
Today, the Supreme Court returned to the lower courts the question whether a 2006 order by the Federal Communications Commission (FCC) is binding on the district court in this case, holding that resolution of that question may depend on the resolution of two preliminary questions: (1) whether the order is the equivalent of a “legislative rule” that has the force of law; and (2) whether the party challenging the FCC’s interpretation had a prior and adequate opportunity to seek judicial review of the order.

Background: Petitioners produce a reference guide about prescription drugs, and they sent healthcare providers faxes stating that the providers could reserve a free copy of the e-book version of the reference guide. One fax recipient brought a putative class action, alleging that the fax was an “unsolicited advertisement” within the meaning of the Telephone Consumer Protection Act (TCPA). The district court dismissed the case but the Fourth Circuit reversed, concluding that the Hobbs Act—which gives courts of appeals exclusive jurisdiction to determine the validity of certain final orders by the FCC—required the district court to follow the FCC’s 2006 interpretation of the term “unsolicited advertisement” as including “any offer of a free good or service.”

Issue: Whether the Hobbs Act required the district court in this case to accept the FCC’s legal interpretation of the TCPA.

Court’s Holding: In an opinion written by Justice Breyer and joined by Chief Justice Roberts and Justices Ginsburg, Sotomayor, and Kagan, the Supreme Court vacated and remanded. The Court did not reach the issue on which it had granted review, instead holding that the answer to the question may rest on two preliminary issues that the courts below had not decided: first, whether the FCC’s 2006 order is the equivalent of a “legislative rule” that has the force and effect of law, or is instead an “interpretive rule” that is merely advisory; and second, whether petitioners had a prior and adequate opportunity to seek judicial review of the FCC’s 2006 order before being named as defendants in this lawsuit.

Justice Thomas and Justice Kavanaugh authored concurrences in the judgment. Justice Kavanaugh’s concurrence, in which Justices Thomas, Alito, and Gorsuch joined, stated that he would have decided the issue on which the Court granted review and held that the district court was entitled to interpret the TCPA under ordinary principles of statutory interpretation and was not required to accept the FCC’s interpretation of the statute. Justice Thomas, joined by Justice Gorsuch, would have gone further and held that “[a] contrary view would arguably render the Hobbs Act unconstitutional” by “trench[ing] upon Article III’s vesting of the ‘judicial Power’ in the courts.”