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Southeastern Legal Foundation Urges Supreme Court to Reject Agency Deference

WASHINGTON, DC (July 24, 2023): [Southeastern Legal Foundation](#) (SLF) filed an [amicus brief](#) with the United States Supreme Court urging the Supreme Court to reject the idea that agencies should be accorded deference by courts when interpreting the scope of their own powers. Under so-called “*Chevron* deference,” agency interpretations are granted wide latitude by courts when they enact rules. This has enabled the growth of the regulatory state and is a threat to separation of powers.

In this [case](#), a group of Herring fisherman are fighting to protect their family businesses from federal regulators who seek to force them to pay for “observers” on their boat to watch for fishing violations. The National Marine Fisheries Service (NMFS) argued that the rule was necessary because the agency had run out of money. Even though no statute authorized this action, the lower courts ruled that they were obligated to defer to NMFS’s own interpretation of its permissible powers. Understandably, those who bear the cost of regulatory actions have asked the courts to reject this notion and be neutral when ruling on legal matters.

As SLF explains in its [amicus brief](#), at its founding, America was designed to keep the powers of government divided. Allowing executive branch agencies to evade funding appropriations that are supposed to be made by Congress, and then pass those costs off to regulated parties violates separation of powers principles. When questions surrounding agency authority reach the courts, legal questions ought to be considered by the courts without any judicial deference for the governmental party.

Director of Litigation from SLF [Braden Boucek](#) states, “The constitutional order and all our freedoms depend on the separation of powers doctrine. When courts stand down and defer, it enables the executive branch to overtake the others.”

SLF and other groups have called for the overturning of *Chevron* for years. In this case, the Supreme Court stands poised to do just that.