

Another Crack in the Agency Armor – Supreme Court Further Expands Judicial Review of Certain Federal Agency Actions

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On June 20, 2025, the Supreme Court issued a 6-3 [opinion](#) holding that U.S. district courts are not bound to follow a federal agency’s interpretation of a statute even though the Hobbs Administrative Orders Review Act (“Hobbs Act”) gives federal courts of appeal exclusive jurisdiction to hear pre-enforcement challenges to certain agency actions.[\[1\]](#) The decision is the latest in a string of cases in which the Court has broadened the judiciary’s role in judicial review of agency actions at the expense of the deference formerly afforded to federal agencies.

Background

The case is a class action lawsuit under the Telephone Consumer Protection Act (“TCPA”) alleging that the defendant sent unsolicited fax advertisements both to physical fax machines and through online fax services. During the pendency of the action, the Federal Communications Commission (“FCC”)—the agency charged with issuing and implementing rules and regulations for the TCPA—issued a declaratory ruling that the TCPA only applied to faxes sent to fax machines, and not through online fax services. Because the Hobbs Act grants the Courts of Appeal exclusive jurisdiction to hear pre-enforcement challenges of final orders, the district court treated the FCC’s declaratory ruling as a binding final order, and granted summary judgment to the defendant for claims involving faxes received through online fax services. The Ninth Circuit upheld the district court’s decision on appeal.

Decision: SCOTUS Reverses the Ninth Circuit

Writing for the majority, Justice Kavanaugh held 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.”[\[2\]](#) The majority articulated a “default rule” under “fundamental principles of administrative law” that, where statutes like the Hobbs Act neither expressly preclude judicial review in enforcement proceedings (as the Clean Water Act does), nor expressly allow it (as the FTC Act does), a district court may still render an independent interpretation of the statute.[\[3\]](#) The Court offered several policy justifications for such a rule, including that its approach “avoids unnecessary litigation” by not requiring parties to bring Hobbs Act challenges on purely theoretical issues that may never materialize, and also avoids due process concerns that precluding judicial review outside the Hobbs Act would pose for parties that may not have existed or have been in the position to challenge a final order during the window the Hobbs Act allows.[\[4\]](#)

In dissent, Justice Kagan argued that the majority improperly narrows the “exclusive” authority the

Hobbs Act grants to courts of appeal.^[5] According to the dissent, its new rule diminishes “[t]he finality and certainty of . . . even the most solid-seeming regulatory regimes,” and “[n]o one will know what they can rely on.”^[6]

Impact of the Decision

The opinion follows nearly one year to the day after the *Loper Bright* and *Jarkesy* decisions, in which the Supreme Court overturned the longstanding *Chevron* doctrine of judicial deference to agency interpretations, and imposed limitations on the ability of agencies to pursue civil penalties without a trial in district court. Our summary of those cases is available [here](#). And we’ve already seen courts of appeal use *Loper Bright* to evaluate TCPA regulations, including when the Eleventh Circuit [struck down the “one-to-one consent” rule](#) earlier this year. This case continues the Court’s effort to rein in the power of federal agencies, favoring judicial interpretation and oversight instead.^[7]

TCPA litigants will have new opportunities to challenge FCC statutory interpretations previously assumed to be unreviewable in the district courts. But the ruling is not limited to the TCPA or the Hobbs Act: it applies to any statutory scheme authorizing pre-enforcement judicial review that does not expressly preclude nor authorize later review, including the Securities Act of 1933,^[8] the Investment Companies Act of 1940,^[9] and the Occupational Safety and Health Act.^[10]

In its new, post-*Chevron* regime, the Court also continues to refer to “appropriate respect to the agency’s interpretation”^[11]—the same language it used in *Loper Bright*.^[12] Again, the Court declined to elaborate. *Loper Bright* makes clear that “respect” is something short of “deference,” but how far short? Before the *Chevron* doctrine, agency interpretations were generally evaluated under *Skidmore v. Swift & Co.*, which granted weight to an agency’s interpretations dependent on “the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.”^[13] Absent further guidance from the Court, the *Skidmore* “power to persuade” standard is the best guess for the standard under which agency interpretations should be evaluated.

Summer Associate Addison Dascher contributed to this post.

^[1] As explained in the opinion, the Hobbs Act gives exclusive jurisdiction to the circuit courts “‘to enjoin, set aside, suspend (in whole or in part), or to determine the validity of . . . all final orders of the Federal Communication[s] Commission made reviewable by section 402(a) of title 47.’ 28 U.S.C. § 2342(1). Under the [statute], when the FCC issues certain orders, any ‘party aggrieved’ has 60 days to file a petition in a court of appeals seeking review of the order and declaratory or injunctive relief against the enforcement of the order. §§ 2342, 2344, 2349. . . . The Hobbs Act also governs review of certain actions of the Department of Agriculture, Department of Transportation, Federal Maritime Commission, Nuclear Regulatory Commission, Surface Transportation Board, and Department of Housing and Urban Development. §§ 2342(2)–(7).” *McLaughlin Chiropractic Associates, Inc. v. McKesson Corp.*, No. 23-1226, slip op. at 4-5 (2025).

^[2] *McLaughlin*, slip op. at 4.

^[3] *McLaughlin*, slip op. at 7.

^[4] *Id.*, slip op. at 10-11.

^[5] *Id.*, slip op. at 13 (Kagan, J., dissenting).

[6] *Id.*, slip op. at 14 (Kagan, J., dissenting).

[7] *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 402 (2024).

[8] 15 U.S.C. § 77i.

[9] 15 U.S.C. § 80a-42.

[10] 29 U.S.C. § 655(f).

[11] *McLaughlin*, slip op., at 4.

[12] *Loper Bright*, 603 U.S. at 402.

[13] 323 U.S. 134, 140 (1944).