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SCOTUS Continues to Limit Authority of Regulatory Agencies by Empowering District Courts to Reject FCC Interpretations

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Suppose an administrative agency issues a rule governing private conduct. And suppose no one uses an available judicial review process to challenge that rule before it takes effect. If that rule is then invoked against a party in a subsequent lawsuit, can that party successfully argue that the rule is invalid?

The US Supreme Court confronted that question in *McLaughlin Chiropractic Associates, Inc. v. McKesson Corp.* In an opinion issued on June 20, it held that the Hobbs Act, which authorizes parties to seek judicial review of certain agency actions before they take effect, does not preclude parties from successfully arguing that earlier-issued agency rules are invalid in subsequent district court proceedings.

McLaughlin is another in a line of recent cases precluding courts from deferring to agency statutory interpretations. And it has significant consequences for entities regulated by the Federal Communications Commission (FCC) or other agencies whose orders are subject to the Hobbs Act. Specifically, it opens up a new avenue for such entities to attack FCC rules and orders – even many years after they were issued.

Background

This case arises from an FCC order interpreting the Telephone Consumer Protection Act (TCPA). As relevant here, the TCPA prohibits a business from faxing an "unsolicited advertisement" to a "telephone facsimile machine" unless the fax includes an opt-out notice (47 USC § 227(b)(1)(C), (2)(D)). Parties that receive an unlawful fax may bring a civil suit against the sender (Ibid.).

In 2009 and 2010, McKesson allegedly violated the TCPA by sending unsolicited fax advertisements to numerous medical practices, including McLauglin Chiropractic Associates. In 2014, McLaughlin sued McKesson in the US District Court for the Northern District of California.

McLaughlin sought to represent a class of other practices that had received faxes from McKesson. Some of those practices had received faxes on traditional fax machines; others had received faxes through online services. But the district court certified the class without distinguishing between the two types of recipients. Shortly thereafter, the FCC issued an order interpreting the term "telephone facsimile machine" to exclude online fax services.

The district court then had to decide how to treat the FCC's order: Did it bind the court, or could the court reject it as contrary to the TCPA? The court deemed the order binding. In so doing, it relied on the Hobbs Act, which provides that courts of appeal have "exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of" final FCC orders, and specifies that parties must challenge FCC orders in the court of appeals within 60 days after they are issued (28 USC § 2342(1)). In the district court's view, the Hobbs Act barred it from questioning the validity of the FCC's order.

The US Court of Appeals for the Ninth Circuit affirmed, agreeing that the district court was bound by the FCC's order. That decision accorded with decisions from every court of appeals to consider the question. Despite the absence of a circuit conflict, the Supreme Court granted certiorari.

SCOTUS decision

The Supreme Court reversed the Ninth Circuit. Writing for a six-Justice majority, Justice Brett Kavanaugh

concluded that, "[t]he Hobbs Act does not preclude district courts in enforcement proceedings from independently assessing whether an agency's interpretation of the relevant statute is correct." Accordingly, the Supreme Court remanded so that the district court could interpret the TCPA "under ordinary principles of statutory interpretation."

Three categories of statutes

The majority began by explaining that there are three categories of statutes that authorize pre-enforcement judicial review of agency actions: some such statutes "expressly *preclude* judicial review in subsequent enforcement proceedings"; others "expressly *authorize*" that review; and others are silent on the question. The majority found the Hobbs Act to fall within that third category. It rejected the argument that the Hobbs Act falls within the first category by way of its grant of exclusive jurisdiction to courts of appeal to "determine the validity" of FCC orders.

Default rule of judicial review

That analysis prompted the following question: "What is the default rule" for statutes that neither expressly preclude nor expressly authorize judicial review in subsequent proceedings? According to the majority, the proper default rule is that "a district court must independently determine for itself whether the agency's interpretation of a statute is correct." That rule follows from "[f]undamental principles of administrative law," including the presumption of judicial review and the text of the Administrative Procedure Act (APA).

