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Legal Summaries

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Pepperdine University School of Law Legal Summaries[*]

TABLE OF CASES

[*] Prepared by the editors and staff of the Journal of the National Association of Administrative Law Judges at Pepperdine University School of Law. The Legal Summaries are selected case briefs of recent court decisions on issues involving administrative law.

UNITED STATES SUPREME COURT

Barnhart v. Walton, 122 S. Ct. 1265 (2002). ***Social Security Act:*** Authorizes payment of Title II disability insurance benefits and Title XVI "Supplemental Security Income" to individuals with disabilities.

FACTS: Under the Social Security Act ("SSA"), the Social Security Administration ("Agency") is required to provide benefits to individuals with a proven "inability" to engage in "substantial gainful activity" which does last, or is expected to last, for a period of not less than twelve months. In this case, an employee challenged the Agency's determination that he was not entitled to benefits as a result of returning to part-time work eleven months after losing his full-time teaching job due to serious mental illness. The employee argued that the Agency's interpretation of the statute's qualifications was unlawful.

ANALYSIS: First, the Supreme Court addressed the issue of whether the regulation of the durational requirement of the provision was unlawful. The Court asserted that the provision made no explicit statements about the duration of the claimant's "inability." The statute did not unambiguously forbid the regulation. Secondly, the construction of the statute was considered and determined to be permissible. The Court's concluded that the Agency's interpretation was in line with the statute's basic objectives, which necessitated some durational requirement. Finally, the interpretation did not contradict the Agency's own longstanding interpretation. Even Congress' frequent amendments and reenactments of the statute made no attempt to alter the provision. The Court concluded that both the statute and the Agency's interpretation of the statute were lawful.

HOLDING: The Court held the Agency regulation lawful, and that the regulation of the duration provision was a reasonable interpretation of the statute.

IMPACT: This decision supports the Agency's ability to be secure in its interpretation of statutes falling within its purview, provided such regulation is reasonable and consistent with the statute's objectives. The opinion does not present much support for employees lacking complete qualification for benefits, however close. The Court is more accustomed to deferring to an agency's interpretation of its own provisions.

New York v. Fed. Energy Regulatory Comm'n, 122 S. Ct. 1012 (2002). ***Federal Power Act:*** Authorized Federal Power Commission (predecessor of FERC) to provide effective federal regulation of the expanding business of transmitting and selling electric power in interstate commerce.

FACTS: In 1996, the Federal Energy Regulatory Commission ("FERC") found that electric utilities were discriminating in the "bulk power markets," in violation of section 205 of the Federal Power Act ("FPA"), by providing inferior access to their networks or no access at all to third-party wholesalers of power. In response to this finding, FERC issued Order No. 888, and invoked its authority under the FPA section 206 to prescribe a remedy to the discrimination: (1) "functional unbundling" of wholesale generation and transmission services (separate rates for generation and transmission), and (2) open access requirement on unbundled retail transmissions in interstate commerce. In addition, FERC rejected a proposal that open access be applied to the "transmission component of bundled retail sales." Subsequently, the state of New York and numerous additional parties sought review of Order No. 888, challenging FERC's jurisdiction over the transmission of electricity.

ANALYSIS: First, the Supreme Court addressed the issue of whether FERC exceeded its jurisdiction by including unbundled retail transmissions with the scope of its open access requirements in Order No. 888. The Court upholds FERC's jurisdiction under section 201(b) of the FPA, which gives FERC authority over "transmission of electric energy in interstate commerce" and the "sale of electricity at wholesale in interstate commerce." The Court explains that the statutory language does not limit FERC's jurisdiction to the wholesale market. Secondly, the Court addressed the issue of whether FERC had a duty to apply its open access remedy to bundled retail transmissions as a result of finding undue discrimination in the wholesale markets. The Court rejected this assumption. The Court held that FERC chose not to assert its jurisdiction, but did not hold itself incapable of doing so. FERC explicitly reserved decision on the jurisdictional issue, explaining that it was neither necessary nor prudent to address the matter at that time. The Court found FERC's decision reasonable. In addition, the Court held that argument inappropriate considering the problem FERC attempted to remedy was in the wholesale market, not retail.

