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Inside this Issue

SCOTUS 2024

The October 2023 term of the Supreme Court of the United States (SCOTUS), which ended on July 1, 2024 with a surprising decision on presidential immunity, included many significant and far-reaching decisions.

We believe that the most important decision was rendered in a case known as *Loper Bright Enterprises v. Raimondo.* In that case, the Court rejected the longstanding rule in administrative law (at the federal level) that the courts would defer to the interpretation of ambiguous statutes provided by administrative agencies with jurisdiction over those statutes, due to their greater expertise with regard to the subject matter. In the 1984 decision in *Chevron USA v. Natural Resources Defense Council, Inc.,* the SCOTUS required courts to defer to reasonable interpretations of ambiguous statutes by the applicable agency.

Now, under *Loper Bright,*[1] federal trial courts must exercise their independent judgment to resolve any such ambiguities. The Court, in a 6-3 decision, held that the Administrative Procedure Act actually requires the courts, not the administrative agencies with jurisdiction, to resolve any questions of law with regard to ambiguous or silent statutes, on the precise question presented.

[1] *Loper Bright* is here: https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

Importantly, the Court in *Loper Bright* noted that the *Chevron* presumption that statutory ambiguities are implicit delegations to agencies, to apply their expertise to resolve the ambiguities, was never correct. The *Loper Bright* Court concluded that agencies have no special competence in resolving statutory ambiguities, because that exercise is reserved to the trial courts, as it would be in cases not involving agency regulations. The *Loper Bright* majority did seem to recognize that it would be appropriate for the trial court to consider, along with all other relevant information, the agency's "body of experience and informed judgment," in the court's process of discerning congressional intent behind an ambiguous statute.

The Court rejected out of hand the government's contention that the *Chevron* deference rule fostered uniform interpretations of federal law. The Court expressed doubt that the rule actually led to such uniformity. Also, the Court said it was a mistaken view that such interpretation of ambiguous statutes was a sort of policymaking, which is best done by "political actors" rather than the courts. Somehow it seems wrong to us to just assume that administrative agency personnel are political actors, who will follow the party line of the President or current Executive branch administration, rather than recognizing that many agency personnel have served with distinction for many years, regardless of which political party happens to be in office for a four- or eight-year period or term. It seems to us undeniable that some agencies do appear to shift with the political winds, but many others often do not.

One aspect of appellate decisions is always worth discussing, and that is the question whether the new decision provides good guidance to parties subject to the jurisdiction of the agency. Does this decision create more uncertainty or less? Does this decision help agencies to do their jobs better or not?

In conjunction with *Loper Bright,* perhaps we need to consider the impact of another decision of SCOTUS in this term.

In *Corner Post, Inc. v. Board of Governors of the Federal Reserve System,* No. 22-1008, a merchant challenged the six-year statute of limitations of 28 U.S.C. 2401(a). Under the Administrative Procedure Act, Corner Post challenged Regulation II of the Federal Reserve as allowing higher interchange fees than the statute permits.

The high Court ruled that the six-year statute does not run from the date the rule is adopted. Rather, it begins to run when the plaintiff is injured by the rule. This decision, coupled with the *Loper Bright* decision, seems to open up a fertile field for challenges to government regulations at the federal level. We predict litigation will increase, not decrease, due to these two decisions.

In yet another decision that shows the Supreme Court is bound and determined to reduce the power of administrative agencies, the Court ruled in *Securities and Exchange Commission v. Jarkesy,* No. 22-859, that the 5th Circuit Court of Appeals was correct in deciding, in a securities fraud case, Jarkesy was entitled to a jury trial under the Seventh Amendment to the U.S. Constitution. The essence of the Court's holding was that, when an action (such as one alleging fraud) is akin to claims brought under the common law, jury trial must be allowed, and not an agency adjudication. This case also has broad implications for other federal administrative

agencies. As stated above, taken together with other Supreme Court cases decided this term, it is evident that a reduction of power for administrative agencies, if not a total dismantling of the so-called "deep state" is well under way in Supreme Court jurisprudence.

TWO CASES RELATING TO HOMELESSNESS ISSUES

Recently, two judicial actions related to homelessness are worthy of note. One involved the SCOTUS again, and the other came down from the State of Washington courts.

