Lecture 12: Judicial Control of Administrative Agencies

ADMINISTRATIVE LAW
Judicial Review

- When a court reviews a decision of an agency.
Judicial Review: Basic Requirements

• Court must have **jurisdiction**.

• Plaintiff must state a **recognized cause of action** and seek a **recognized remedy**.

• Must be a **real case and controversy**.
  
  ○ U.S. Supreme Court does not give advisory opinions.
  
  ○ State courts sometimes will give advisory opinions.
What Is The Purpose Of Judicial Review?

• Ensures fair treatment.

• Acts as an essential check on the power of agencies.

• Ensures the agency has acted within the Constitution.
Routes To Judicial Review

• Statutory Review – established by the agency’s enabling act.

  – Most common pattern:

    o After the agency’s decision becomes final, an interested person files a petition for review in a federal court of appeals.
The court reviews the decision on the basis of the record compiled by the administrator, and if the agency is invalid, the reviewing court may vacate the decision or remand it for further proceedings.

- Under some administrative statutes, review occurs initially in a federal district court.

- However, modern trend is to allow petitioner to proceed directly to a court of appeals.
QUIZ TIME!
• **Nonstatutory Review** – when Congress has failed to create a special statutory procedure for judicial review, or when the procedure that does exist cannot furnish adequate relief, a party dissatisfied with agency action must resort to “nonstatutory review.”
– (Note: judicial review is, however, **always** based upon some statutory grant of subject matter jurisdiction).

– A party who wishes to invoke nonstatutory review looks to the **general grants of original jurisdiction** that apply to the federal courts.
Examples Of General Grants Of Original Jurisdiction

• 28 U.S.C. section 1361
  – Gives district courts jurisdiction over mandamus to require an officer or employee of the U.S. or an agency to perform a duty owed the plaintiff.

• 42 U.S.C. section 1343
  – Jurisdiction to hear cases under 42 U.S.C. 1983 and other civil rights statutes (mostly about state officials)
• 28 U.S.C. Section 1331

• Actions arising under federal law, constitution, treaties, etc.

• Most federal agency actions are brought under Section 1331.
“Agency Action”

• Under the APA, the right to judicial review applies to any “agency action.”

• What is “agency action?”

  – A “circumscribed, discrete” decision or set of decisions.

  – Must affect the rights and obligations of citizens. So, a report to Congress or study of the health effects of second-hand smoke would not constitute agency action.
Scope Of Judicial Review

• **DE NOVO REVIEW**

  – A complete review where the court *rehears evidence and redecides* the case.

  – Very rare.

• **NO REVIEW**
• Other categories: arbitrary and capricious, abuse of discretion, clearly erroneous, and substantial evidence.

• Court is **limited to reviewing the record** that has been established at the agency.
Barriers To Judicial Review

• STATUTE PRECLUDES REVIEW.

– Enabling act states “no judicial review.”

– The U.S. Supreme Court has ruled that only if there is clear and convincing evidence should a court preclude judicial review.

– In the absence of clear and convincing evidence there is a presumption of judicial review.
– Even if a statute precludes judicial review, a court can still review issues of alleged constitutional violations.

• DECISION IS COMMITTED TO AGENCY DISCRETION.
• EXHAUSTION OF ADMINISTRATIVE REMEDIES AND RIPENESS.

– A court will only consider judicial review of an agency action provided the action has been appealed all the way to the agency’s highest decision-maker.

– Failure to exhaust administrative remedies makes the case not ripe. Avoids premature adjudication.
• **Final Agency Action and Deadlines to Appeal.**

  – Only **final agency actions** are appealable.

  – An action is final when the decision-making process is completed so as to resolve the issue before the agency.

  – Once the action becomes final, the appeal must be filed with the reviewing court within strict deadlines (e.g., 30 days).
• STANDING

– Standing is a person’s right to bring a claim because he is directly affected by the issues raised.
– Standing elements:

• **Injury** - must demonstrate that the litigant has suffered a *concrete and particularized injury* that is either *actual or imminent*.

• **Causation** – the injury is *fairly traceable to the defendant* and it is likely that a favorable decision will result.

• **Remedy/redressability** – a court has the ability to redress the injury.
• PRIMARY JURISDICTION

– Even if a court has the power to hear a case, if the case involves issues that are better decided by an administrative agency, the court will give the agency the first opportunity to resolve the issue.
Main Concern Of Judicial Review

• Ensuring that due process has been satisfied by the agency in question.