



Business Litigation Update

July 2025

Supreme Court Narrows Agency Deference in TCPA Litigation

On June 20, the U.S. Supreme Court issued a significant decision further clarifying the scope of judicial review of Federal Communications Commission (FCC) orders interpreting the Telephone Consumer Protection Act (TCPA). In a 6-3 opinion authored by Justice Kavanaugh, the court held that the Hobbs Act does not require a district court to follow an agency's order, but rather, the court should independently apply rules of statutory interpretation to determine a statute's meaning and assess the order's validity.

Background

The case, *McLaughlin Chiropractic Associates Inc. v. McKesson Corp.*, involved a putative class action alleging a TCPA violation involving junk faxes. After a class was certified, the district court held that under the Hobbs Act, it lacked authority to question an FCC order holding that the TCPA does not apply to online faxes and, as a result, decertified the class. The Ninth Circuit affirmed and the Supreme Court granted certiorari to resolve whether the Hobbs Act requires district courts to follow the FCC's legal interpretation in private enforcement actions.

Under the Hobbs Act, aggrieved parties have 60 days to seek review of rules and orders issued by certain administrative agencies before those orders can be enforced, i.e., the pre-enforcement review period, and appellate courts have "exclusive jurisdiction to enjoin, set aside, suspend..., or to determine the validity of" those orders. District courts have previously interpreted that language as mandating deference to an agency's interpretation.

Supreme Court Decision

In reaching the opposite conclusion, the Supreme Court considered three categories of statutes that allow for pre-enforcement review of agency rules and orders: those that expressly preclude judicial review in subsequent enforcement proceedings; those that expressly authorize or contemplate judicial review in subsequent enforcement proceedings; and those, like the Hobbs Act, that are silent on the issue.

The court held that when the statute does not expressly prohibit or authorize judicial review in subsequent civil enforcement proceedings, "a district court must independently determine for itself whether the agency's interpretation of a statute is correct" and that district courts must determine the meaning of the statute using ordinary principles of statutory interpretation while giving appropriate respect to the agency's interpretation.

The court reversed the Ninth Circuit's holding and remanded the case to the district court to interpret whether the TCPA applies to online faxes. Justices Kagan, Sotomayor, and Jackson dissented.

Implications

McKesson follows the court's recent ruling in *Loper Bright Enterprises v. Raimondo*, which eliminated the long-standing *Chevron* deference afforded to agency interpretations of ambiguous statutes. Together, these decisions signal a marked shift in the deference previously afforded to federal agencies by the judiciary, granting courts greater latitude to independently interpret federal statutes.

Though *McKesson* is a junk fax case, the ruling impacts other areas of TCPA litigation, including questions such as whether cell phones are “residential” and thus subject to the TCPA’s do-not-call provisions, whether text messages are “call[s]” under the TCPA, and whether the “called party” refers to the intended recipient or the actual person who receives a call.

While *McKesson* may prove helpful to TCPA defendants in litigation, entities that send text messages or make calls that may be subject to the TCPA are encouraged to be cautious and ensure their compliance.

FOR MORE INFORMATION

For more information, please contact:

Jessica E. Salisbury-Copper

937.443.6854

Jessica.Salisbury-Copper@ThompsonHine.com

Steven G. Stransky

216.566.5646

202.263.4126

Steve.Stransky@ThompsonHine.com

Jenna Schneider

513.352.6633

Jenna.Schneider@ThompsonHine.com

This advisory bulletin may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgment of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel.

This document may be considered attorney advertising in some jurisdictions.

© 2025 THOMPSON HINE LLP. ALL RIGHTS RESERVED.