HOLDING: The Court held that FERC properly construed its statutory authority in the regulation of electricity. FERC may require the utility to transmit competitors' electricity over its line on the same terms that the utility applies to its own energy transmissions, and may refuse to impose that requirement on utilities that continue to offer only "bundled" retail sales.

IMPACT: This case will have significant impact on electricity industry as it continues its transition from local monopolies to more competitive nationwide markets. FERC has significant deference while attempting to regulate the inequalities of the electricity industry in some categories; the Court is unpersuaded that it will encroach upon the States' ability to maintain local matters. The States have been left to regulate a significant portion of the retail sales. On the other hand, it is unclear what effect the loss of control over unbundled retail transmissions will have on energy policy arguments. However, this case is a victory for consumers and smaller utility companies. Not only are consumers able to seek and secure more cost-effective services from anywhere around the country, but smaller utility companies are able to provide those services with access to the national "grids" once controlled by monopolies.

Ragsdale v. Wolverine World Wide, Inc., 122 S. Ct. 1155 (2002). ***Family and Medical Leave Act of 1993:*** Guarantees eligible employees twelve weeks of leave in a one-year period following certain events: a disabling health problem, a family member's serious illness, or the arrival of a new child. During the absence, the employer must maintain the employee's group health coverage; upon return, the employee must be fully reinstated. The Act makes it unlawful for an employer to "interfere with, restrain, or deny the exercise of" those rights.

FACTS: Under the Family and Medical Leave Act of 1993 ("FMLA"), eligible employees are entitled to twelve weeks of leave in a one-year period following certain medical events. In this case, the employer granted the employee thirty weeks of unpaid sick leave when cancer kept her out of work. When the employee's condition persisted and she failed to return to work, the employer terminated her. The employee argued that thirty weeks leave did not count against her FMLA entitlement under 29 C.F.R. § 825.700(a) because the employer failed to provide her individualized notice that twelve weeks of her absence would count as FMLA leave.

ANALYSIS: The Supreme Court determined that the review of the Secretary of Labor's authority to issue regulations necessary to carry out the FMLA must start by reviewing the Act itself. The Court found that section 825.700(a) created two distinct problems: (1) the individualized notice requirement undermined the Act's own remedial scheme, and (2) the statute fundamentally altered the FMLA's cause of action, by relieving the employee's burden of proving any real impairment of rights and resulting prejudice. The Court held that an Agency does not have the authority to act in a manner inconsistent with the administrative structure established by Congress. In this case, Congress' intent to administer a case-by-case review would be wholly contradicted by the Secretary's imposition of section 825.700(a).

HOLDING: The Court held that section 825.700(a) is contrary to the Act and beyond the Secretary of Labor's authority. The Court reasoned that regulations created to carry out the Act are permissible, but the regulation in this case extended the employer's liability beyond statutory limits. Furthermore, the employee was not entitled to twelve additional weeks of leave for the employer's failure to give individualized notice. The Court explained that as long as the employers' policies meet the Act's minimum requirements, leave taken may be counted toward the twelve weeks required under the FMLA.

IMPACT: This case is a loss for agencies attempting to regulate provisions perceived as necessary to ensure more efficient and effective administration of the laws. However, this case does not preclude similar cases from receiving a favorable outcome. The Court is still more likely to defer to agency regulation, provided the regulation is reasonable and does not materially alter or undermine the primary objectives of the statute.

Wis. Dep't of Health & Family Serv. v. Blumer, 534 U.S. 473 (2002). ***Medicare Catastrophic Coverage Act:*** Wisconsin state-law Medicaid eligibility statute, requiring elderly nursing home resident's at home spouse to spend down his savings, is not in violation of the federal Medicare Catastrophic Coverage Act of 1988.

FACTS: After entering a Wisconsin nursing home, respondent Blumer applied for Medicaid as an extension of her husband's Medicaid benefits. Blumer could not qualify for Medicaid because the couple's spending exceeded their income limit. The Wisconsin statute adopted the "income first rule." The income first rule is a method used by most states, where the "community spouse's income" (spouse living at home) includes the community spouse's actual income at the time of an eligibility hearing, in addition to an anticipated post-eligibility "community spouse monthly income allowance" ("CSMIA"). If Blumer transferred a monthly portion of her income to her husband, she would qualify for Medicaid. It was found that there was no reason to reserve additional assets for Blumer's husband.

