Supreme Court Signals Move Away from Judicial Deference to Administrative Agencies

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KEY TAKEAWAYS

- In three decisions released late last month, the U.S. Supreme Court demonstrated increased skepticism of judicial deference to administrative agencies' statutory interpretations.
- While the decisions do not overrule or even mention *Chevron*[1] deference – the doctrine that courts generally should defer to a federal agency's interpretation of an ambiguous statute – the decisions open the door to more aggressive examination by the courts of agency interpretations that arguably stray from the underlying statutory language.

In a unanimous decision on June 15, 2022, the Court in *American Hospital Association v. Becerra*[2] examined a Medicare reimbursement formula reduction that affected certain hospitals. While rejecting the DHHS agency interpretation of the reimbursement statute, the Court made no mention of *Chevron* deference even though the parties extensively briefed this doctrine. Instead, the Court focused solely on the relevant language of the statute. In particular, the Court held that the "text and structure" of the statute demonstrated that the Medicare reimbursement cut was not consistent with the statute.

In a 5-4 decision a few weeks later, the Court in *Becerra v. Empire Health Foundation*[3] again made no mention of *Chevron* deference even though the majority noted that the underlying statute's "ordinary meaning … [did] not exactly leap off the page." Despite its initial conclusion that the ordinary meaning of the statutory language was unclear, the Court continued its recent pattern of (a) choosing to not apply *Chevron* deference directly and (b) instead performing textural and structural analysis of its own. Based on this statutory analysis, the Court in *Empire Health* concluded that the statute was "surprisingly clear" if read as technical provisions for specialists and that the language of the statute supported the agency's implementing regulation.

Finally, in *West Virginia v. EPA*,[4] the Supreme Court in a 6-3 decision again refused to give any deference to the EPA's interpretation of a Clean Air Act provision which the EPA claimed as the statutory basis to regulate greenhouse gas emissions by power plants. The Court concluded that the EPA had violated the "Major Questions" Doctrine when the EPA used this provision to regulate carbon emissions. Under the "Major Questions" Doctrine, an agency cannot make decisions of vast economic and political significance without Congress expressly giving the agency the power to do so. Since the EPA's effort to regulate greenhouse gases by making industry-wide changes was a decision of "vast economic and political significance," the Court concluded that the EPA lacked the authority to do so in light of the overall nature and structure of the statute. Thus, even though there was some textual support for the EPA's position, the Court again refused to defer to the agency and its interpretation of a statute.

Read together, these three decisions show an increased skepticism by the Court of agency interpretations of statutes and signal that going forward, the federal courts will more closely scrutinize administrative agency decisions in general. Businesses that have, to date, relied on an administrative agency interpretation may need to reassess their reliance if the interpretation relies on a broad or strained reading of a statute. Conversely, businesses currently restrained by agency

interpretations which were shown deference by courts may now have an opening to challenge those interpretations.

In this uncertain environment, it may be helpful to get guidance from experienced counselors. Please contact your Miller Canfield attorney or any of the authors to discuss these developments further.

[1] *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

[2] *Am. Hosp. Ass'n v. Becerra*, 142 S. Ct. 1896 (2022).

[3] *Becerra v. Empire Health Found., for Valley Hosp. Med. Ctr.*, 142 S. Ct. 2354 (2022).

[4] *W. Virginia v. Env't Prot. Agency*, 142 S. Ct. 2587 (2022).