Supreme Court of the United States

PEREZ v. MORTGAGE BANKERS ASSOCIATION

135 S.Ct. 1199 (2015)
Nos. 13-1041, 13-1052
Argued December 1, 2014
Decided March 9, 2015

Justice SOTOMAYOR delivered the opinion of the Court.

When a federal administrative agency first issues a rule interpreting one of its regulations, it is generally not required to follow the notice-and-comment rulemaking procedures of the Administrative Procedure Act (APA or Act). The United States Court of Appeals for the District of Columbia Circuit has nevertheless held, in a line of cases beginning with *Paralyzed Veterans of Am. v. D.C. Arena L.P.*, 117 F.3d 579 (1997), that an agency must use the APA's notice-and-comment procedures when it wishes to issue a new interpretation of a regulation that deviates significantly from one the agency has previously adopted. The question in these cases is whether the rule announced in *Paralyzed Veterans* is consistent with the APA. We hold that it is not.

I

A

The APA establishes the procedures federal administrative agencies use for "rule making," defined as the process of "formulating, amending, or repealing a rule." § 551(5). "Rule," in turn, is defined broadly to include "statement[s] of general or particular applicability and future effect" that are designed to "implement, interpret, or prescribe law or policy." § 551(4).

Section 4 of the APA, 5 U.S.C. § 553, prescribes a three-step procedure for so-called "notice-and-comment rulemaking." First, the agency must issue a "[g]eneral notice of proposed rulemaking," ordinarily by publication in the Federal Register. § 553(b). Second, if "notice [is] required," the agency must "give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments." § 553(c). An agency must consider and respond to significant comments received during the period for public comment. Third, when the agency promulgates the final rule, it must include in the rule's text "a concise general statement of [its] basis and purpose." § 553(c). Rules issued through the notice-and-comment process are often referred to as "legislative rules" because they have the "force and effect of law." *Chrysler Corp. v. Brown*, 441 U.S. 281, 302-303 (1979).

Not all "rules" must be issued through the notice-and-comment process. Section 4(b)(A) of the APA provides that, unless another statute states otherwise, the notice-and-comment requirement "does not apply" to "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." 5 U.S.C. § 553(b)(A). The term "interpretative rule," or "interpretive rule," is not further defined by the APA, and its precise meaning is the source of much scholarly and judicial debate. We need not, and do not, wade into that debate here. For our purposes, it suffices to say that the critical feature of interpretive rules is that they are "issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers." *Shalala v. Guernsey Memorial Hospital*, 514 U.S. 87, 99 (1995). The absence of a notice-and-comment obligation makes the process of issuing interpretive rules comparatively easier for agencies than issuing legislative rules. But that convenience comes at a price: Interpretive rules "do not have the force and effect of law and are not accorded that weight in the adjudicatory process." *Ibid.*

B

These cases began as a dispute over efforts by the Department of Labor to determine whether mortgage-loan officers are covered by the Fair Labor Standards Act of 1938 (FLSA), 52 Stat. 1060, as amended, 29 U.S.C. § 201 *et seq.* The FLSA "establishe[s] a minimum wage and overtime compensation for each hour worked in excess of 40 hours in each workweek" for many employees. *Integrity Staffing Solutions, Inc. v. Busk,* 135 S.Ct. 513, 516 (2014). Certain classes of employees, however, are exempt from these provisions. Among these exempt individuals are those "employed in a bona fide executive, administrative, or professional capacity... or in the capacity of outside salesman...." § 213(a)(1). The exemption for such employees is known as the "administrative" exemption.

The FLSA grants the Secretary of Labor authority to "defin[e]" and "delimi[t]" the categories of exempt administrative employees. *Ibid.* The Secretary's current regulations regarding the administrative exemption were promulgated in 2004 through a notice-and-comment rulemaking. As relevant here, the 2004 regulations differed from the previous regulations in that they contained a new section providing several examples of exempt administrative employees. One of the examples is "[e]mployees in the financial services industry," who, depending on the nature of their day-to-day work, "generally meet the duties requirements for the administrative exception." § 541.203(b). The financial services example ends with a caveat, noting that "an employee whose primary duty is selling financial products does not qualify for the administrative exemption." *Ibid.*

