is when courts are faced with these issues that require some real expertise there, in a litigation context, the way the American legal system works is each side puts on its own experts, and you have battles of the experts, which can make it sound like it's a fair choice for the court, which experts it wants to go with, and that's not always true. Another thing is that a one wing of the court has really gotten into, quote unquote, plain meaning interpretations of statutory words, and not every statutory word should be interpreted by its plain meaning, because it is dealing with a technical subject, and it needs a more specialized definition.

[00:11:19] Nick Capodice

No rightly idea what that means, Hannah.

[00:11:22] Hannah McCarthy

All right. The example that Robin gave me was tomatoes. There was once a case about import taxes on vegetables. Now, Nick, a tomato is a fruit.

[00:11:33] Nick Capodice

Oh. This one? Yeah. By definition, yes. A tomato is a fruit.

[00:11:38] Hannah McCarthy

But.

[00:11:39] Nick Capodice

But most people think and treat a tomato like a vegetable.

[00:11:44] Robin Kundis Craig

And so in that case, the court actually took what's called a purposive approach, looking at what Congress was trying to accomplish, looking at the purpose of the statute. And it said, look, most people in Congress, most people in the United States consider tomatoes to be vegetables. Therefore they're subject to the import tax. Okay.

[00:12:04] Nick Capodice

So that's a plain meaning interpretation. Like, sure, you can dance around it and say that Congress didn't intend to include tomatoes in the vegetable tax, but come on. Of course they did.

[00:12:16] Hannah McCarthy

Yeah, but proteins are different. I mean, unicorns.

[00:12:26] Robin Kundis Craig

If you look up a simple definition of what a protein is, it'll say a string of amino acids. Well, yeah. But then a biochemist will tell you, but it's got a fold and it's got to get complex and it's got to be doing something. And and that's the distinction the FDA made in that situation.

[00:12:43] Nick Capodice

A unicorn appears to be a horse with a horn, but actually in a unicorn, expert will tell you that their horn has to have healing properties. When it throws itself off a cliff to escape you, it has to land on that horn and survive, and that they won't throw themselves off a cliff to escape a virgin.

[00:13:03] Hannah McCarthy

We're not talking about fruit here. We're talking about the distinction between a horse and all of our wildest dreams coming true. One is higher stakes than the other. But what the Supreme Court did in the Loper Bright case is, say, you know what the.

[00:13:19] Robin Kundis Craig

Logic of the Loper Bright decision is? We're not going to engage in Chevron deference because it's not in the APA, the Administrative Procedure Act.

[00:13:28] Hannah McCarthy

The APA says that when an agency interprets a law and makes a rule, for example, yes, horses must be protected, but a unicorn is not a horse. You do not have to protect unicorns.

[00:13:43] Nick Capodice

Although, I mean, to be fair, you should.

[00:13:45] Hannah McCarthy

Yeah. No, you definitely should. But anyway, that rule can be reviewed by a court. And then that court shall decide, quote all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.

[00:14:04] Nick Capodice

So a court could say, I don't know, looks kind of like a horse to me.

[00:14:10] Hannah McCarthy

But for the past 40 years, we had the Chevron deference, which required courts to defer to the agency interpretation when a law was ambiguous or left an administrative gap like the protect all Horses law does not say protect all equines. It says protect all horses. And if the agency interprets that to mean not unicorns, Chevron would have meant, yep, the agency knows best.

[00:14:39] Nick Capodice

But Chevron is over. Now it.

[00:14:41] Hannah McCarthy

Is dunzo. And we're going to talk about what that might mean and what it might not very soon. But first, Nick and I are going to take a little break so that we can think about unicorns. Absolutely.

[00:14:52] Nick Capodice

And before we do that, just a quick reminder that Civics 101 is listener supported. And everything from our unicorn research, our in-depth unicorn research to our microphones is possible because of you. If you want to join the beautiful community of Civics 101 supporters, you will be our unicorn and we will protect you. You can do that at our website civics101podcast.org.

[00:15:17] Hannah McCarthy

All. Right. We're back.

