ECONOMIC POLICY

8 policies that could be vulnerable to new legal challenges

The Supreme Court jettisoned longstanding precedent that helped the federal government make regulations. Now broad policies could be determined by judges.

The Supreme Court jettisoned a 40 year-old precedent that allowed agencies to make rules and smoothly operate the federal government. The ruling is poised to transform the role of the federal government. (Amanda Andrade-Rhoades for The Washington Post)

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By Jacob Bogage
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CORRECTION

A previous version of this article incorrectly identified the federal agency that implemented rules around the Pregnant Workers Fairness Act. It also misstated the name of that legislation. The article has been corrected.

Regulations that touch nearly every facet of American life could face new challenges after the Supreme Court's move to overturn a long-standing legal precedent last week. Just days later, litigants around the country are already taking aim at some rules with new motions and filings.

The court's landmark ruling in *Loper Bright Enterprises v. Raimondo* jettisoned a doctrine known as "*Chevron* deference," which generally required courts to defer to the expertise of federal experts when regulations faced scrutiny. The decision — a 6-3 vote along ideological lines — jeopardizes federal rules in policy arenas from climate change to low-income food assistance, and tobacco safety to pharmaceutical approvals, and much more.

The precedent dates to 1984, so years of regulations and lower court rulings were made following its lead. Now legal scholars are unsure how much of the U.S.'s administrative framework — decisions made by legions of experts and bureaucrats responsible for the daily operations of the federal government — could fall in the months and years to come.

"It means chaos," said Dorothy A. Brown, a law professor at Georgetown University. "This is the Supreme Court cutting back on agency power knowing that Congress can never pass a law that will answer all questions. But it limits what government can do to protect people, protect consumers and impose costs on big corporations."

Here are eight policy areas that could be overhauled by the *Loper Bright* ruling.

Student loan forgiveness

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Hundreds of billions of dollars in student loan assistance could hang in the balance now. The Education Department has promulgated half a dozen rules related to student loan repayment or forgiveness since July 2023, and two of them are the subject of ongoing lawsuits that allege government overreach.

"No policy is at greater risk than the administration's student loan forgiveness efforts, which spend hundreds of billions of dollars without congressional authority," said Michael Brickman, a fellow at the American Enterprise Institute and a former senior adviser in the Education Department under President Donald Trump.

Republican attorneys general in 18 states have sued to stop the Saving on a Valuable Education program, which lowers monthly student loan payments and offers a shorter path to loan forgiveness. They argue that Congress never envisioned anything as expansive as the program in the law underpinning the regulation.

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Attorneys for Career Colleges and Schools of Texas made similar arguments in their lawsuit to block the Borrower Defense to Repayment rules, which clears the debts of students whose colleges used illegal or deceptive tactics to persuade them to borrow. The Education Department is enjoined from fully implementing either rule.

The new legal landscape will make it harder for the department to defend its "pro-student" regulations, said Dan Zibel, co-founder of the National Student Legal Defense Network and a former deputy assistant general counsel in the Education Department under President Barack Obama.
— *Danielle Douglas-Gabriel*

Protections for transgender students

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A new Biden administration regulation protecting transgender students and laying out how schools must respond to accusations of sexual assault and harassment was already being challenged, and the new ruling gives opponents further ammunition to stop it.

The regulation is the administration's interpretation of the half-century-old Title IX law, which bars discrimination on the basis of sex in federally funded K-12 schools, colleges and universities. The administration, citing a 2020 Supreme Court ruling, included discrimination based on gender identity in its definition of sex discrimination, meaning schools might be required, for instance, to allow transgender students to use pronouns and bathrooms that align with their gender identity. The provision was celebrated by LGBTQ+ advocates and derided by conservatives.

The rules, which were set to take effect on Aug. 1, have already been temporarily blocked by three different federal courts covering different parts of the country, with additional suits pending. The Biden administration's regulation replaced a similar one written by the Trump administration, which bolstered the procedural rights of the students accused of sexual assault or harassment. It's unclear whether the Supreme Court would now allow either one of the rules to go forward.

— *Laura Meckler*

Workers' rights

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Expanded overtime pay eligibility, new requirements for employers to accommodate pregnancy, guidelines on workplace harassment and standards holding franchised brands responsible for labor law violations could all be in jeopardy.

"This has created many, many new areas to litigate," said Ann Lofaso, a professor of labor law at West Virginia University.

The Supreme Court ruling almost immediately put a check on the Labor Department's authority. Hours after the ruling came down Friday, a U.S. District Court judge in eastern Texas cited the decision in an order to block the federal overtime expansion from applying to Texas state employees. The rule went into effect Monday and makes millions more workers eligible for overtime pay

nationwide. But labor and employment attorneys say the Texas judge's decision signals that another court will probably block the rule.

