

Practice Update

# Florida Voters Overturn Decades of Precedent Controlling How Statutes and Rules Involving Administrative Bodies Must Be Construed

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By Diane G. DeWolf and Kristen M. Fiore

On Tuesday, November 6, 2018, Florida voters adopted Amendment 6. Most commonly known as the “Victim’s Rights” Amendment, Amendment 6 also added one sentence to the Florida Constitution that has enormous impact—overturning decades of precedent as to how statutes and rules involving state administrative bodies must be construed. The Amendment states:

## Section 21 of Article V

Judicial interpretation of statutes and rules.—In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an administrative agency’s interpretation of such statute or rule, and must instead interpret such statute or rule de novo.

The Amendment, which takes effect January 8, 2019, will prohibit courts and hearing officers from giving any deference to an agency’s interpretation of the statutes and rules it is charged with enforcing. Until now, an agency’s interpretation of a statute or rule was to be given deference and had to be accepted unless that interpretation was “clearly erroneous.”

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In other words, if more than one reasonable interpretation of a statute or rule existed, a court had no choice but to adopt the agency's reasonable interpretation.

Unfortunately, the Amendment raises a tremendous number of questions that will only be determined in future litigation. For example, what happens to decades of prior agency interpretations previously adopted by courts? What is an "agency" for purposes of the Amendment? Does it apply to municipalities and counties? Does it apply retrospectively or only prospectively? What interpretations of statutes and rules may now change based on the Amendment's mandate?

Just a few of the many areas impacted include the regulation and litigation of Bid Protests, Professional and Business Occupations, Public Transit, Tax and Revenue, Environmental cases, Land Use and Zoning, Public Service Commission cases, Medicaid reimbursement/auditing, Insurance Regulation, and Agriculture.

In conducting business with and litigating against Florida Administrative Entities or private parties where an agency interpretation is at issue, make sure you are best positioned to take advantage of these new changes. Call Kathi Giddings, Diane DeWolf, or Kristen Fiore, or contact your Akerman attorney for more information.