ANALYSIS: First, the Court analyzed whether the words "community spouse's income" could be interpreted to include potential post-eligibility transfers of income from the institutionalized spouse. Although Blumer argued that such inclusion was precluded by the face value of the term "community spouse's income," the Court rejected this argument. Rather, the Court assessed that "income" does not mean only the income possessed by the common spouse, but rather that available to the common spouse. This analysis called into question the "spousal impoverishment" provisions of the Medicare Catastrophic Coverage Act of 1988 ("MCCA"). Under the MCCA, a spouse living at home, otherwise known as the community spouse, has the right to reserve income and assets to meet the minimum monthly maintenance needs he or she will have when the other spouse is institutionalized and gains Medicaid eligibility. The MCCA also serves to protect from a diminution of a standard amount of assets. The Court found the "income-first rule" a permissible interpretation of the Act. The opposing "resource-first rule" excludes CSMIA from consideration.

HOLDING: The Supreme Court held that the "income-first rule" was necessary and did not conflict with the "spousal impoverishment" provision of the MCCA.

IMPACT: The Court's decision to implement the "income first rule" over the "resource-first rule" may give rise to disputes over the calculation of pre-eligibility and post-eligibility benefits under the MCCA. As a result of the protection that the MCCA provides to married couples in special circumstances, the adoption of the "income-first rule" will likely meet further opposition. Critics may claim that Congress never made such a policy choice, or that the text of the federal statute expressly authorizes the alternative resource-first approach rather than the "income-first rule."

FIRST CIRCUIT COURT OF APPEALS

Harrington v. Chao, 280 F.3d 50 (1st Cir. 2002). ***Labor Management Reporting and Disclosure Act:*** The Secretary of Labor's decision not to bring an action against a labor organization for violation of 29 USC § 481 under Title IV of the Labor Management Reporting and Disclosure Act ("Act") is entitled to only a narrow abuse of discretion review, but must be supported by reasons for the decision, especially where it is inconsistent with precedent.

FACTS: Under the Act, the Secretary of Labor ("Secretary") has discretion to invalidate a union election under the Act. In the present case, a union member challenged a decision of the Secretary not to pursue an action where regional officials were elected by a delegation from local unions instead of all union members. Under the Act, all elections of local officials must be by open votes from all local members, whereas regional officials can be elected by delegates from local chapters. The challenger contended that the Secretary's interpretation of a "regional" and "local" chapter was inconsistent with prior rulings and therefore improper.

ANALYSIS: First, the court noted that decisions by the Secretary under the Act are subject to an "abuse of discretion" standard of review, pursuant to Supreme Court precedent. Specifically, review is limited to whether the examination of the statement of reasons issued by the Secretary in the case demonstrates that the decision was so irrational as to be arbitrary and capricious. Upon review of the statement of reasons issued by the Secretary, the court concluded that the decision of the Secretary was a divergence from the Department of Labor's prior position in these matters. In addition, the court found that there was insufficient information in the statement of reasons to support a divergence from the prior position. Specifically, the court stated that while the Secretary is entitled to change position over time to address changing circumstances, the Secretary failed to cite any sections of the Act, provide any case law, or to give a statement as to the reasons for the policy change. The court noted that concerns regarding consistency and predictability of the application of the Act require supporting statements from the Secretary for any policy changes.

HOLDING: The court held that where the Secretary is departing from established application of the Act, a clear statement of the reasons for the change and the application of the appropriate law must be made. Thus, the case was remanded to the Secretary to (1) issue an amended statement of reasons to clearly explain the departure from established practice, (2) pursue action against the Union, or (3) issue a statement of reasons that reconciles the present decision with the past approach.

IMPACT: This case sets forth clear guidance to the Secretary and other agency officials charged with discretionary decision making: changes in past approaches to matters under their discretion must be supported by a clear statement of reasons to ensure that those affected by the decision can adjust their actions accordingly.

SECOND CIRCUIT COURT OF APPEALS

MFS Sec. Corp. v. New York Stock Exch., 277 F.3d 613 (2d Cir. 2002). ***Securities Exchange Act:*** The Securities Exchange Act ("SEA") gives authority to the securities exchanges to regulate their own conduct and that of their members. Under the SEA, it is illegal for floor brokers to trade on their own accounts or on accounts in which they have an interest.

