

13-1052 NICKOLS V. MORTGAGE BANKERS ASSOCIATION

DECISION BELOW: 720 F.3d 966

LOWER COURT CASE NUMBER: 12-5246

QUESTION PRESENTED:

The Administrative Procedure Act, 5 U.S.C. §§ 551-59, "established the maximum procedural requirements which Congress was willing to have the courts impose upon agencies in conducting rulemaking procedures." *Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 524 (1978). Section 553 of the Act sets forth notice-and-comment rulemaking procedures, but exempts "interpretative rules," among others, from the notice-and-comment requirement. 5 U.S.C. § 553(b). The D.C. Circuit, in a line of cases descending from *Paralyzed Veterans of America v. D.C. Arena L.P.*, 117 F.3d 579 (D.C. Cir. 1997), has created a per se rule holding that although an agency may issue an *initial* interpretative rule without going through notice and comment, "[o]nce an agency gives its regulation an interpretation, it can only change that interpretation as it would formally modify the regulation itself: through the process of notice and comment rulemaking." *Id.* at 586. In this case, the D.C. Circuit invoked the *Paralyzed Veterans* doctrine-which is contrary to the plain text of the Act, numerous decisions of this Court, and the opinions of the majority of circuit courts-to invalidate a Department of Labor interpretation concluding that mortgage loan officers do not qualify for the administrative exemption under the Fair Labor Standards Act.

The question presented is:

Whether agencies subject to the Administrative Procedure Act are categorically prohibited from revising their interpretative rules unless such revisions are made through notice-and--comment rulemaking.

CONSOLIDATED WITH 13-1041 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 6/16/2014