[00:15:27] Hannah McCarthy

We're talking about the end of the Chevron Doctrine or deference, a 40 year judicial principle that told courts that they had to leave some things up to the experts. And before the break, I promised that we would try to understand what that means. Now that Chevron is over. We'll hear from Robin again in just a moment. But I want to introduce you to our second guest.

[00:15:49] Mustafa Santiago Ali

Well, I'm glad Robin went over it. I mean, I can go deep on the law, but most folks fall asleep. Um, so this.

[00:15:55] Hannah McCarthy

Is doctor Mustafa Santiago Ali. He's the executive vice president of the National Wildlife Federation. He has also spent a lot of his life empowering civic voices in many, many communities. And we are going to have a whole other episode about that. But for the purposes of this episode, we talked to Mustafa in part because of his 24 years at the EPA. When I asked him about Chevron, he told me to consider the political climate when it was first established.

[00:16:26] Mustafa Santiago Ali

Yeah. So, you know, you got to understand the moment, right? That was the Reagan administration. Uh, they were very focused on federal Agencies having the power to make decisions, but at that time they were wanting federal agencies to make decisions around deregulation, and that's why they were so supportive of the Chevron case.

[00:16:53] Archival

Anyone who's ever wrestled with a tax form, or had to make sense out of a complicated bureaucratic regulation knows how costly and time consuming government overregulation can be. And that brings me back to regulation.

[00:17:06] Nick Capodice

Okay, so when the Chevron deference was established, the hope of the executive branch was that it would lead to deregulation, not more regulation.

[00:17:16] Mustafa Santiago Ali

They did not know that over the years, we would have a country that became more diverse, diverse in ideas, diverse in a number of other ways, and they would no longer have that power to be able to support business and industry in the way that they saw fit, and that people would be demanding that our federal agencies continue to do a better job in protecting their lives. And that's why going all the way back and understanding those dynamics around the Chevron versus NRDC case is so important.

[00:17:48] Hannah McCarthy

Essentially, Mustafa sees Chevron as having been something that allowed federal agencies to do what they are ostensibly supposed to do protect people and make the country a safer, healthier place.

[00:18:02] Mustafa Santiago Ali

Well, you know, I'm not old enough to have been there back then, but, you know, I did have the opportunity to have mentors who were there and who appreciated the fact that the expertise that individuals had garnered over years, not just in school, which is important, but also in real life experiences on the ground, being able to understand the laws that folks in Congress were making.

[00:18:29] Nick Capodice

So Mustafa is saying that the agency experts have spent their whole career in and out of school, understanding the stuff that Congress passes laws about.

[00:18:38] Hannah McCarthy

Right. And Mustafa says that even Congress knows that it doesn't always, or even often really know what it is passing laws about.

[00:18:48] Mustafa Santiago Ali

And even they also said we don't have the expertise to know all the ins and outs, but we will rely on these federal agencies who do have the experience and expertise to make sure that the regulations that we put in place are going to be the ones that are going to be beneficial to people. So over the years, people really appreciated being able to. One honor the oath that they took and to do the best job that they could, to make sure that the American public had the things that they needed to have safer and healthier lives.

[00:19:22] Nick Capodice

I do just want to jump in quickly here. Hannah, in all seriousness, in all of my years of us working on this show, often talking to people who are either in federal agencies or used to be in federal agencies. This is definitely the case that they took an oath to well and faithfully discharge their duties. And they take it super seriously because, you know, civil servants were not handpicked as a presidential favor to somebody to just sit in a chair. They are qualified. They want to do their jobs as best as possible because they know who they're doing them for.

[00:19:56] Hannah McCarthy

I totally agree, I am always honestly quite moved by the amount of good faith, effort and civil servants. Okay, so these civil servants lost a little bit of the judiciary's faith in them, right? Chevron is over.

[00:20:12] Mustafa Santiago Ali

Well, Justice Elena Kagan, she criticized the decision, arguing that it turns judges into de facto policymakers. And what she was really saying in that moment is that, you know, we may have experience in the law, but we do not have the experience of a scientist, of a toxicologist. Of a biologist. Of a number of these folks who have spent their years in perfecting their craft and then understanding how they could utilize that. So she said, you know, it was never the intention for us to be able to take this power away from the agencies that have to do this work. So that's what she was speaking about in that moment, in her dissent.

