

KANSAS VOICES, KANSAS SOLUTIONS NEWSLETTER

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Life After Chevron

On June 28, 2024, the U.S. Supreme Court struck down the Chevron doctrine, meaning the courts no longer must defer to interpretations of federal agencies about the laws they administer.

Fortunately, the Kansas Business Roundtable anticipated this decision. On June 3, the Roundtable had convened corporate counsels representing a variety of Kansas businesses to discuss Chevron implications in Kansas. The Roundtable's goal was to determine how best it could inform Kansas legislators to react to this court decision.

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The Decision

In a 6-3 decision, the conservative justices overturned the 1984 Chevron decision, thus beginning a new era when **courts are no longer obliged to defer to subject matter experts** who work in federal agencies and who were appointed by the president and confirmed by the Senate.

For the past 40 years, when laws passed by Congress have been vague or ambiguous, federal departments and commissions in the executive branch have interpreted them using their expertise. Speaking for the dissenting justices, Justice Elena Kagan described the ruling as giving courts “control over matters they know nothing about.



Birds fly outside the U.S. Supreme Court on the day justices issue orders in pending appeals in Washington, U.S., June 24, 2024. - Nathan Howard | Reuters [cnbc.com](https://www.cnbc.com)

The majority opinion went as far as to describe the “rapid expansion of the administrative process” that took place during the New Deal era, *United States v. Morton Salt Co.*, 338 U.S. 632, 644, and how the federal agencies were able to exercise “independent judgement.” The majority opined the shift crept too far away from the basic role of the Courts, “As Chief Justice Marshall declared in the foundational decision of *Marbury v. Madison*, “[i]t is emphatically the province and duty of the judicial department to say what the law is.”

What Happens Next?

Going forward, judges must exercise their independent judgment to determine how to apply certain statutes to environmental, telecommunications, and medical issues as well as other complex topics about which the judges have no expertise. The trial court record

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Implications for Kansas

Life After Chevron Continued

will likely have an increased position as the Courts shift the burden.

New legal challenges will likely be filed targeting federal regulations not explicitly backed by clear and specific laws such as new EPA pollution regulations governing cars and power plants, FDA approval processes on medical devices and drugs, and other long-standing agency rules previously unchallenged.

As the balance of power shifts away from the administrative agencies, it will likely place a clear obligation on the legislative branch to pass clearer laws. Congress and those supporting specific laws, will have an increased duty to pass laws with more specifics or face an increasingly uncertain court review.

On June 3, the Roundtable's discussion with corporate counsels determined that while Kansas courts do not follow the Chevron doctrine, overturning Chevron would have implications at the state as well as federal levels.

The main topic of conversation was how to craft more precise legislation. It was concluded the Kansas Legislature should increase its diligence in drafting bills. Legislative staff should be provided with



adequate time to research, edit, and ensure legislative intent is clearly stated in the text.

Legislative leaders should be mindful of workloads and pay scales that need to keep up with changing market conditions so staff attorneys can ensure the integrity of legislative efforts.

The Roundtable's concern at the state level is more pronounced than the federal level due to historic understaffing at the state level. Current workforce shortages in the legal field in Kansas make imperative the need to ensure our citizen-legislature form of state government is supported by qualified attorneys to draft bills.

An aerial photograph of the Wichita State University campus. The image shows several large, modern academic buildings with flat roofs and brick accents. There are extensive parking lots filled with cars. A large, green, tree-filled area is visible in the center. In the background, a dense forest of green trees stretches towards the horizon under a clear blue sky.