FACTS: MFS Securities Corp. ("MFS") engaged in a practice known as "stop flipping," where the floor broker, following the purchase or sale of a security for a customer, purchases the same security for a profit on one-eighth of a point. This was a common practice among floor brokers, who regulated themselves and were therefore able to interpret their actions under rule 11a-1 by excluding profit sharing arrangements from the definition of "interest in an account." Following an investigation, the New York Stock Exchange ("NYSE") expelled MFS from the exchange. MFS then brought suit against the NYSE, claiming that the NYSE participated in impermissible group boycott under the Sherman Act.

ANALYSIS: Since the NYSE, a self regulating securities exchange, was under a statutorily imposed obligation to oversee both Exchange membership and the enforcement of rules, their investigation and subsequent action was acceptable.

HOLDING: MFS engaged in impermissible stock flipping, in violation of the SEA, and was required to seek administrative review before bringing a claim under the Sherman Act.

IMPACT: The enforcement of administrative review requirements prior to bringing a claim in court forces adequate regulation based on the SEA. Although MFS had flexibility in interpreting their own rules, in this instance, the NYSE also had flexibility in deciding to boycott the organization.

THIRD CIRCUIT COURT OF APPEALS

Schnall v. Amboy Nat'l Bank, 279 F.3d 205 (3d Cir. 2002). ***Truth in Savings Act:*** Creates a private right of action against any depository institution which fails to comply with any requirement imposed.

FACTS: This is a putative class action brought by Plaintiff Martin Schnall ("Schnall"). Amboy National Bank ("Bank") made certain newspaper advertisements promoting its money market accounts. Schnall deposited at least 20,000 dollars into a money market account during a one-year period. However, the promotion of what would come from the money market account was not as advertised. Plaintiff alleged a violation of the Truth in Savings Act ("TISA"). The lower court held that even if the claim was a violation of TISA, summary judgment in favor of the Bank was appropriate because Schnall failed to produce sufficient evidence that he relied on the advertisement to his detriment.

ANALYSIS: TISA imposes civil liability on any bank which fails to comply with any regulation under this rule. Even if the Bank was following regulations in making their advertisement, and the regulations happened to be misleading, without challenging the validity of the regulation they would still be held accountable. Further, a plaintiff need not show that he or she was misled or financially harmed by the violation, because TISA provides strict accountability for TISA offenders.

HOLDING: Under TISA, if you are an account holder, you do not have to show that you were misled or financially harmed to recover damages for the first time.

IMPACT: By extension, those that violate TISA will be held accountable regardless of whether or not they actually misled consumers or caused actual harm.

FIFTH CIRCUIT COURT OF APPEALS

Macktal v. Chao, 171 F.3d 323 (5th Cir. 2002). ***Administrative Procedure Act:*** Under the Administrative Procedure Act, an agency has inherent, but not unlimited authority to reconsider its decisions. An agency may not reconsider its own decision if doing so would be arbitrary or capricious, in essence, an abuse of discretion. Reconsideration must occur within a reasonable amount of time after the initial decision, and notice of the agency's intent to reconsider must be given to the parties.

FACTS: On appeal, petitioner Joseph J. Macktal, Jr., a former employer of Brown & Root and the U.S. State Department of Labor, asked the court to review and vacate a decision and order of the Administrative Review Board ("ARB") of the Department of Labor. The order denied Macktal's petition for attorney's fees and costs on the basis that the ARB lacked the authority to reconsider its prior decision which awarded him fees and costs.

ANALYSIS: The court first addressed the issue of the ARB's authority to reconsider an earlier decision. Since review on the merits is de novo, the court said they would affirm the decision of the ARB unless it was "arbitrary, capricious, an abuse of discretion, or otherwise contrary to law, or unless it is not supported by substantial evidence." Since reconsideration is not prohibited by statute, the ARB has the authority to reconsider its decisions. The court was therefore persuaded that the ARB correctly concluded that it had the authority to reconsider its earlier ruling awarding attorneys' fees and costs. The court stated that the reasonableness of the agency's reconsideration implicates two opposing policies: "The desirability of finality on the one hand and the public's interest in reaching what, ultimately, appears to be the right result on the other." Because the ARB acted promptly and allowed additional briefings by the parties, the ARB did not abuse its discretion in reconsidering the order.