[00:20:56] Hannah McCarthy

We actually have to talk about this dissent, Nick. It is not often that a justice's dissent gets as much news coverage as this one did. Outlets described it as devastating, scathing, even blistering.

[00:21:11] Nick Capodice

Really like for this inside baseball case?

[00:21:15] Hannah McCarthy

Yes, really. Justice Kagan said, quote, as if it did not have enough on its plate. The majority turns itself into the country's administrative czar. She said, quote, a rule of judicial humility gives way to a rule of judicial hubris. She quotes the Chevron opinion from 1984 which said, quote, judges are not experts in the field and are not part of either political branch of the government. And then she goes on to say, quote, those were the days when we knew what we are not.

[00:21:48] Nick Capodice

Justice Kagan is not pulling any punches there.

[00:21:52] Hannah McCarthy

One of her big points, Nick, was precedent matters in the world of law. It's called stare decisis, relying on and respecting the rulings and opinions of past judges. Justice Kagan ends her dissent by saying, quote, my own defenses of stare decisis, my own dissents to this court's reversals of settled law by now fill a small volume. Once again, with respect, I dissent.

[00:22:23] Nick Capodice

So she used her dissent in part to say, I keep dissenting, and it's often for the same reason. And oh, look, I have to do it again. Is it a stretch to say that she sounds tired?

[00:22:39] Hannah McCarthy

I mean, she does. She sounds fully exasperated. And I do think it's important to note, for those out there who don't read Scotus opinions regularly, they often end in something like, respectfully, I dissent. But in the past few sessions we have gotten sign offs. Like with sorrow, we dissent or with fear for our democracy, I dissent. The justices really don't give interviews. They don't write op eds. This is the closest that we get to that. So that is what Kagan thinks. Here's what Mustafa thinks.

[00:23:19] Mustafa Santiago Ali

Well, I'm an optimist, right? But I'm also an optimist that deals with the reality of the situations that we find ourselves in. And we have made progress over the last 40 years in relationship to environmental protection because we were able to regulate entities. You know, there was a time in our country when rivers were catching on fire, when in many cities you couldn't look up and see the sky because there was so much air pollution, smog that was there. Now, you said that there are some folks who appreciate the decision. That's true. There are some folks on the business and industry side, usually those who are in the fossil fuel world, but there are many others who have real concerns with this. Why do they have those concerns? They have concerns because they like to have a stable playing field, if I can say it that way. They like consistency. And this breaks 40 years of consistency, which means it makes it much more difficult for them to plan and to actually have the utilization of their capital resources. So that's one side of the equation.

[00:24:25] Nick Capodice

A stable playing field. And that's an interesting way to put it, because it's not like Mustafa is saying, you know, regulation is over or regulation is just going to be left up to the courts entirely. He's saying we had a way of doing things that worked well and this throws that off.

[00:24:44] Hannah McCarthy

Yeah, I think I actually asked both Robin and Mustafa, you know, basically like, is the sky falling from the perspective of these federal agencies? And as is so often the case, the sky is almost never falling because the country is a multi-layered and complicated entity. But Mustafa did add this.

[00:25:04] Mustafa Santiago Ali

The other side of it is that this creates a chaos. There are going to be additional judicial actions that are going to happen. This also, most folks in business and industry and I work with a number of them over the years when I was at EPA. They also understand that this will slow processes down. And one of the things that they have always shared is that we want to have fairness in the decisions that are happening, but we also wanted to expedite more quickly. So this also presents another set of challenges for those in business and industry. You have to remember, what came out 40 years ago didn't just set precedent for law in relationship to EPA. There were a number of other federal agencies that were also a part of the sets of actions that came out afterwards, that we are literally weakening the protections that the FDA and a number of other places.

[00:25:56] Hannah McCarthy

So we've talked quite a bit about the environment here, because that is Mustafa's and Robin's area of expertise. But Chevron was cited in over 18,000 cases over the course of its life. There are a lot of federal agencies who have had their rules reviewed and accepted by the judiciary because of Chevron. Mustafa's worry is that the Loper bright decision will just, generally speaking, make the whole system less efficient.