In 1999 and again in 2001, the Department's Wage and Hour Division issued letters opining that mortgage-loan officers do not qualify for the administrative exemption. In other words, the Department concluded that the FLSA's minimum wage and maximum hour requirements applied to mortgage-loan officers. When the Department promulgated its current FLSA regulations in 2004, respondent Mortgage Bankers Association (MBA), a national trade association representing real estate finance companies, requested a new opinion interpreting the revised regulations. In 2006, the Department issued an opinion letter finding that mortgage-loan officers fell within the administrative exemption under the 2004 regulations. Four years later, however, the Wage and Hour Division again altered its interpretation of the FLSA's administrative exemption as it applied to mortgage-loan officers. *Id.,* at 49a-69a. Reviewing the provisions of the 2004 regulations and judicial decisions addressing the administrative exemption, the Department's 2010 Administrator's Interpretation concluded that mortgage-loan officers "have a primary duty of making sales for their employers, and, therefore, do not qualify" for the administrative exemption. *Id.,* at 49a, 69a. The Department accordingly withdrew its 2006 opinion letter, which it now viewed as relying on "misleading assumption[s] and selective and narrow analysis" of the exemption example in § 541.203(b). *Id.,* at 68a. Like the 1999, 2001, and 2006 opinion letters, the 2010 Administrator's Interpretation was issued without notice or an opportunity for comment.

C

MBA filed a complaint in Federal District Court challenging the Administrator's Interpretation. MBA contended that the document was inconsistent with the 2004 regulation it purported to interpret, and thus arbitrary and capricious in violation of § 10 of the APA, 5 U.S.C. § 706. More pertinent to this case, MBA also argued that the Administrator's Interpretation was procedurally invalid in light of the D.C. Circuit's decision in *Paralyzed Veterans,* 117 F.3d 579. Under the *Paralyzed Veterans* doctrine, if "an agency has given its regulation a definitive interpretation, and later significantly revises that interpretation, the agency has in effect amended its rule, something it may not accomplish" under the APA "without notice and comment." *Alaska Professional Hunters Assn., Inc. v. FAA,* 177 F.3d 1030, 1034 (C.A.D.C.1999). Three former mortgage-loan officers — Beverly Buck, Ryan Henry, and Jerome Nickols — subsequently intervened in the case to defend the Administrator's Interpretation.

The District Court granted summary judgment to the Department. *Mortgage Bankers Assn. v. Solis*, 864 F.Supp.2d 193 (D.D.C.2012). Though it accepted the parties' characterization of the Administrator's Interpretation as an interpretive rule, *id.*, at 203, n. 7, the District Court determined that the *Paralyzed Veterans* doctrine was inapplicable because MBA had failed to establish its reliance on the contrary interpretation expressed in the Department's 2006 opinion letter. The Administrator's Interpretation, the District Court further determined, was fully supported by the text of the 2004 FLSA regulations. The court accordingly held that the 2010 interpretation was not arbitrary or capricious.

The D.C. Circuit reversed. *Mortgage Bankers Assn. v. Harris*, 720 F.3d 966 (2013). Bound to the rule of *Paralyzed Veterans* by precedent, the Court of Appeals rejected the Government's call to abandon the doctrine. 720 F.3d, at 967, n. 1. In the court's view, "[t]he only question" properly before it was whether the District Court had erred in requiring MBA to prove that it relied on the Department's prior interpretation. *Id.*, at 967. Explaining that reliance was not a required element of the *Paralyzed Veterans* doctrine, and noting the Department's concession that a prior, conflicting interpretation of the 2004 regulations existed, the D.C. Circuit concluded that the 2010 Administrator's Interpretation had to be vacated.

We granted certiorari and now reverse.

II

The *Paralyzed Veterans* doctrine is contrary to the clear text of the APA's rulemaking provisions, and it improperly imposes on agencies an obligation beyond the "maximum procedural requirements" specified in the APA, *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 524 (1978).

A

The text of the APA answers the question presented. Section 4 of the APA provides that "notice of proposed rulemaking shall be published in the Federal Register." 5 U.S.C. § 553(b). When such notice is required by the APA, "the agency shall give interested persons an opportunity to participate in the rule making." § 553(c). But § 4 further states that unless "notice or hearing is required by statute," the Act's notice-and-comment requirement "does not apply ... to interpretative rules." § 553(b)(A). This exemption of interpretive rules from the notice-and-comment process is categorical, and it is fatal to the rule announced in *Paralyzed Veterans.*

Rather than examining the exemption for interpretive rules contained in § 4(b)(A) of the APA, the D.C. Circuit in *Paralyzed Veterans* focused its attention on § 1 of the Act. That section defines "rule making" to include not only the initial issuance of new rules, but also "repeal[s]" or "amend[ments]" of existing rules. Because notice-and-comment requirements may apply even to these later agency actions, the court reasoned, "allow[ing] an agency to make a fundamental change in its interpretation of a substantive regulation without notice and comment" would undermine the APA's procedural framework. 117 F.3d, at 586.

