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Supreme Court Holds that the Hobbs Act Does Not Bar District Courts from Considering Challenges to Agency Statutory Interpretations in Enforcement Proceedings

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Today, in a divided opinion in *McLaughlin Chiropractic Associates v. McKesson Corporation*, the Supreme Court further restricted the ability of agencies to bind courts with their interpretations of the law. With Justice Kavanaugh writing for a six-justice majority, the Court held that the Hobbs Act does not bar district courts from considering (and disagreeing with) an agency's interpretation of a statute during enforcement proceedings.

In this case, a McKesson business unit sent online faxes advertising products and services to its customer, McLaughlin Chiropractic. McLaughlin, along with other chiropractic offices that also received faxes, brought a putative class action against McKesson, alleging that the faxes were "unsolicited advertisements" in violation of the Telephone Consumer Protection Act ("TCPA"). Six years into the litigation, the Federal Communications Commission ("FCC") issued an interpretive order construing the TCPA to exclude "online fax service[s]" from the definition of "telephone facsimile machine." This interpretation would mean McLaughlin and the accompanying class would have no claim under the TCPA as to the advertisements sent via online fax services.

The Hobbs Act allows parties to seek pre-enforcement review within 60 days of an interpretive FCC order. Relevant here, the Hobbs Act provides that "[t]he court of appeals … has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of … all final orders of the [FCC] made reviewable by section 402(a) of title 47." 28 U.S.C. § 2342. Based on that provision, the lower courts found that the FCC's order construing the TCPA to exclude "online fax service[s]" was a "final order[]" reviewable *only* by the court of appeals in a pre-enforcement suit. As such, the district court held that it was bound to accept the FCC's interpretation and granted summary judgment in favor of McKesson, which was affirmed by the Ninth Circuit.

The Supreme Court reversed, siding with McLaughlin. The Court held that the Hobbs Act's exclusivity provision does not prevent district courts from considering challenges to the FCC's statutory interpretations. Unlike the Clean Water Act and other statutes that specifically state agency action "shall not be subject to judicial review in any civil or criminal proceeding for enforcement," 42 U.S.C. § 9613(a), the Court found that the Hobbs Act is silent as to whether parties can challenge agency statutory interpretations during enforcement proceedings. When a statute is silent, the Court held the default rule is that courts must independently determine whether an agency's statutory interpretation was correct.

Justice Kagan, joined by Justices Sotomayor and Jackson, dissented, arguing that the Hobbs Act's grant of "exclusive jurisdiction" to federal courts of appeals to "determine the validity of" agency orders means that district courts in enforcement proceedings are barred from doing so. But the majority disagreed, finding that "determine the validity of" means "entering a declaratory judgment that declares the order valid or invalid." Since enforcement proceedings do not seek declaratory judgments as to validity, but rather determine liability, they are not covered by the exclusivity provision. The Court also dismissed concerns that permitting district court review of agency statutory interpretations under the Hobbs Act will result in uncertainty and conflicting orders.

This case signifies another move by the Supreme Court to strengthen courts' independent authority to interpret the law, even where an administrative agency has issued a formal order interpreting a statute. Businesses subject to adverse regulatory action should carefully consider the strength of the agency's legal analysis and, when assessing a potential judicial challenge, should bear in mind that a federal court is unlikely to give much (if any) deference to an agency's view of the law.

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