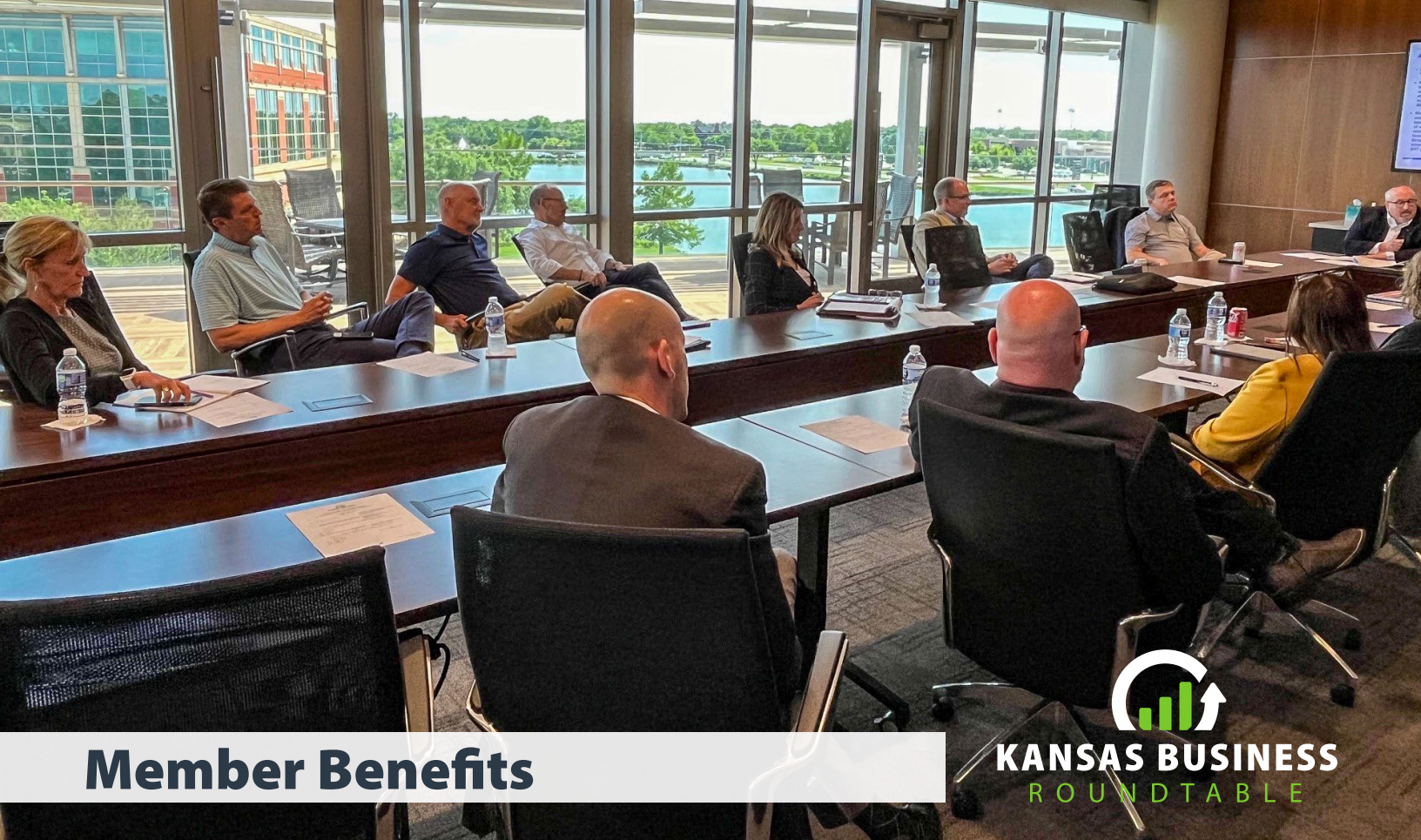
Annual Issues Summit

September 24, 2024

9 a.m. – 2 p.m.

Save the date for the Roundtable's annual Issues Summit at Wichita State University as we explore what Kansas can do to make childcare more accessible to the workforce, the state of healthcare and insurance in Kansas after ten years of the ACA, and the economic costs to Kansas businesses of increased homelessness. Seating is limited.

Contact Kathy.Sexton@wichita.edu for information.



Member Benefits



The Kansas Business Roundtable celebrated a successful first year by adopting a strategic plan in October 2023. The plan includes action items to position the new organization to achieve its mission to **convene leaders to create Kansas solutions** that strengthen our communities and our state.

During the 2024 Legislative session, members participated in four online Legislative Updates primarily to gain understanding of policy issues of concern in legislative committees. In June, general counsels of Kansas companies met with Roundtable members to examine issues in the legal arena of most concern to businesses.

This newsletter is a key strategy to engage with members across the state. Other strategies include online discussions and in-person discussions with business leaders and key public officials about issues affecting the economic future of Kansas.

In June 2024, the Roundtable adopted a menu of membership options to ensure businesses of all sizes and from all corners of the state can join the founding members in their efforts to have healthy, nonpartisan discussions about important issues. Associate membership begins at \$500 per year. Higher levels of investment bring additional member benefits.

Learn more from any Roundtable member or reach out to KBR Executive Director Scott Schneider at scott@sjschneider.law or Kathy.Sexton@wichita.edu. Instead of hiring full-time staff, the Roundtable engaged the Public Policy & Management Center at Wichita State University in February 2024 to perform administrative and event planning services.