[00:26:29] Mustafa Santiago Ali

You've also made it much more difficult for us to have timely sets of responses, because no longer does the agency make final judgments on things. It ends up the courts are the ones who do that. So it just creates this administrative burden. It creates additional cost, and it will probably frustrate many of the folks who are hoping that our federal agencies can be as efficient and effective as possible.

[00:27:06] Hannah McCarthy

And to those who hear this episode and are thinking, all right, so the courts are in charge of what kinds of rules agencies get to make. Robin told me about this other form of deference that does still exist.

[00:27:23] Robin Kundis Craig

There always have been and always will be a lot of agency decisions that would not have raised Chevron as an issue to begin with. Then what the court went at great lengths to say was that, hey, we're still going to allow what's known as Skidmore deference. And Skidmore deference means basically whatever the agency's interpreting, it's not formal enough that we're going to give it Chevron deference. But if the agency convinces us they're right, we'll go with the agency. So as long as the court sticks with that and says, yeah, we will agree to listen to the agency and, and be persuaded when they're being persuasive. Um, there is still a fair amount of deference room left for the agency.

[00:28:15] Nick Capodice

All right. Hold on a minute. There's basically, like a lesser chevron.

[00:28:18] Hannah McCarthy

There is kind of for now.

[00:28:22] Robin Kundis Craig

Now, why I'm phrasing that the way I'm phrasing it is, is the court made up Skidmore deference just like it made up Chevron deference?

[00:28:30] Hannah McCarthy

Robin explained that, you know, the Supreme Court said there is the Administrative Procedure Act and Chevron is not in it.

[00:28:38] Robin Kundis Craig

Well, guess what, Skidmore deference isn't in the Administrative Procedure Act, either.

[00:28:43] Nick Capodice

Got it. It isn't impossible to imagine this other deference also going the way of the dodo.

[00:28:50] Hannah McCarthy

Robin did tell me that it would be very strange to not give an agency the chance to explain and defend their thinking, especially when they're being sued and a judge does not have to use Chevron to say that an agency is allowed to do their thing.

[00:29:06] Robin Kundis Craig

For the lower courts, for the federal district courts, and particularly the federal courts of appeal, which decide way more cases than ever reach the Supreme Court. I think most judges, particularly in highly technical cases, are going to be interested in what the government's position actually is. There's still a general respect for the federal government. One hopes continues that will lend them to at least listen, at least take seriously whatever it is that the federal agency is saying. If, as I suspect will happen, the majority of lower court judges, district court and court of appeals judges stick to business as usual. Basically, they're just not going to be saying Chevron.

[00:29:58] Nick Capodice

Is it possible, Hannah, that getting rid of Chevron doesn't change much?

[00:30:04] Hannah McCarthy

It is possible, but it isn't likely. There are states around the country that don't like certain rules, and their chances of successfully challenging those rules just went up. That means more lawsuits against federal agencies. One other thing, Nick. The Administrative Procedure Act, the thing that Scotus based its looper bright decision on. It says that people have six years to sue an agency over a new rule.

[00:30:34] Nick Capodice

Like the agency makes a rule and a state or a company or what have you has six years to challenge it. And if they don't challenge it in six years, they just can't do it, period. Yeah.

[00:30:46] Hannah McCarthy

Well, on July 1st, 2024, the Supreme Court issued a ruling that says that that six year statute of limitations begins when the plaintiff is quote unquote, injured, not when the agency makes the rule.

[00:31:01] Nick Capodice

Now, what does that mean?

[00:31:02] Hannah McCarthy

That means that if I open a business selling cupcakes tomorrow, and a federal agency issued a rule about cupcake size in 1954, I am allowed to sue that agency over that rule because it limits how big my cupcakes can be, and I do not like that.

[00:31:19] Nick Capodice

Even though that rule is 70 years old, right?

[00:31:22] Hannah McCarthy

And I have six years to do it. In other words, there's really no such thing as a finalized rule anymore.

[00:31:32] Nick Capodice

So way more lawsuits then.

