



Supreme Court Avoids Answering Question On Hobbs Act Deference To FCC Orders

PDR Network, LLC v. Carlton & Harris Chiropractic Inc., No. 17-1705

Decided June 20, 2019

Today, the Supreme Court declined to resolve whether the Hobbs Act requires district courts to follow FCC Orders construing the Telephone Consumer Protection Act (“TCPA”), remanding for the court of appeals to consider “two preliminary issues.”

Background:

Petitioners (collectively, “PDR Network”) sent healthcare providers an unsolicited fax offering free copies of an e-book about prescription drugs. One of the providers sued PDR Network for violating the TCPA, which prohibits any person from faxing “unsolicited advertisement[s].” 47 U.S.C. § 227(b)(1)(C). The district court dismissed the case, refusing to follow a 2006 FCC Order stating that faxes promoting free goods or services are an “unsolicited advertisement” under the TCPA. Reversing, the Fourth Circuit reasoned that the Hobbs Act, which gives federal courts of appeals “exclusive jurisdiction” to determine the validity of certain FCC “final orders,” 28 U.S.C. § 2342(1), required the district court to adopt and apply the FCC Order’s interpretation of the TCPA.

Issue:

Whether the Hobbs Act requires district courts to follow FCC Orders construing the TCPA.

“[T]he extent to which the Order binds the lower courts may depend on the resolution of two preliminary sets of questions that were not aired before the Court of Appeals.”

Justice Breyer,
writing for the majority

Gibson Dunn submitted an *amicus* brief on behalf of state and local government associations in support of Petitioners:

*PDR Network, LLC,
PDR Distribution, LLC, and
PDR Equity LLC*

Court's Holding:

The Court did not answer the question. Instead, it remanded for the Fourth Circuit to determine (1) whether the FCC Order is a “legislative” or “interpretive” rule, and (2) whether PDR Network had a “prior” and “adequate” opportunity to challenge the FCC Order under the Administrative Procedure Act, 5 U.S.C. § 703.

What It Means:

- The decision leaves unresolved whether the “exclusive jurisdiction” provision of the Hobbs Act requires district courts to adopt and follow an FCC Order interpreting the TCPA.
- Under the Court’s holding, there are two ways the Fourth Circuit on remand might avoid answering the broader question presented. First, if the FCC Order is an interpretive rule, not a legislative rule, then it would merely announce the agency’s construction of the statute and “may not be binding on the district court.” Second, if PDR Network lacked a “prior” and “adequate” opportunity under the Administrative Procedure Act to challenge the FCC Order, 5 U.S.C. § 703, then PDR Network “may” be able to mount that challenge in the current proceeding, even if the FCC Order were a legislative rule.
- Justice Kavanaugh wrote a concurring opinion that Justices Thomas, Alito, and Gorsuch joined. He reasoned that the Hobbs Act neither bars PDR Network from challenging the FCC Order’s interpretation of the TCPA nor requires district courts to adopt the FCC’s interpretation. Holding otherwise, Justice Kavanaugh continued, would improperly give the agency’s interpretation the legal force of a statute “no matter how wrong the agency’s interpretation might be.”
- Justice Thomas also wrote a concurring opinion that Justice Gorsuch joined. He reasoned that, if the Hobbs Act precludes district courts from independently construing the TCPA, then the Hobbs Act “would trench upon Article III’s vesting of the ‘judicial Power’ in the courts.” Likewise, if the Hobbs Act requires district courts to give the force of law to an agency’s statutory interpretation, then it would violate Article I’s vesting of the legislative power in Congress.

As always, Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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