This reading of the APA conflates the differing purposes of §§ 1 and 4 of the Act. Section 1 defines what a rulemaking is. It does not, however, say what procedures an agency must use when it engages in rulemaking. That is the purpose of § 4. And § 4 specifically exempts interpretive rules from the notice-and-comment requirements that apply to legislative rules. So, the D.C. Circuit correctly read § 1 of the APA to mandate that agencies use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance. Where the court went wrong was in failing to apply that accurate understanding of § 1 to the exemption for interpretive rules contained in § 4: Because an agency is not required to use notice-and-comment procedures to issue an initial interpretive rule, it is also not required to use those procedures when it amends or repeals that interpretive rule.

B

The straightforward reading of the APA we now adopt harmonizes with longstanding principles of our administrative law jurisprudence. Time and again, we have reiterated that the APA "sets forth the full extent of judicial authority to review executive agency action for procedural correctness." *Fox Television Stations, Inc.*, 556 U.S., at 513. Beyond the APA's minimum requirements, courts lack authority "to impose upon [an] agency its own notion of which procedures are 'best' or most likely to further some vague, undefined public good." *Vermont Yankee*, 435 U.S., at 549. To do otherwise would violate "the very basic tenet of administrative law that agencies should be free to fashion their own rules of procedure." *Id.*, at 544.

These foundational principles apply with equal force to the APA's procedures for rulemaking. We explained in *Vermont Yankee* that § 4 of the Act "established the maximum procedural requirements which Congress was willing to have the courts impose upon agencies in conducting rulemaking procedures." *Id.*, at 524. "Agencies are free to grant additional procedural rights in the exercise of their discretion, but reviewing courts are generally not free to impose them if the agencies have not chosen to grant them." *Ibid.*

The *Paralyzed Veterans* doctrine creates just such a judge-made procedural right: the right to notice and an opportunity to comment when an agency changes its interpretation of one of the regulations it enforces. That requirement may be wise policy. Or it may not. Regardless, imposing such an obligation is the responsibility of Congress or the administrative agencies, not the courts. We trust that Congress weighed the costs and benefits of placing more rigorous procedural restrictions on the issuance of interpretive rules. In the end, Congress decided to adopt standards that permit agencies to promulgate freely such rules — whether or not they are consistent with earlier interpretations. That the D.C. Circuit would have struck the balance differently does not permit that court or this one to overturn Congress' contrary judgment.

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For the foregoing reasons, the judgment of the United States Court of Appeals for the District of Columbia Circuit is reversed.

It is so ordered.

[The concurring opinion of Justice Alito is omitted.]

Justice SCALIA, concurring in the judgment.

I agree with the Court's decision, and all of its reasoning demonstrating the incompatibility of the D.C. Circuit's *Paralyzed Veterans* holding with the Administrative Procedure Act. *Paralyzed Veterans of Am. v. D.C. Arena L.P.*, 117 F.3d 579 (C.A.D.C.1997). I do not agree, however, with the Court's portrayal of the result it produces as a vindication of the balance Congress struck when it "weighed the costs and benefits of placing more rigorous... restrictions on the issuance of interpretive rules." *Ante*, at 1207. That depiction is accurate enough if one looks at this case in isolation. Considered alongside our law of deference to administrative determinations, however, today's decision produces a balance between power and procedure quite different from the one Congress chose when it enacted the APA.

"The [APA] was framed against a background of rapid expansion of the administrative process as a check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices." *United States v. Morton Salt Co.*, 338 U.S. 632, 644 (1950). The Act guards against excesses in rulemaking by requiring notice and comment. Before an

agency makes a rule, it normally must notify the public of the proposal, invite them to comment on its shortcomings, consider and respond to their arguments, and explain its final decision in a statement of the rule's basis and purpose. 5 U.S.C. § 553(b)-(c); *ante,* at 1203-1204.

The APA exempts interpretive rules from these requirements. § 553(b)(A). But this concession to agencies was meant to be more modest in its effects than it is today. For despite exempting interpretive rules from notice and comment, the Act provides that "the *reviewing court* shall ... interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." § 706 (emphasis added). The Act thus contemplates that courts, not agencies, will authoritatively resolve ambiguities in statutes and regulations. In such a regime, the exemption for interpretive rules does not add much to agency power. An agency may use interpretive rules to *advise* the public by explaining its interpretation of the law. But an agency may not use interpretive rules to *bind* the public by making law, because it remains the responsibility of the court to decide whether the law means what the agency says it means.

Heedless of the original design of the APA, we have developed an elaborate law of deference to agencies' interpretations of statutes and regulations. Never mentioning § 706's directive that the "reviewing court ... interpret ... statutory provisions," we have held that *agencies* may authoritatively resolve ambiguities in statutes. *Chevron U.S.A. Inc. v. Natural Res. Defense Council, Inc.*, 467 U.S. 837, 842-843 (1984). And never mentioning § 706's directive that the "reviewing court ... determine the meaning or applicability of the terms of an agency action," we have—relying on a case decided before the APA, *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945)—held that *agencies* may authoritatively resolve ambiguities in regulations. *Auer v. Robbins*, 519 U.S. 452, 461 (1997).