[00:31:40] Hannah McCarthy

All of this brings me to a point here in this strange inside baseball of an episode, we've been talking a lot about what this means in terms of process and rules and regulations, but Mustafa brought it all back around to the human beings in those agencies. There was a time when the courts prioritized what those people had to say, because it was assumed that they knew best. The end of Chevron is probably going to change that.

[00:32:12] Mustafa Santiago Ali

Well, I think the concern is that people feel undervalued. And, you know, almost on every job you want to help people to to know that they're honored and valued and keep morale high. Right. Um, and when you have these types of actions, it sends a message that you're not as valuable and you're not as needed. And the level of expertise and intelligence that you bring, you know, that is not a priority in the process.

[00:32:41] Nick Capodice

Okay, Hannah, one last question for you about all this. Go for it. We are talking about agencies making rules. Those rules are based on laws. And Chevron said that when the law was unclear or ambiguous or what have you, the agency knows best. So now that it's over, can Congress just make laws more specific, kind of do a little bit more heavy lifting? Is that the possible answer to this?

[00:33:11] Mustafa Santiago Ali

Again, I'm an optimist. So my answer is yes. But there are also some challenges, right? We now are going to have to have folks on Capitol Hill who are creating much narrower laws. And the problem is that, one, it's hard for people to get anything done on Capitol Hill. Right now, we're asking folks in a very tough time to be able to create the new sets of actions that are going to be necessary to keep people protected, and that's just going to take work. So we just have to be very mindful of that.

[00:33:43] Hannah McCarthy

So narrower laws. Sure. A horse. And by that we do not mean a unicorn. And for now, and I do mean for now Congress has one other option.

[00:33:57] Robin Kundis Craig

You know, I think one of the important things for people to understand is that the overruling of Chevron is not yet a constitutional decision. I expect it to be a constitutional decision about the next time where that distinction matters. But it's not yet a constitutional decision, which means technically, Congress still has something to say. So because the court rested on the Administrative Procedure Act, Congress could go back and rewrite the Administrative Procedure Act to write Chevron back in. It could also put deference into various statutes when it really wants the agency expertise to be listened to. Now, like I said about the time Congress actually decides to do that is about the time I think the court will reach for article three of the Constitution and make this constitutional ruling, which then Congress can't overrule. But for the moment, Congress could, if it wanted to really start tailing deference in various statutes? Because the Administrative Procedure Act is a default. If a specific statute says do something else, that specific statute governs.

[00:35:24] Hannah McCarthy

But of course, as many of us know, relying on Congress to take action is not always the best course of action. So instead, I will leave you with this one last thought. It's from Mustafa, who pointed out that, you know, not just because of Chevron, but because of a lot of what's been going on at the Supreme Court. We're all paying a lot more attention.

[00:35:49] Mustafa Santiago Ali

We have a public that is now becoming more aware of how incredibly important it is to understand who our judges are, what they stand for. And if we should be supporting them. Um, especially if they're elected judges or the individuals who will, you know, place those judges in those respective positions. So that gives me hope. Now, I know that we still have lots of education to do so folks can make the best decisions for themselves, but I'm seeing people starting to pay so much more attention. People stop me in the airport. We'll have some questions about a number of issues, and this is one of those that, you know, five years ago, folks wouldn't have said, hey, but what do we do about the courts? So I think, you know, it's a beautiful evolutionary moment. I just wish that it also didn't come with the pain of many folks having to deal with these sets of actions that are going on.

[00:37:05] Hannah McCarthy

That does it for this episode. It was produced by me. Hannah McCarthy with Nick Capodice. Christina Phillips is our senior producer. Rebecca LaVoy is our executive producer. We might have gone a bit above and beyond the basics on this one, but if you are looking for a little more 101 in your life, Nick and I have a book. It's called A User's Guide to Democracy, and it's your pocket companion to living in this twisty, twirly nation of ours. You can find it wherever books are sold. Music in this episode by Jay Vartan. Adeline. Park. Floors. Deuces. Staff and Karlin. Sugo! Real heroes. Paper twins. Paisley. Pink. Dejana. Beigel and Jon Bjork. As always, you can get more Civics 101 at our website civics101podcast.org. Civics 101 is a production of NPR New Hampshire Public Radio.

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