In *City of Grants Pass, Oregon v. Johnson,* No. 23-175,[2] SCOTUS held that the City of Grants Pass, Oregon legally prohibited camping on city streets and city-owned property by an ordinance. The Ninth Circuit, the court whose decision was under review, had held that the Eighth Amendment's Cruel and Unusual Punishment Clause bars cities from enforcing public-camping ordinances like these against homeless individuals, whenever the number of homeless persons exceeded the "practically available" shelter beds. The high Court disagreed. It distinguished cases such as *Robinson v. California,* 370 U.S. 660, in which the Court held that California could not enforce a law providing that no person shall be addicted to the use of narcotics, because that law punished a *status* as a criminal offense. The Grants Pass law did not criminalize a *status*, the Court said.

The Court basically saw this law as one regulating behavior/conduct, and rejected the idea that somehow homelessness was involuntary. In any event, this would probably be welcome news to municipalities and some fire district/RFA clients of ours, who have had difficulties with homeless encampments in recent years.

Within one week after the *Grants Pass* decision, on July 3, 2024, the Supreme Court of the State of Washington decided *Potter v. City of Lacey,* No. 101188-1.[3] *Potter* was certified to the court by the Ninth Circuit for determination of a state law question. Jack Potter lived in a 23-foot trailer hitched to his truck, which he parked on public lots and streets in the city of Lacey. In 2019, the city passed an ordinance barring people from parking such large vehicles and trailers on public lots and streets for more than four hours per day. Mr. Potter sued, arguing that he had a right to reside where he wanted and that this right derived from his constitutional right to travel intrastate.

The State Supreme Court said no authority was presented to support the arguments for a "right to reside", which seems to be more like a right *not* to travel! The court cited authority from the state of Maine that held the opposite—that there is no (federal) constitutional right to intrastate travel that protects one's right to remain in a particular place, in a particular manner, in a vehicle. Moreover, the court added, that there is binding Washington authority upholding the police power or right to regulate parking in a city. Cities can clearly enact vehicle and traffic regulations which are not in conflict with general laws of the state.

Holding that the plaintiff could not show the Lacey's parking ordinance violated his asserted constitutional right to reside in that manner, the court unanimously held that Mr. Potter did not

[2] *Grants Pass* is here: https://www.supremecourt.gov/opinions/23pdf/23-175_19m2.pdf

[3] *Potter* is here: https://www.courts.wa.gov/opinions/pdf/1011881.pdf

prove any constitutional violation. In a footnote, the court also rejected a late attempt to re-frame the issue as a violation of the "cruel and unusual punishment" clause contained in Article I, Section 14 of the State Constitution, or the protections of freedom of association set out in Article I, Section 5 of the State Constitution.

INTERESTING PUBLIC RECORDS CASE ON DELIBERATIVE PROCESS EXEMPTION

On July 16th the Court of Appeals, Division II, in *Citizens Action*,[4] issued an interesting opinion on the "deliberative process" exemption contained in the Public Records Act at RCW 42.56.280. This exemption, which many of our readers will be familiar with, exempts from disclosure "preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended…."

These pre-decisional records are exempt unless they are cited publicly by the agency or its agents. *See* RCW 42.56.280. The question in this case, however, was whether the facts showed that the records in question were "pre-decisional." It was undisputed that, once a decision is made, such records are no longer exempt. The records being sought here were the original proposals put forth in bargaining by both labor and management.

The court held that such records are in fact pre-decisional because the implementation of the proposals is not implemented until the Legislature funds the collective bargaining agreements in question. We will omit the details because the point we wish to make for local governments engaged in collective bargaining under RCW 41.56 (for example) is that records related to bargaining are exempt, we would think, until the collective bargaining agreement (CBA) is ratified by both parties—the elected officials for the management side, and the rank and file covered bargaining unit members, for the labor side. In other words, a CBA tentatively agreed to by both labor and management bargaining teams is still covered by the deliberative process exemption, under the rationale of the *Citizens Action* court.

Update: RFA wins tribal case

As we reported in a previous *Firehouse Lawyer* article (See July 2023 issue), the Chehalis Tribe, which owns the Great Wolf Lodge property in southern Thurston County, filed a legal action against the West Thurston Regional Fire Authority, claiming that the tribe was entitled to be served by the RFA, whether the parties entered into a contract or not.

The Attorney General had authored a legal opinion that a fire district has a statutory duty to serve all properties within the jurisdictional boundaries of the district, including tribal lands. See AGO 2021, No. 3. However, the AGO did state that a fire district may withdraw property from its service area boundaries. In this instance, that is exactly what the RFA did, pursuant to RCW 52.26.110.

