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In NCLA *Amicus* Win, Ohio Supreme Court Rejects Deference to Agency Interpretations

TWISM Enterprises, LLC v. State Board of Registration for Professional Engineers and Surveyors

Washington, DC (January 3, 2023) – The Supreme Court of Ohio, in a [4-3 opinion](#), denounced agency deference and ruled that the state’s courts need not defer to agency interpretations of ambiguous statutes. In no uncertain terms, Justice Pat DeWine, writing for the majority, stated, “We reaffirm today that it is the role of the judiciary, not administrative agencies, to make the ultimate determination about what the law means. Thus, the judicial branch is never required to defer to an agency’s interpretation of the law.” The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an [amicus brief](#) in *TWISM Enterprises, LLC v. State Board of Registration for Professional Engineers and Surveyors*, urging the Supreme Court of Ohio to declare agency deference unconstitutional.

NCLA argued in its *amicus* brief that the Hamilton County Court of Appeals erred by deferring to the Ohio Board of Registration for Professional Engineers and Surveyors’ “reasonable interpretation” of a statute setting forth the requirements that engineering firms must fulfill to provide their services in Ohio. TWISM Enterprises, LLC, a small, Cincinnati-based engineering firm, was denied its application for a Certificate of Authorization (COA) to provide professional engineering services to the public because TWISM designated an independent contractor, rather than a full-time, W-2 employee, as its engineering manager. The Board claimed that the statute precluded TWISM from designating its independent contractor—a licensed professional engineer who himself held a COA—to serve as the firm’s manager, notwithstanding the absence of any statutory language supporting this purported requirement. Such agency deference, NCLA’s brief argued, is nothing more than a command that courts abandon their duty of independent judgment and assign controlling weight to a non-judicial entity’s statutory interpretation.

In line with NCLA’s analysis, the Supreme Court of Ohio held that mandatory agency deference violates separation-of-powers principles and strips courts of the judicial authority “to say what the law is.” Citing NCLA founder and CEO Philip Hamburger’s scholarship, the Court also highlighted how agency deference results in systematically biased judgments in cases where a government agency is also a party.

Applying its independent judgment, the Court found nothing in the statute’s language to preclude an independent contractor from serving as a full-time manager of an engineering firm. As Justice DeWine explained, “an [agency’s] interpretation should never be used to alter the meaning of clear text.” Addressing Ohio’s previously “confused state” of caselaw on agency deference, Justice DeWine made clear that “Ohio’s system of separation of powers precludes any sort of mandatory deference to agency interpretations.” Further, Justice DeWine wrote that Ohio courts may not construe ambiguity in the language of a statute “as an implicit delegation of power to administrative agencies to fill in statutory gaps.” To the contrary, the Court concluded, agency deference is permissive rather than mandatory and may occur only when a statutory term is ambiguous.

The authority to render definitive interpretations “to say what the law is” has long been understood as resting exclusively with the judicial branch. NCLA commends the Supreme Court of Ohio for ruling that courts, not

government agencies, have the final say over ambiguous laws.

NCLA released the following statements:

“Over recent years, the state supreme courts and legislatures have been leaders in recognizing that fundamental constitutional protections are destroyed when courts defer to the most powerful litigators before them, the government. NCLA is encouraged to see Ohio recognize this issue as well and side in favor of constitutional order. We hope to see the federal courts recognize the same.”

— **Kara Rollins, Litigation Counsel, NCLA**

“The Ohio Supreme Court’s ruling is an excellent step forward in putting an end to the unconstitutional practice of agency deference and returning the exclusive duty ‘to say what the law is’ to the courts. NCLA applauds the Court for clarifying Ohio’s deference jurisprudence and joining the increasing number of courts in other states who have similarly rejected deference and declined to cede judicial authority to executive agencies.”

— **Casey Norman, Staff Counsel, NCLA**

For more information, visit the *amicus* brief page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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