Introduction

- Last week, we defined judicial review and discussed the conditions under which the courts may review a case.

- This week, we are discussing the scope of review, which “refers to the depth of courts’ probe of administrative action” (Rosenbloom 2015, 168).

Chevron Doctrine

- Discussion Questions
  1. Please brief and discuss *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (1984).
  2. What is the *Chevron* doctrine?
  3. Why is *Chevron* controversial?

Chevron Doctrine (2)

- Two step framework (Rosenbloom 2015)
  - Did Congress speak directly to the issue at hand (or is the statutory language unambiguous)?
  - If not, is the agency's interpretation reasonable?

Chevron Doctrine (3)

Imagine you are a lawful permanent resident of the United States. You are arrested for driving under the influence ("DUI"). At the time of your arrest, your child is in the car with you but is not wearing a seatbelt. As a result, you are also charged with felony child endangerment.

Under federal law, committing child abuse is a deportable defense. As a result, you are ordered to be deported and the Board of Immigration Appeals upholds that decision. You file a lawsuit. How might the court rule?

(See *Martinez-Cedillo v. Sessions*, 896 F.3d 979 (9th Cir. 2018)

Chevron Doctrine (4)

Imagine that a woman undergoes in vitro fertilization after her husband's death and give birth to twins. She then applies for Social Security benefits for the two children. Under the Social Security Act, an eligible child had to have been dependent on an insured individual at the time of the qualified individual's death. After an administrative hearing, the Social Security Administration denied the woman's claim on the grounds that the twins were not defined as the deceased's children under the law.

See Astrue v. Capato (2012)

Chevron Doctrine (4)

- Why is *Chevron* so controversial?
  - Are judges undermining their Article III duty?
  - Can agencies make policy without the permission of Congress?

Other “Looks”

- Another way to describe the scope of judicial review is by examining the level of “scrutiny” a court applies to agency action (Rosenbloom 2015).
  - Soft Look
  - Hard Look
  - No Look

Other “Looks” (2)

- Soft Looks
  - Agency’s statutory interpretation
  - Rulemaking procedures

Other “Looks” (3)

- Hard Looks
  - FOIA requests
  - Substance of agency rules

Other “Looks” (4)

- No Look
  - Agency non-enforcement
    - What happened in *Heckler v. Chaney* (1985)?
    - Is inaction the same as recission? (See p. 171)

Questions?

Sources

- Rosenbloom (2015)