



NEWS RELEASE

Attorney General Mike Hilgers

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Attorney General Mike Hilgers Joins Brief Asking U.S. Supreme Court to Reexamine Oft-Abused Legal Doctrine

Attorney General Mike Hilgers joined a coalition of 27 states in a brief asking the U.S. Supreme Court to overrule—or at least clarify—the doctrine known as *Chevron* deference.

The case, *Loper Bright Enterprises v. Gina Raimondo, Secretary of Commerce*, revolves around a regulation by the National Marine Fisheries Service that requires herring fishing boats to have an additional person on board to serve as a monitor, tracking compliance with federal regulation. The catch: The fishing companies must pay the monitor’s salary, which would cost around \$700 per day.

Facing down this impossible situation, the fisheries took the government to court. Applying *Chevron* deference, the lower courts held that the Magnuson-Stevens Act allowed the imposition, even though the statute did not expressly authorize it. The fisheries then asked the Supreme Court to take the case—either to “overrule *Chevron*, or at least clarify that statutory silence concerning controversial powers expressly but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency.”

AG Hilgers praised the brief, saying: “The Constitution lays out three branches of government—not four. It leaves to our elected representatives, and not unelected and unaccountable bureaucrats, the power to pass legislation. Overturning *Chevron* is a critical step to restoring the Constitution’s protection against the unaccountable use of power and will help save Nebraskans from an endless number of regulations and burdens.”

Chevron deference allows courts to defer to a federal agency’s interpretation of an ambiguous statute—even if the court thinks that the agency’s approach is not the most faithful way to read the statute. And because agencies only have the powers that Congress gives them by statute, the doctrine effectively allows agencies to expand their authority whenever statutes are even a little unclear.

The doctrine has been abused and manipulated to allow federal agencies to run amok, the coalition’s brief explained.

By stacking the deck in the agencies’ favor, the States lose “not only our authority to regulate in ways that matter most, but also our right to have the people we send to

Congress make those calls if the federal government tries to take on these issues instead,” according to the brief.

Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming joined the West Virginia-led brief.

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Brief Attached

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