The Thurston County Superior Court this month granted a summary judgment to the RFA, dismissing the tribe's case, holding that the RFA followed the withdrawal statute and there was no showing that this statute (RCW 52.26.110) is unconstitutional.

[4] *Citizens Action* is here: https://www.courts.wa.gov/opinions/pdf/D2%2058331-3-II%20Published%20Opinion.pdf

This is the type of factual situation that we were alluding to in our article concerning civil disputes with Indian tribes, when a state statute is involved but the dispute does pertain to tribal lands, in our *Firehouse Lawyer* article on Indian law in the September 2023 edition[5] of this newsletter. We think the decision is an important one, but stay tuned. Incidentally, the RFA was represented by Attorney Eric Quinn.

Was GEMT Changed?

During 2023, there was widespread concern that the Washington State Health Care Authority was going to modify certain aspects of the GEMT reimbursement process. GEMT stands for Ground Emergency Medical Transportation. Specifically, a suggested amendment to the State Plan, the proposed SPA 23-0009 would have affected reimbursement for certain transports or situations where the provider engaged in "Treat and Refer," when patients were not actually transported.

Having reviewed the applicable WAC regulations and having contacted the Section Manager at the Health Care Authority, we are able to confirm that SPA 23-0009 was withdrawn from consideration in May of 2024. The WACs remain unchanged, with respect to the definitions, such as "Treat and Refer."[6] Stay tuned for any developments.

[5] https://firehouselawyer.com/Newsletters/September2023FINAL.pdf

[6] See the regulation pertaining to "treat and refer services" here: https://app.leg.wa.gov/WAC/default.aspx?cite=182-531-1740

Important Case Re Religious Discrimination

On July 25, 2024, the Washington Supreme Court rendered a pivotal decision in the case of *Suarez v. State of Washington*,[7] addressing the intricate balance between religious accommodation and workplace requirements under the Washington Law Against Discrimination (WLAD). Adelina Gabriela Suarez, a nondenominational Christian, was employed by Yakima Valley School, a state-operated nursing facility. Her faith mandated observing a Saturday Sabbath and certain religious holidays, leading her to request Saturdays off. Her employer denied these requests, citing staffing requirements and adherence to a CBA that dictated employee schedules based on seniority.

The conflict came to a head when Suarez called in on September 29, 2019, stating she could not work due to her religious beliefs. Subsequently, she was terminated. Suarez filed a lawsuit, asserting that Yakima Valley failed to accommodate her religious practices and terminated her in violation of public policy as protected under the WLAD. The procedural history is extensive. Initially, the superior court sided with Yakima Valley, granting summary judgment and dismissing Suarez's claims. The Court of Appeals reversed this decision, prompting a review by the Washington Supreme Court.

The core of the dispute revolved around what constitutes an "undue hardship" for employers under the WLAD. Historically, under Title VII of the Civil Rights Act of 1964, the "undue hardship" defense was defined by the Supreme

[7] *Suarez* is here: https://www.courts.wa.gov/opinions/pdf/1013868.pdf

Court in *Trans World Airlines, Inc. v. Hardison* as anything more than a de minimis cost to the employer. The Washington Supreme Court had previously aligned with this standard. However, the U.S. Supreme Court's recent decision in *Groff v. DeJoy*[8] clarified that "undue hardship" should be understood as a substantial burden in the overall context of the employer's business.

The Washington Supreme Court in *Suarez* adopted this clarified standard, emphasizing that substantial burdens—not trivial costs—should guide the undue hardship analysis. The Court found that Suarez's requested accommodations would impose substantial burdens on Yakima Valley, including violating seniority provisions of the CBA and causing significant operational disruptions. Moreover, the Court reaffirmed that while employers must accommodate religious practices, this requirement does not extend to preferential treatment that would contravene established agreements or create inequitable burdens on other employees.

The Court concluded that Yakima Valley had provided reasonable accommodations within the bounds of the CBA and staffing constraints. On the wrongful termination claim, the Court differentiated between failing to accommodate religious practices and terminating employment based on religious discrimination. It upheld that Suarez's termination was due to her unreliability and refusal to work mandatory shifts, rather than her religious beliefs.

This decision underscores the delicate balance employers must strike in accommodating religious practices without imposing substantial burdens on their operations. It also highlights the evolving judicial interpretation of "undue hardship" and sets a precedent for future cases under the WLAD.

[8] See our discussion of *Groff* in July of 2023: https://www.firehouselawyer.com/Newsletters/July2023.pdf