Supreme Court to Hear TCPA Class Action on Unsolicited Faxes and Online Fax Services

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For the second time in five years, the U.S. Supreme Court will decide a case that arises out of the Telephone Consumer Protection Act's (TCPA) ban on the sending of unsolicited faxes. On Friday, October 3, 2024, the Court said it would hear arguments about whether to reopen a class action lawsuit filed by a group of chiropractors, McLaughlin Chiropractic Associates (the McLaughlin Class), against medical tech company McKesson Corp. (McKesson).

Case Background

The McLaughlin Class filed their class action lawsuit against McKesson on the grounds that McKesson violated the TCPA by sending unsolicited fax advertisements to members of the Class. Some of these advertisements were sent to class members via online fax services. The McLaughlin Class alleged that these unsolicited fax advertisements violated the Federal Communications Commission's (FCC) interpretation of the TCPA under the Hobbs Act.

The Ninth Circuit Court of Appeals upheld the decision of the Northern District of California, which had decertified the McLaughlin Class on the grounds that the Class could not identify which faxes had been sent by McKesson via an online fax service or which faxes had been sent by a traditional fax machine.

The McLaughlin Class's Argument

The McLaughlin Class subsequently filed its petition for a writ of certiorari in May 2024. In their petition, the McLaughlin Class specifically asks the Court to expand its 2019 ruling in *PDR Network, LLC v. Carlton & Harris Chiropractic Inc.*, which stopped short of deciding whether the Hobbs Act requires a district court to accept the Federal Communications Commission's (FCC) interpretation of the TCPA. The McLaughlin Class contends that the Court's lack of interpretation on the FCC's guidance and the Hobbs Act has prevented the justices from making a full determination about the scope of the TCPA and online fax communications.

Legal Implications

This matter presents a unique challenge for this Supreme Court, which eviscerated "*Chevron*" deference in *Loper-Bright Enterprises v. Raimondo* last term. While some may expect the Court to take a similar approach to this case as it involves a federal agency's interpretation of a statute, the Hobbs Act operates on a different

wavelength as the FCC's interpretation of the statute takes away power from the courts to review the FCC's decision-making under the TCPA. The Court skirted these arguments in *PDR Network,* but given its decision in *Loper-Bright*, it is possible that the Court further weakens agency interpretation of statutes, like the Hobbs Act at issue here. Depending on which way the Court rules, this could lead to greater litigation under the TCPA as the FCC would no longer be able to rely on its regulatory "crutch" to interpret what exactly the TCPA means.

This item also appeared in the ABA Business Law Section's October 2024 in Brief: Business Regulation & Regulated Industries.

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