To support its default rule, the majority also invoked two major decisions issued last term. First, it cited *Loper Bright Enterprises v. Raimondo*, 603 US 369 (2024), which requires courts to independently interpret statutes without deferring to an agency's interpretation. Second, it cited *Corner Post, Inc. v. Board of Governors*, 603 US 799 (2024), which relied on the presumption favoring judicial review of agency action to hold that an APA claim does not accrue for statute-of-limitations purposes until the plaintiff is injured by final agency action.

Potential constitutional issue

The majority also flagged a potential constitutional concern about statutes in the first category discussed above – i.e., those that expressly foreclose judicial review of agency actions in a subsequent enforcement proceeding. Such statutes create "unfairness" that "could potentially rise to the level of a constitutional due process problem." But because the Hobbs Act did not fall into the first category, it sufficed to "adhere[] to the default rule" in this case.

Dissent

Justice Elena Kagan dissented, joined by Justices Sonia Sotomayor and Ketanji Brown Jackson. Justice Kagan argued that the Hobbs Act expressly precludes subsequent judicial review by giving the court of appeals exclusive authority to "determine the validity" of FCC orders. Using dictionary definitions, she explained that when a district court decides whether an agency's statutory interpretation is correct, it necessarily "determine[s] the validity" of the agency's order. And Justice Kagan resisted the majority's "default rule," explaining that the presumption of judicial review "does not operate when Congress, rather than eliminating judicial review, has channeled it in one direction or another."

Implications

McLaughlin carries significant consequences for regulated industry, generally, and entities regulated by the FCC, specifically.

Most obviously, *McLaughlin* opens up a new avenue of attack on FCC rules and orders. Before *McLaughlin*, all circuits had held that the Hobbs Act required district courts to accept earlier-issued FCC rules and orders. Thus, an entity that was not able to challenge the rule or order within 60 days of its issuance (whether because the entity did not exist or was not aware) was still bound by that rule or order in later lawsuits and enforcement proceedings.

After *McLaughlin*, that is no longer true. So, for instance, if an entity is sued in district court under the TCPA (or another statute with a private cause of action), and the plaintiff invokes an FCC rule, then the defendant now can

and should make all available arguments for why the rule is invalid. At the same time, there also may be cases (like *McLaughlin*) where plaintiffs can make new arguments that had previously been foreclosed by an FCC rule. In those scenarios, district courts will now consider those arguments *de novo* – whereas before they would have rejected them out of hand. Simply put, regulated entities should not take prior FCC interpretations – even long-standing ones – for granted.

In the TCPA context, this decision will require the reexamination of many principles rooted in FCC orders and rules that companies and their counsel have long used as cornerstones of their compliance strategies. Fundamental issues, such as what forms of consent are sufficient to authorize informational calls and text messages, the definitions of regulated technologies, the circumstances in which dialing platforms may be responsible for calls and messages initiated by their users, and other principles long considered settled law, are now subject to reconsideration.

Next, entities should consider raising due process challenges to statutes that appear to bar them from challenging earlier-issued agency rules and orders. The majority listed the Clean Water Act, Clean Air Act and Comprehensive Environmental Response, Compensation, and Liability Act as statutes falling into that category. And footnote 5 of the majority opinion strongly suggests that at least some Justices in the majority would be sympathetic to such a due process argument.

At minimum, entities should point to *McLaughlin* when making arguments that statutory judicial review bars should be interpreted narrowly. They can rely on *McLaughlin*'s new "default rule," the presumption of judicial review and the constitutional-avoidance canon in light of *McLaughlin*'s due process concerns. Indeed, the principles announced in *McLaughlin* could assist regulated entities in overcoming a wide variety of procedural obstacles to judicial review of administrative action.

Finally, *McLaughlin* fits within the broader trend of recent Supreme Court decisions curbing the power of administrative agencies, barring courts from deferring to agency legal interpretations and empowering entities to challenge agency action. *McLaughlin* further confirms that this Supreme Court will be open to all manner of arguments aiming to reduce agency authority – even arguments that have been rejected by every circuit or that would have seemed novel or radical just a decade ago.

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