

Firms Must Offer A Trifecta Of Services In Post-Chevron World

By **Neil Hare** (September 4, 2024)

The confluence of litigation, lobbying and communications in law firms has been naturally occurring over the last decade. But due to the U.S. Supreme Court's June decision overturning the Chevron doctrine, firms need to ensure they have these capabilities covered if they are to keep up with the ramifications of this ruling and provide adequate counsel quickly.



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Certainly in Washington, D.C., many of the top law firms have provided lobbying services for decades, as it was impossible to avoid running into the federal government when representing clients. But, as the lobbying industry expanded alongside the expansion of the government, law firms big and small began offering government relations services — even firms outside the Beltway.

Meanwhile, many lobbying firms began offering strategic communications services, as old, shoe-leather lobbying wasn't enough to move the needle. The COVID-19 pandemic and Jan. 6, 2021, accelerated this trend, as it was impossible and undesirable to try and set up in-person meetings on Capitol Hill.

With the Chevron decision, it is more crucial than ever that law firms seamlessly integrate their litigation, lobbying and strategic communications like never before.

The End of Chevron Deference

In June, the Supreme Court overturned the Chevron doctrine in *Loper Bright Enterprises v. Raimondo*, ruling that courts must independently decide if an agency has acted within its statutory authority, without deferring to an agency's interpretation of ambiguous statutes.

The movement to overturn the Chevron doctrine came from conservative activists who argued it was facilitating the expansion of a vast administrative state, where unelected officials were free to make rules on practically all aspects of American life.

Whether that is true or not, the likely real-world outcome of this decision is more litigation, enhanced lobbying to help Congress write much more narrowly focused and detailed legislation, and the need for public facing communications to support both.

First, on the litigation side, this decision now gives courts different standards for exercising their power to overturn agency decisions than they have had in 40 years. That creates an opportunity for companies affected by regulatory burdens.

For example, climate activists are concerned that companies will try to litigate away current rules limiting pollution, protecting against exposure to toxic chemicals and addressing climate change in general.

Further numerous court challenges to U.S. Food and Drug Administration drug approval decisions are also anticipated.

Second, on the lobbying side, Congress now has an enhanced burden to write much more

specific legislation, and not simply rely on agency rulemaking. In many instances, legislation previously included open-ended language deferring to the agencies to write and implement specific rules. The change ushered in by Loper Bright means congressional staff will likely rely more heavily on lobbyists to help craft legislation.

Likewise, lobbyists now have the ability and, more importantly, an obligation to their clients to advocate for much more specific language in bills.

This new dynamic will force law firms to rapidly expand their strategic communications offerings. While there may be concerns that this new precedent will allow the business community to overturn regulations — many of which are long-standing — the reality is the court of public opinion may exact a heavy price for doing so.

If companies do indeed sue to roll back U.S. Environmental Protection Agency rules around climate change, for instance, courts may rule the regulations have exceeded congressional intent, but the public may disagree and punish companies with their wallets and their social media feeds.

It's hard to know how much public outcry might come from a company's decision to challenge regulations, but social media makes the prospect much easier and cheaper than in the past. There are also plenty of activist groups and consumer watchdogs that will now be on heightened alert due to Loper Bright opening this door.

The Importance of Integration

The recent changes require law firms to recognize the increased importance of having litigation, lobbying and communications functions integrated within their business model. The synergies between these functions will offer firms the ability to deliver strategic, coordinated and more effective solutions to advance client interests.

Law firms that do not have these capabilities in-house must outsource one or more of these activities to third-party vendors, but that may lead to uncoordinated activities and misalignment.

Seamlessly integrating the three activities is what allows for the advancement of a client's interests. So how can firms thread this needle?

It starts with the coordination of campaigns that touch on all three functions. For example, a litigation strategy could be complemented by lobbying efforts to push for legislative changes, and supported by proactive communications activities to help shape public opinion.

Digging a bit deeper, any litigation around a hot-button issue — whether it's regulatory, a class action or a high-dollar matter — can, and likely will, attract media attention. Ignoring it is really not an option.

Lawyers will benefit from a deeper understanding of what public relations means in today's environment. For example, it's no longer as simple as contacting a media outlet and sharing a client's point of view, hoping for a favorable story. The media landscape has changed immensely.

Today's media landscape offers lots of opportunities to control the message through both earned and paid placements, including op-eds, thought leadership pieces and videos. This content can then be amplified on social media.

Finally, without Chevron deference addressing regulatory burdens, companies may find it more beneficial to lobby Congress and agencies in lieu of, or in conjunction with, litigation. Firms with a government affairs team can assess two paths to regulatory relief, increasing the bottom line in the process.

Democrats and Republicans are still far apart on issues like the Affordable Care Act, climate change, housing and minimum wage. Depending on the outcome in the November elections, the path for changes in these areas may be shorter in the halls of Congress than the courts of law, especially if one party controls both chambers and the White House, which is a distinct possibility.

Whether a company faces a legal dispute, needs legislative advocacy or is managing a public relations crisis, law firms with this trifecta of services will be better positioned to offer tailored, integrated responses.

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