Rules the Equal Employment Opportunity Commission established to implement the bipartisan 2022 Pregnant Workers Fairness Act, which provides new pregnancy- and childbirth-related accommodations for workers, face several pending lawsuits. That includes a case filed by 17 states in April over a requirement that employers provide "reasonable accommodations" for employees seeking abortions. A memo in that lawsuit already cites the new Supreme Court decision.

Separately, a highly anticipated Labor Department rule introduced this week that would regulate workers' exposure to extreme heat will likely be vulnerable. "That's ripe for a challenge," said Stephanie Adler-Paindiris, a lawyer at the firm Jackson Lewis who represents employers.

— Lauren Kaori Gurley

Electric vehicle support and emissions limits

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Federal government help for electric vehicles — and a federal crackdown on emissions from gasoline-powered cars and trucks — may be in trouble.

The Biden administration's most consequential climate rule could be newly vulnerable: The Environmental Protection Agency's plan to boost sales of electric vehicles while slashing emissions from gasoline-powered cars and trucks. Republican attorneys general from more than two dozen states had already sued the EPA over the Biden administration's most consequential climate rule, a sweeping attempt to transform the U.S. auto market. The top trade association for the U.S. oil and gas industry, which could see demand for its products decline as consumers shift to EVs, has also challenged the regulations in the U.S. Court of Appeals for the D.C. Circuit. Opponents say the agency has overstepped its authority.

The EPA will need to convince the court that Congress empowered it to issue the rules, said Jeff Holmstead, a partner at the law and lobbying firm Bracewell LLP and a former top EPA official under President George W. Bush.

"The question is going to be, 'Did Congress clearly intend to give EPA authority to force a fundamental shift in the transportation sector?'" Holmstead said.

— Maxine Joselow

Corporate climate disclosures

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Publicly traded companies are soon supposed to start sharing key details about their carbon footprints and how much of a threat climate changes poses to their

bottom lines. But the Supreme Court's decision may kill that requirement before it even takes effect.

The Securities and Exchange Commission, the country's main Wall Street and banking regulator, approved that new requirement in March. The rule tests the powers of the federal government to compel companies to confront global warming, making it significantly harder for businesses to gloss over their role in higher emissions and their vulnerability to climate change. And it immediately came under legal assault; the SEC paused enforcement as soon as multiple lawsuits were filed.

Now the success of the rule could hinge on the SEC's ability to convince judges that the policy is not intended to drive companies to lower their emissions, but merely to require they share information investors need, a key role of the regulator.

— *Jacob Bogage, Evan Halper and Maxine Joselow*

Net neutrality

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Under rules issued by the Federal Communications Commission (FCC) earlier this year, internet service providers can't slow down or throttle some content, or make it easier to access material they're paid to speed up.

Industry giants have sued over the rules, which broaden the FCC's oversight of telecom firms. The Sixth Circuit court in Cincinnati has asked both sides to submit briefs on how they believe the *Loper Bright* decision affects the issue by Monday. The FCC said in a statement this week that its interpretation of its authority over internet service providers did not rely on *Chevron* deference. But the court may disagree: Previous case law has invoked the principle.

— *Eva Dou*

Intellectual property rights

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Fights over patent infringement and other intellectual-property claims could soon wind up back in court. One example that already looks likely to flare up again: Tech giant Google's battle with speaker-maker Sonos.

Courts have ruled in the past that Google infringed on Sonos's patents using software to control audio speakers. But Google argues that those rulings rest on an interpretation of the law by the U.S. International Trade Commission, a federal agency that makes rulings and takes actions on unfair trade practices. In a court filing last week, Google's lawyers asked the U.S. Court of Appeals to take another look if the Supreme Court threw out the *Chevron* deference.

A spokesperson for Google declined to comment. A spokesperson for Sonos did not respond to a request for comment.

— *Gerrit De Vynck*

Lab-developed medical tests

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Many academic hospitals develop in-house blood tests that doctors and patients rely on for the diagnosis of serious conditions, including cancer or Alzheimer's disease. The FDA has not historically regulated these laboratory-developed tests, or "LDTs," but this year issued a new rule that will phase in regulation.

A trade association seeking to block the new rule has filed suit against the FDA in Texas, where federal judges have generally been hostile to the agency. The case will test whether the FDA has the statutory authority to regulate such tests as medical devices, the classification it's used to assert jurisdiction over them.

Former acting FDA commissioner Norman "Ned" Sharpless, who served in the Trump administration and was director of the National Cancer Institute under both Trump and Biden, said the FDA would have faced a tough legal fight even without the *Chevron* decision. Now its case will be even harder.

— *Joel Achenbach*