

22-1219 RELENTLESS, INC. V. DEPARTMENT OF COMMERCE

DECISION BELOW: 62 F.4th 621

LOWER COURT CASE NUMBER: 21-1886

QUESTION PRESENTED:

The Magnuson-Stevens Act ("MSA") governs fishery management in federal waters. It states that, with the approval of the Secretary of Commerce, the National Marine Fisheries Service ("NMFS") may require fishing vessels to carry federal observers who enforce the agency's regulations. Congress appropriates funds for these observers. In three circumstances absent here, but not elsewhere, the MSA allows federal observers to be paid in some manner by the regulated party. Deeming annual Congressional appropriations for the federal observers insufficient, the agency asserted a right to force the fishing vessels into contracts to pay the federal observers. The First Circuit approved this practice without stating whether its conclusion was a "product of *Chevron* step one or step two." It held the mere fact that the MSA provides for federal observers gave the agency *carte blanche* to charge the regulated party for those observers. Neither *Chevron* nor the MSA provision allowing measures "necessary and appropriate" to enforce the statute allows this result.

The questions presented are:

1. Whether the Court should 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. 1.

2. Whether the phrase "necessary and appropriate" in the MSA augments agency power to force domestic fishing vessels to contract with and pay the salaries of federal observers they must carry.

1. This is the question already accepted by the Court in *Loper Bright Enterprises, et al. v. Raimondo, Secretary of Commerce, et al.*, No. 22-451, *certiorari granted* (May 1, 2023) concerning the same statute and regulation.

Limited to Question 1 presented by the petition.

EXPEDITED BRIEFING SCHEDULE THAT WILL ALLOW THIS CASE TO BE ARGUED IN TANDEM WITH NO. 22-451, *LOPER BRIGHT ENTERPRISES, et al. v. RAIMONDO, SEC. OF COMM., et al.*, IN THE JANUARY 2024 ARGUMENT SESSION.

CERT. GRANTED 10/13/2023