BERGER SINGERMAN
FLORIDA'S BUSINESS LAW FIRM

FLORIDA'S REJECTION OF CHEVRON DEFERENCE

December 18, 2018

By: Colin M. Roopnarine and Daniel H. Thompson

Amendment 6 to the State Constitution has delivered a severe blow to that pillar of state administrative law elucidated in numerous legal opinions and treatises – an agency is afforded great deference in the interpretation of the statutes and rules over which it exercises jurisdiction. In 1984, the U.S. Supreme Court handed down the landmark decision in Chevron U.S.A., Inc. v. NRDC, 467 U.S. 837 (1984), wherein the Court strongly supported judicial deference to agencies' interpretations of the statutes over which it has jurisdiction. The Court used a two-prong test that involved the following inquiries – 1) whether Congress "directly addressed the precise question at issue," a positive response to which would end the inquiry because the Court would have to "give effect to the unambiguously expressed intent of Congress; 2) but if the response to 1) was negative and the statute was deemed "silent or ambiguous with respect to the specific issue," the Court would then examine whether the agency's interpretation was reasonable. Florida showed support for the doctrine when the Court ruled in Florida Interexchange Carriers Association v. Clark, 678 So. 2d 1267 (Fla. 1996), that "an agency's interpretation of a statute it is charged with enforcing is entitled great deference and will be approved by this court if it is not clearly erroneous." (Emphasis added).

The Chevron decision became universally synonymous with "judicial deference to the agency interpretation of a statute over which that agency has jurisdiction." In part, the rationale behind this decision included the fact that agencies tend to have expertise in areas governed by the statutes over which they have jurisdiction, agencies may need flexibility in the interpretation of their statutes in the event of unforeseen industry developments or problems, and perhaps most importantly, deference promotes uniformity. Without delving too deeply into administrative law history, agencies both federal and state were at one time notorious for the haphazard and at times contradictory approach to matters they administered. There was very little uniformity, for example in the issuance of licenses, as different agency personnel would interpret the same statute differently. The deference standard gave agencies a base to assist in supporting its efforts to engage in uniform actions and provide uniform results. The effect was that the population for the most part could reasonably predict agency action, and the regulated business community could rely on the government for regulatory consistency which in turn led to better long-term management and planning. But where on the one hand there was a perception of clarity, uniformity and predictability, on the other hand there was an argument being made that Chevron created a judicial bias in favor of state agencies. It is possible that in response to this perception of bias, the Constitutional Revision Commission arrived at Amendment 6. Florida is not alone, however, and the state may have been prescient in the passage of Amendment 6, because Mississippi, Arizona and Wisconsin have also rejected the Chevron deference standard. Earlier this year additional states are urged the Supreme Court to take up the case California Sea Urchin Commission v. Combs which, with the elevation of Brett Kavanaugh to the bench could have signaled an end to Chevron deference, but in the end the Court denied certiorari.

For more information on this topic, please contact the authors, Colin Roopnarine and Dan Thompson, on the firm's Government and Regulatory Team.

---

[1] For the legal history buffs, Chevron was a clarification and expansion of NLRB v. Hearst Publications, Inc., 322 U.S. 111 (1944), wherein the Court rendered its decision by relying on whether Congress had delegated

responsibility to an agency to clarify statutory terms, and if so found, then such clarification though permissible must be made within judicial boundaries.

[2] It should be noted that not every state adopted the Chevron standard of deference. See Yamaha Corp. of America v. State Bd. Of Equalization, 19 Cal. 4th 1, 7 (1998), out of the State of California.

[3] In fact, the Florida Administrative Procedures Act was enacted in significant part to rein in rogue agencies by requiring transparency and consistency in their rulemaking endeavors.

Related Practices

Administrative Hearings & Appeals

Related Practice Teams

Government and Regulatory

Related Team Member(s)

Colin M. Roopnarine

Daniel H. Thompson

Topics

Administrative Law

Government and Regulatory