By supplementing the APA with judge-made doctrines of deference, we have revolutionized the import of interpretive rules' exemption from notice-and-comment rulemaking. Agencies may now use these rules not just to advise the public, but also to bind them. After all, if an interpretive rule gets deference, the people are bound to obey it on pain of sanction, no less surely than they are bound to obey substantive rules, which are accorded similar deference. Interpretive rules that command deference *do* have the force of law.

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Justice THOMAS, concurring in the judgment.

I concur in the Court's holding that the doctrine first announced in *Paralyzed Veterans of America v. D.C. Arena L.P.*, 117 F.3d 579 (C.A.D.C.1997), is inconsistent with the Administrative Procedure Act (APA), 5 U.S.C. § 551 *et seq.,*and must be rejected. An agency's substantial revision of its interpretation of a regulation does not amount to an "amendment" of the regulation as that word is used in the statute.

I write separately because these cases call into question the legitimacy of our precedents requiring deference to administrative interpretations of regulations. That line of precedents, beginning with *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945), requires judges to defer to agency interpretations of regulations, thus, as happened in these cases, giving legal effect to the interpretations rather than the regulations themselves. Because this doctrine effects a transfer of the judicial power to an executive agency, it raises constitutional concerns. This line of precedents undermines our obligation to provide a judicial check on the other branches, and it subjects regulated parties to precisely the abuses that the Framers sought to prevent.

The doctrine of deference to an agency's interpretation of regulations is usually traced back to this Court's decision in *Seminole Rock, supra,* which involved the interpretation of a war-time price control regulation, *id.*, at 411. Along with a general price freeze, the Administrator of the Office of Price Administration had promulgated specialized regulations governing the maximum price for

different commodities. *Id.*, at 413. When the Administrator brought an enforcement action against a manufacturer of crushed stone, the manufacturer challenged the Administrator's interpretation of his regulations.

The lower courts agreed with the manufacturer's interpretation, *id.*, at 412-413, but this Court reversed. In setting out the approach it would apply to the case, the Court announced—without citation or explanation—that an administrative interpretation of an ambiguous regulation was entitled to "controlling weight":

> "Since this involves an interpretation of an administrative regulation a court must necessarily look to the administrative construction of the regulation if the meaning of the words used is in doubt. The intention of Congress or the principles of the Constitution in some situations may be relevant in the first instance in choosing between various constructions. But the ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation." *Id.*, at 413-414.

The Court then concluded that the rule "clearly" favored the Administrator's interpretation, rendering this discussion dictum. *Id.*, at 415-417.

From this unsupported rule developed a doctrine of deference that has taken on a life of its own. It has been broadly applied to regulations issued by agencies across a broad spectrum of subjects. It has even been applied to an agency's interpretation of another agency's regulations. And, it has been applied to an agency interpretation that was inconsistent with a previous interpretation of the same regulation. It has been applied to formal and informal interpretations alike, including those taken during litigation. Its reasoning has also been extended outside the context of traditional agency regulations into the realm of criminal sentencing.

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This accumulation of governmental powers allows agencies to change the meaning of regulations at their discretion and without any advance notice to the parties. It is precisely this problem that the United States Court of Appeals for the D.C. Circuit attempted to address by requiring agencies to undertake notice and comment procedures before substantially revising definitive interpretations of regulations. *Paralyzed Veterans, supra.* Though legally erroneous, the Court of Appeals' reasoning was practically sound. When courts give "controlling weight" to an administrative interpretation of a regulation — instead of to the *best* interpretation of it — they effectively give the interpretation — and not the regulation — the force and effect of law. To regulated parties, the new interpretation might as well be a new regulation.

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This practice turns on its head the principle that the United States is "a government of laws, and not of men." *Marbury, supra,* at 163. Regulations provide notice to regulated parties in only a limited sense because their meaning will ultimately be determined by agencies rather than by the "strict rules and precedents" to which Alexander Hamilton once referred.

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Although on the surface these cases require only a straightforward application of the APA, closer scrutiny reveals serious constitutional questions lurking beneath. I have "acknowledge[d] the importance of *stare decisis* to the stability of our Nation's legal system." "But *stare decisis* is only an 'adjunct' of our duty as judges to decide by our best lights what the Constitution means." *McDonald v. Chicago*, 561 U.S. 742, 812 (2010) By my best lights, the entire line of precedent beginning with *Seminole Rock* raises serious constitutional questions and should be reconsidered in an appropriate case.