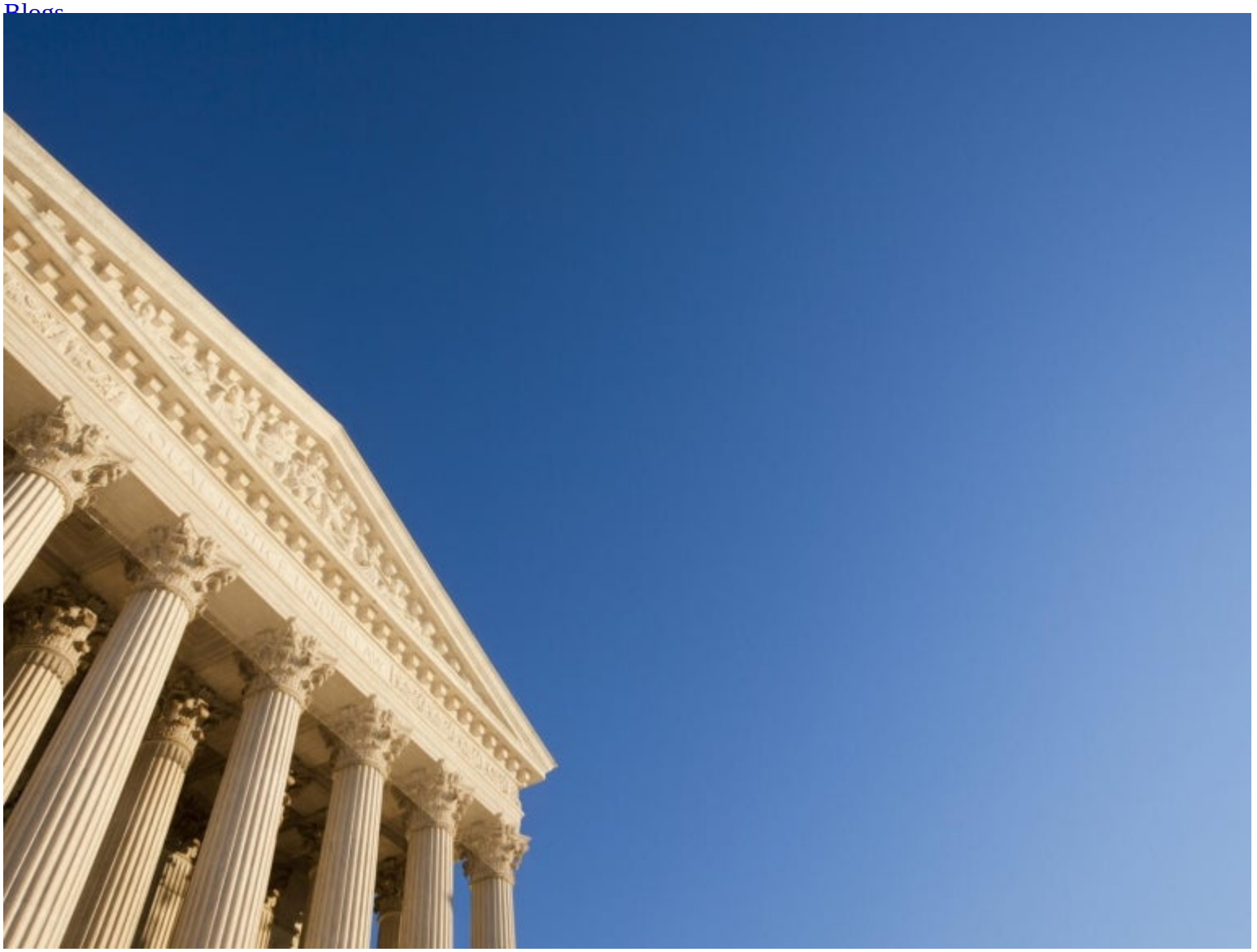

Given the potential implications of the overturning of the *Chevron* doctrine by the US Supreme Court a few weeks ago – see our **Client Update** on the ***Loper* decision** – it's natural to be concerned that continued applicability of all sorts of federal regulations is suddenly in question. As Justice Elana Kagan pointed out in her dissent, "private parties have ordered their affairs—their business and financial decisions, their health-care decisions, their educational decisions—around agency actions that are suddenly now subject to challenge."

It remains to be seen how large of an impact the *Loper* decision will have. See our **Client Update** for several examples of areas where this decision may make way for new challenges.

With respect to SEC regulations, **one commentator** – a former SEC General Counsel – argues that *Chevron* deference has not played a major role in challenges to SEC rules over the past two decades, with such cases

often decided on other bases. One example is the Fifth Circuit's decision to invalidate the SEC's share repurchase rule last year, which was decided based on a holding that adoption of the rule amounted to arbitrary and capricious action under the Administrative Procedure Act. The ongoing challenges to the climate risk disclosure rule similarly make arguments based on the "major questions" doctrine (discussed in this **Client Update**) and arbitrary and capricious action.

Time will tell whether *Loper* creates a sea change in administrative rulemaking, or more of the same – at least with respect to SEC rules.

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