HOLDINGS: The Fifth Circuit held that: (1) the ARB had inherent authority to reconsider its earlier decision awarding attorneys' fees and costs, and (2) the decision on reconsideration not to award fees was reasonable.

IMPACT: When a district court awards attorneys' fees, that order will not be considered final for appellate review until at the court sets the amount of the award. Until such time however, as long as an agency's reconsideration of a settlement is not arbitrary and the party is given fair notice, a decision may be reconsidered and redefined. In this respect, agency orders are to be treated much like that of court orders.

SEVENTH CIRCUIT COURT OF APPEALS

Amer. Society of Cataract & Refractive Surgery v. Thompson, 279 F.3d 447 (7th Cir. 2002). ***Medicare Act:*** Created and implemented a formula for calculating the practice expense relative value units ("PERVUs") as part of a fee schedule for doctors.

FACTS: Action brought by national medical organizations of physicians of different specialties to challenge the constitutionality of a Department of Health and Human Services regulation to implement a new physician fee schedule system for Medicare.

ANALYSIS: The court reasoned that the Medicare Act, by its express terms, precluded judicial review of the determination of relative values and relative value units, including review of the regulation promulgated by the Secretary implementing a statutory transition formula for the determination of PERVUs (components combined with relative value units to determine an amount for physician reimbursement). The court focused on Congress' intent to prohibit administrative and judicial review of the Secretary's decision.

HOLDING: The Court of Appeals held that: (1) the Medicare Act's express terms precluded judicial review of regulation at issue; (2) physicians providing Medicare services had no protected property interest in the statutory transition formula used to determine PERVUs; and (3) adherence to Medicare Act's prohibition of judicial review of regulation did not violate separation of powers doctrine.

IMPACT: By foreclosing judicial review, the Secretary, rather than the Court, will effectively serve as the final arbiter by interpreting an act of Congress. The court here is simply adhering to an explicit congressional prohibition of judicial review.

EIGHTH CIRCUIT COURT OF APPEALS

Glover v. Standard Federal Bank, 283 F.3d 953 (8th Cir. 2002). ***Real Estate Settlement Procedure Act:*** The consideration of whether a yield spread premium paid to a mortgage broker from a lender is a fee is subject to the two part case-by-case analysis set forth by the Department of Housing and Urban Development ("HUD"). HUD is afforded *Chevron* deference in its interpretation of the applicable statute.

FACTS: Mortgage borrowers attempted to certify a class of persons receiving a home mortgage from the defendant, alleging that the defendant was receiving referral fees for securing mortgages with disadvantageous interest rates. The district court's decision to certify the class was appealed by the defendant, who claimed that the HUD interpretation of what constitutes a "fee" under the Real Estate Settlement Procedures Act ("RESPA") requires a case-by-case analysis, precluding class certification. The two-part test used by HUD examines the amount paid to the broker and analyzes the amount of services performed by the broker in the specific case to determine if the exchange was for referral or for services rendered by the broker. The borrowers responded that the applicable statute was unambiguous and therefore allows for general applicability, permitting class certification.

ANALYSIS: First, the court noted that the issue of deference was necessarily dispositive, because if the court deferred to the HUD interpretation, the case-by-case approach would preclude the possibility of class certification. The court analyzed the statute to determine if *Chevron* was applicable. After finding that the statute was ambiguous, the court, relying on precedent, found that there was an explicit gap left by Congress expressly granting power to HUD to regulate the application of the statute. As a result, the court deferred to the HUD interpretation, requiring only that it could not be plainly erroneous or inconsistent with the regulation.

HOLDING: The Court held that the HUD two-part test was a proper interpretation of the statute. Thus, the HUD interpretation of RESPA was proper and the previous order certifying the class should necessarily be reversed.

IMPACT: While this is a loss for matters of judicial economy, it is a victory for the strong policy concerns supporting the deference of courts to administrative interpretations of statutes. It is an additional victory for brokers and mortgagors that may have been subject to sweeping class action suits by classes of differently situated members. This decision leaves a result that still affords protection for mortgage consumers, while still holding the lenders and brokers responsible for kickbacks schemes that harm the consumer.

NINTH CIRCUIT COURT OF APPEALS

Sklar v. Commissioner, 282 F.3d 610 (9th Cir. 2002). ***I.R.C. § 6115:*** "A 'dual payment' under the Tax Code is a payment made in part in consideration for goods and services, and in part as charitable contribution."

