THE FATE OF FLORIDA ADMINISTRATIVE LAW IN LIGHT OF THE PASSAGE OF AMENDMENT 6

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On November 6, 2018, the citizens of the State of Florida approved several Constitutional Amendments in unprecedented fashion. This blog concerns only a portion of one of them. Amendment 6 was popularized as a “victims’ rights” amendment, and like many other amendments was bundled with unrelated other “provisions”. The victims’ rights provision amended Article I, Section 16 of the Florida Constitution.

The provision in question is one that affects anyone practicing before government agencies. The relevant portion of Article V, Section 21 reads, “Judicial interpretation of statutes and rules. In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an administrative agency’s interpretation of such statute or rule, and must instead interpret such statute or rule de novo.” The repercussions of this language cannot be understated because it removes a long standing (per federal deference standard articulated in the Chevron case and which will be discussed in greater detail in a later blog) pillar of administrative law, i.e., the great deference afforded to state agencies in the interpretation of the statutes and rules over which it has jurisdiction. [1]

In analyzing the amendment language, one must first look at the phrase “a state court or an officer hearing an administrative action.” While this may seem simple enough, it raises a question that has been met with contention by administrative law practitioners. With few exceptions, administrative law cases are heard at the Division of Administrative Hearings before Administrative Law Judges, and while the title contains “judge,” the general opinion is that they are not “Article V” judges like county and circuit judges. This would mean then that administrative law judges would not be governed by this amendment. This creates an additional ambiguity that could result in different interpretations from ALJ’s themselves. So the initial question is this – does the Constitutional Amendment apply to Administrative Law Judges? The answer appears to be “yes.” The drafters were careful enough to include the phrase “an officer hearing an administrative action,” which could indicate a desire to include administrative actions heard by Administrative Law Judges or other administrative officer (such as an agency head).

This will be the first installment in a series of blogs on this portion of Amendment 6, with the series operating under the premise that actions before administrative law judges and other officers who operate in such a manner are indeed governed by Amendment 6. Subsequent installments will address the effect on formal and informal administrative hearings, agency final orders, ruling on exceptions to conclusions of law, predictability and transparency of agency actions, and other issue affected by the amendment.

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

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[1] In Tallahassee v. Mann, 411 So. 2d (Fla. 1982), the state Supreme Court concluded that agency interpretations "come to this court clothed with a presumption of validity," and went so far to state 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).

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