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TCPA Alert

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Supreme Court limits FCC authority in TCPA civil enforcement cases

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A SCOTUS ruling weakens FCC authority in TCPA cases, exposing businesses to greater litigation risk and requiring a fresh look at compliance strategies across jurisdictions.



What's the impact?

- Businesses can no longer rely solely on previously settled agency guidance or safe harbors, increasing the risk, unpredictability, and complexity of TCPA compliance strategies.
- Federal district courts now must independently interpret the TCPA's statutory provisions under ordinary principles of construction, giving only "appropriate respect" to agency interpretations and orders previously considered binding on courts sixty (60) days after entry.
- Counsel for both plaintiffs and defendants in TCPA civil enforcement actions may seize opportunities to craft new arguments, liability theories, and defenses, urging courts to consider alternative interpretations of statutory text.

In the Supreme Court TCPA decision, [*McLaughlin Chiropractic Associates, Inc. v. McKesson Corporation*](#), the Court held that district courts hearing civil enforcement lawsuits under the Telephone Consumer Protection Act of 1991 (TCPA) are not bound by a prior Federal Communications Commission (FCC) interpretation of the statute. The Court ruled, six to three, that the Hobbs Act's grant of "exclusive jurisdiction" to the courts of appeals for pre-enforcement challenges does **not** compel trial-level judges to adopt an agency's reading of a statute when the same issue surfaces later in an enforcement or private civil action. As cited by the Court, the "fundamental principles of administrative law establish the proper default rule: [i]n enforcement proceedings, district courts must independently determine whether an agency's statutory interpretation is correct, rather than being bound by the agency's interpretation."

While the underlying case centered on an FCC order interpreting the term "telephone facsimile machine" in the TCPA, this decision will reverberate well beyond unsolicited faxes. It will impact the approaches parties undertake when considering and engaging in civil litigation under not only the TCPA, but federal agency actions taken pursuant to other statutory frameworks covered by the Hobbs Act—including, as [Justice Kagan's dissent](#) points out, rules issued by the Nuclear Regulatory Commission and certain orders issued by the Secretary of Transportation.

One year after the Court's *Loper Bright* decision [overruling Chevron](#), *McLaughlin* demonstrates the continued shift of power away from administrative agencies to the courts and the expansion of market participants' ability to challenge agency determinations. [This ruling](#) accelerates the Court's retreat from a framework that previously granted administrative agencies significant deference as it pertained to the application and interpretation of the law, and affirms the "commanding role" that courts now play in "every sphere of current or future federal regulation[.]"

Supreme Court decision on FCC deference

In early 2010, McKesson Corporation's (McKesson) subsidiary sent promotional faxes to medical practices. Some recipients used traditional fax machines; others received messages through online fax services that deliver faxes by email or web portal. As noted in *McLaughlin*, the case centered on whether such transmissions fell under the TCPA's scope.

In 2014, *McLaughlin Chiropractic Associates* (*McLaughlin*), one of the recipients, filed a putative class action under the TCPA—which sets statutory damages of at least \$500 per fax—alleging that the transmissions lacked the required opt-out notice.

Months after the putative class was certified, a company unrelated to the litigation petitioned the FCC to make a declaratory ruling assessing whether the TCPA applies to faxes received through online fax services. The Court further explained that this procedural overlap added complexity to the case.

While the *McLaughlin* case was ongoing, the FCC issued the [Amerifactors declaratory ruling](#), interpreting the TCPA's definition of "telephone facsimile machine" to exclude online fax services. Relying on Ninth Circuit precedent, the district court treated the FCC's order as binding and granted summary judgment to McKesson on the online fax claims, concluding that the Hobbs Act required deference to the FCC's interpretation. As reaffirmed in *McLaughlin*, the Ninth Circuit upheld this view.

Having granted certiorari, the Court reversed and remanded, holding that absent express statutory preclusion of judicial review, in an enforcement proceeding, a district court is not bound by an agency's pre-enforcement statutory interpretation. The Court held in *McLaughlin* that trial courts must conduct their own statutory analysis.

How the ruling impacts TCPA litigation strategy

The Hobbs Act gives courts of appeals "exclusive jurisdiction" to review a variety of agency rules and orders in pre-enforcement petitions, but it does not strip district courts of the power to interpret a statute in later enforcement suits. As clarified by the Court in *McLaughlin*, a district court that rules on liability under the statute does not "determine the validity" of an agency order in the sense contemplated by the Hobbs Act; it merely applies the law to the case before it. The Court further emphasized that district courts must conduct their own analysis under "ordinary principles of statutory interpretation," giving the agency's view appropriate respect but not treating it as binding.

Wider implications for federal regulatory enforcement

As a consequence of this case, district courts are no longer precluded from engaging anew in statutory interpretation of terms under the TCPA previously considered settled by FCC orders and guidance. The FCC may likely issue fewer interpretations and engage in more methodical rulemaking intended to persuade courts, anticipating that interpretive guidance will receive no automatic deference when eventually litigated. While parties retain the option to petition the FCC for declaratory rulings or rulemakings, the Court signaled that such relief is "largely illusory" because the agency may decline, and courts review that refusal deferentially. Federal district courts will likely encounter more entities bringing more claims that litigate questions of perceived statutory ambiguity directly, further escalating the volume and stakes of TCPA cases against an increasingly complex backdrop of newly created circuit splits.

Reevaluating TCPA compliance across jurisdictions

Businesses have built communication strategies around FCC guidance. *McLaughlin* marks a shift away from automatic deference to agency interpretations by the Court. Businesses subject to the TCPA and similar statutes can no longer rely solely on agency guidance to protect against

enforcement exposure. In light of this ruling, organizations should take stock of their practices to reevaluate whether their processes can withstand the risk of litigation. To the extent applicable, organizations should begin to recalibrate their compliance posture and tailor their approach to consider differing judicial interpretations across jurisdictions.

To discuss how this decision may affect your organization's TCPA compliance strategy, please contact your Nixon Peabody attorney or:

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