FACTS: Taxpayers challenged the decision of the Internal Revenue Service (IRS) to disallow their deduction of part of tuition payments made to their children's religious schools as charitable contributions.

ANALYSIS: Under I.R.C. § 6115, in order to qualify as a "dual payment" or a "quid pro quo payment" to a charitable organization, "a taxpayer must establish that its dual payment exceeds the market value of the goods received in return." In the present case, the taxpayers' tuition payments are not deductible as a "dual payment" or a "quid pro quo payment" to a charitable organization because most of the tuition was specifically paid for the purpose of education and was therefore a payment for which the parents received solely intangible religious benefits.

HOLDING: The Court of Appeals held that the tuition payments were not partially deductible as a dual payment or a quid pro quo payment to a charitable organization absent a showing that any dual tuition payments made exceeded the market value of the secular education their children received, or that they intended to make a gift by contributing any such excess payment.

IMPACT: The IRS can and will strictly monitor all charitable deductions in which any benefit is derived in return. The burden is on the taxpayer to prove that any dual payments made exceed the market value of the benefit they derive to qualify as a charitable deduction.

United Food & Commercial Workers Union v. NLRB, 284 F.3d 1099 (9th Cir. 2002). ***National Labor Relations Act:*** Union organizing activity is germane to collective bargaining under the National Labor Relations Act ("NLRA") with respect to organizing activities outside the collective bargaining unit, and is hence an expense that both union members and non-members should be responsible for.

FACTS: United Food and Commercial Workers Union Locals 7 and 951 ("Union") serve as the sole representatives for employees of several retail food companies in negotiating various employment matters with their respective companies. The NLRA requires that a union must represent all employees in bargaining, whether or not the employees belong to a union. As a result, the NLRA further requires all employees to pay union dues, whether or not they actually belong to the union, since all employees reap the benefits of union representation. Therefore, when the non-members of the Union were charged for the cost of organizing the employees of a local competitor, they filed a complaint with the National Labor Relations Board ("NLRB"), contending that sharing the organizing costs of a competing company was unfair. The NLRB dismissed the charges, stating that the organizing activity is still a part of collective bargaining.

ANALYSIS: Courts are required to give deference to the NLRB on statutory interpretation issues. Under the NLRA, the NLRB has primary jurisdiction over issues of unfair labor practice, such as the non-members' claim at hand. The court further found that the NLRB's determinations were germane with the realities of collective bargaining, because unorganized employees at competing companies can significantly weaken the Union's bargaining power, forcing them to accept lower wages and benefits.

HOLDING: The court upheld the fees imputed to the non-members on the premise that organizing employees within the same competitive market is a benefit that reaches both members and non-members alike, and is thus germane to collective bargaining.

IMPACT: This decision further strengthens the power, pervasiveness and influence of unions throughout the country. So long as a union can show that its actions are related to benefits that will reach all employees, a union may collect dues from both members and non-members alike.

DISTRICT OF COLUMBIA CIRCUIT COURT OF APPEALS

Arizona v. Thompson, 281 F.3d 248 (D.C. Cir. 2002). ***Temporary Assistance for Needy Families:*** Department of Health and Human Services ("DHHS") has discretion to permit expenditures under the Temporary Aid for Needy Families ("TANF") program.

FACTS: Six states sought review of a DHHS directive, barring them from applying TANF funds to costs associated with both TANF programs and similar state aid program. In the present case, the states sent proposals to DHHS that included use of TANF funds for common expenses, such as concurrent determinations of eligibility for state and TANF programs with similar standards, office expenses, hiring of staff to administer both programs and administrative databases. DHHS issued a directive prohibiting the use of the funds in this manner, and the states appealed.

ANALYSIS: First, the court examined the applicability of *Chevron* deference to the DHHS directive. The language of the requirements for receipt of TANF funds was undisputed. Further, the manner in which the states were allowed to use funds under the previous program (Aid for Families with Dependent Children, or "AFDC") were analyzed. The court determined that under AFDC, the states were allowed to allocate the totality of their expenses to common administrative costs. The court found the reading of the requirements for receipt of TANF funds to be unambiguous under the first test for *Chevron* deference and thus declined to consider the remaining prong of the test. The court held that under the clear language of the statute, the states could allocate any amount they chose to common administrative costs, within the fifteen percent administrative cost limit imposed by the statute. Additionally, the court noted that the states were free to adopt the eligibility requirements of TANF for their state aid programs, thus allowing TANF funds to be allocated for common costs, again, up to the fifteen percent limit imposed by statute.

