

Russell L. Weaver

*The Undervalued Nonlegislative Rule*

54 Admin. Law Rev. 871 (2002)

Abstract by Dipal Shah

In his article, Weaver assesses *Christensen v. Harris County* and *Unites States v. Mead Corp.* in the context of judicial deference to non-legislative agency rules. Weaver argues that the “force of law” discourse attached to both the *Christensen* and *Mead* decisions confuse the importance and place of non-legislative rules. Weaver asserts that the flaw in this reasoning exists not only because Congress never states that an agency is entitled to interpret statutes with the “force of law” in a particular format, but also because the Court pushes the concept well beyond rational boundaries by applying the standards to arbitrary rules. Additionally, Weaver argues that the “force of law” concept is applied when Congress has no clear intent on the subject at hand.

Weaver asserts that *Christensen* and *Mead* are devoid of a structural and contextual assessment of the objectives, functions, or value of non-legislative rules. Furthermore, through of the Court’s interest in “force of law,” the Court overlooks how this standard has created increased litigation. Weaver concludes by arguing that this litigation has led to deprivation of administrative guidance, self-interpretation, and has prompted agencies to engage in unpopular behavior.