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Is It Appropriate to Defer to Agency Interpretations under the Maine Constitution?

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The issue of whether courts should defer to an executive agency's interpretation of a statute is a familiar one. Going back all the way to *Marbury v. Madison*, we know that courts decide the meaning of a statute. Courts therefore routinely decide how to interpret ambiguous statutes. But what happens when a statute is ambiguous and an agency tasked with enforcing that statute has interpreted the statute in a particular way? Should a court defer to that interpretation?

Under Law Court precedent, the answer to this question has been, as a general rule, yes. In *Guilford Transportation Industries v. Public Utilities Commission* and elsewhere, the Law Court has said that a court will defer to an agency's interpretation of a statute it enforces if (1) the statute is ambiguous, and (2) the agency's interpretation is reasonable. In doing so, the Law Court relied upon the U.S. Supreme Court's decision in *Chevron v. NRDC*, which articulated the same two-part test.

This test has become the center of controversy, given the broad authority it arguably grants to agencies. Although *Marbury* establishes that it is generally the court's job to interpret a statute, *Chevron* deference means that a court will only decide whether an agency's interpretation of an ambiguous statute is reasonable. This, of course, significantly constrains the judicial role of interpretation. Just last November, Justice Gorsuch wrote a notable dissent from denial of a petition for writ of certiorari in *Buffington v. McDonough*, making this point:

> "A maximimalist account of *Chevron* risks turning *Marbury* on its head."

Justice Gorsuch went on to argue that *Chevron*, broadly applied, violates basic judicial principles. Interestingly, Justice Gorsuch noted that these problems with *Chevron* have led various state courts to "refuse[] to import a broad understanding of *Chevron* into their own administrative law jurisprudence."

Weeks ago, at the end of December, Ohio joined that group of states in *TWISM Enterprises LLC v. State Board of Registration for Professional Engineers & Surveyors*. The Ohio Supreme Court observed that, under the separation of powers doctrine, it is solely the function of the judiciary to

"render definitive interpretations of the law." In that court's view, "[t]he idea that a court must defer to an agency determination is difficult to reconcile with these separation of powers concepts." Accordingly, the court held that a court is not required to defer to an agency's reasonable interpretation of a statute. Instead, a court "*may* consider an administrative agency's construction of a legal text" along with other traditional tools of statutory interpretation, giving the agency's construction the weight due "the persuasive power of the agency's interpretation."

These recent opinions raise interesting questions. Maine, too, has enshrined separation of powers in its Constitution, and Maine's doctrine—as the Law Court has observed—is "much more rigorous" than under the U.S. Constitution. Moreover, as has been noted previously on this blog, the Law Court interprets the Maine Constitution independently of the U.S. Constitution. So, then, several questions arise. Could deference to an agency interpretation violate Maine's separation of powers doctrine? If so, under what circumstances? And is the *Chevron* doctrine, as it has been articulated and applied in Maine, consistent with that constitutional doctrine? Given the increased criticism of *Chevron* and the increased independence of state courts on this issue, these are questions worth pondering.

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