

SCOTUS Punts Auto Service Advisors' Overtime Case Back to the Ninth Circuit

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On June 20, 2016, the U.S. Supreme Court, ruling 6-2, vacated a Ninth Circuit decision holding that service advisers – workers at car dealerships who talk with customers about the work to be done on their vehicles – should be eligible to receive overtime compensation under the Fair Labor Standards Act (FLSA). *Encino Motorcars, LLC v. Navarro et al.*, No. 15-415 (June 20, 2016). The Court ordered the Ninth Circuit to reconsider the issue without giving weight to the U.S. Department of Labor's (DOL) 2011 regulations stating that service advisers are not exempt from overtime pay. The Court found that the DOL's final 2011 regulations, a complete change in direction from the DOL's 2008 notice of proposed rulemaking, failed to include a proper explanation of the reasons behind its rule that car dealership service advisers should qualify for overtime.

The matter arose when former and current service advisers filed suit claiming that California car dealership Encino Motorcars, LLC violated the FLSA by failing to pay them overtime compensation. The district court granted the dealership's motion to dismiss. However, the Ninth Circuit reversed, stating that the *Chevron* deference – administrative law requiring courts to defer to interpretations of statutes made by those government agencies charged with enforcing them, unless such interpretations are unreasonable – required it to follow the DOL's 2011 rule.

In a decision written by Justice Anthony Kennedy, the Supreme Court has punted the case back to the Ninth Circuit and instructed it to interpret the FLSA without giving *Chevron* deference to the DOL's 2011 regulation.

In remanding the matter, the Supreme Court noted that when, as here, Congress has authorized an agency to issue regulations and the agency has promulgated the same, the agency's interpretation should receive *Chevron* deference if (i) the statute is ambiguous, and (ii) the agency's interpretation is reasonable. In contrast, when an agency fails to provide adequate reasons for its decisions, a regulation is considered "procedurally defective" and arbitrary and capricious, and *Chevron* deference is not warranted.

The Court reasoned that, in order to be entitled to *Chevron* deference, the DOL needed to at least "display awareness that it is changing position" and "show that there are good reasons for the new policy" to depart from its position of several decades. The Court found that although the agency is not required to provide further justification for the policy change, it must be cognizant that such policies could have "engendered serious reliance interests that must be taken into account." Because the DOL offered "barely any explanation" as to why it changed its position to

interpret the statute to exempt employees who sell vehicles, but not those who sell services, or to address the significant reliance interests, the Court concluded that the DOL's 2011 regulation must not receive *Chevron* deference and remanded the case to the Ninth Circuit to interpret the statute in the first instance.

Justice Ruth Bader Ginsburg wrote a concurring opinion, joined by Justice Sonia Sotomayor, indicating that she concurred with the majority's opinion that the DOL did not satisfy its basic obligation to explain the reasoning behind its new policy. However, she noted that this decision did not place any sort of "heightened standard" of arbitrary and capricious review. Moreover, Justice Ginsburg stated that, unlike Justice Thomas, she was "not persuaded that, sans *Chevron*, the Ninth Circuit should conclude on remand that service advisors are categorically exempt from hours regulations."

Justice Clarence Thomas wrote a dissenting opinion, joined by Justice Samuel Alito, stating that while he agreed with the majority that the DOL is not owed *Chevron* deference because the regulation is procedurally defective, he disagreed with the Court's decision to punt on the issue and remand to the Ninth Circuit. Based on the plain meaning of the exemption's terms, Justice Thomas noted that he would reverse the Ninth Circuit's judgment.

Notably, the Court's *Encino Motorcars* decision could potentially lead courts to take a closer look at other controversial regulations proposed by the DOL that veer from its previous positions

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