HOLDING: The court held that the states receiving federal funds for the TANF program could use up to fifteen percent of the TANF funds for administrative costs common to the state and federal aid programs. Thus, the decision by the states to use the TANF funds for common administrative costs was proper under the unambiguous language of the statute.

IMPACT: The future concern for states is a possible legislative amendment restricting the use of TANF funds by the state so as to bar use for common costs. Until this occurs, states are free to ease the burden of common administrative costs by applying TANF funds to similar state programs related to TANF, thus promoting efficient administration of aid programs and efficient use of funds.

Fund Democracy, LLC v. S.E.C. Comm'n, 278 F.3d 21 (D.C. Cir. 2002). ***15 U.S.C. § 80a-15(a):*** Provides that "no person may serve as an investment advisor or a registered investment company except pursuant to a written contract which has been approved by the vote of a majority of the outstanding voting securities of the company."

FACTS: Fund Democracy, LLC, was an advisor and resource for mutual fund investors and challenged an order of the Securities and Exchange Commission (SEC) denying its request for a hearing and granting an investment company and its investment advisors an exemption from certain provisions of the Investment Company Act of 1940. The SEC challenged their claim, arguing a lack of standing.

ANALYSIS: The court first addressed the issue of standing. Under Article III, federal courts only have jurisdiction to resolve cases and controversies. The court noted, "a plaintiff or petitioner must, at an irreducible constitutional minimum ... demonstrate that it has suffered a concrete and particularized injury that is: (1) actual or imminent, (2) caused by or fairly traceable to an act that the litigant challenges in the instant litigation, and (3) redressable by the court. Fund Democracy did not meet this standard. The court then addressed the issue of associational standing. The court determined that an association only has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests it seeks to protect are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. Fund Democracy failed in this respect as well. Further, the court rejected the argument that an individual's status as an "interested person" is sufficient to confer standing to petition for review of an SEC order under the Act.

HOLDING: The D.C. Circuit ruled that Fund Democracy, a one-person business run by its principal, Mercer Bullard, did not have standing to bring an action challenging the SEC's granting of the order to Hillview Investment Trust II or its refusal to hold a hearing. The court stated that the only people who will be directly affected by the SEC's order granting Hillview's request for an exemption are those who have purchased shares in Hillview or are at least considering doing so.

IMPACT: The decision limits standing for associations and allows for such on behalf of its members only when certain qualifications are met by its members. These limitations put a much greater burden on the ability of associations to bring suit and may limit their avenues of recourse.

Sinclair Broad. Group v. FCC, 284 F.3d 148 (D.C. Cir. 2002). *Telecommunications Act of 1996:* The Federal Communications Commission ("FCC") may limit common ownership of television stations in some local markets and not others in compliance with the Telecommunications Act and without violating the First Amendment.

FACTS: The Sinclair Broadcasting Group ("Sinclair") challenged the "local ownership rule," which originally permitted common ownership of two television stations in the same local market if: (1) one of the stations is not among the four highest ranked stations in the market; and (2) at least eight independently owned, high-powered, operational stations remain in the market after the merge. Sinclair contended that: (1) limiting common ownership of television stations to local markets with eight independent voices is arbitrary and capricious; (2) failing to fully grandfather existing local marketing agreements ("LMAs") violates the Telecommunications Act of 1996 and is an unlawful taking of property under the Fifth Amendment; and (3) the overall restrictions violate the First Amendment.

ANALYSIS: The court first noted that when reviewing issues as subjective as diversity in broadcasting, the FCC is entitled to more deference than usual. The court found that the FCC decision to limit the common ownership of television stations in local markets and allow only limited grandfathering of LMAs altered the future effect and not the past legal consequences, of LMAs. Additionally, since the FCC regulation was not content-based and did not single out a particular group of broadcasters, the Court applied the rational basis standard of review to determine whether the FCC decision violated the First Amendment.

HOLDING: The Court of Appeals held that the FCC's actions were reasonable in all interpretations of the Telecommunications Act. The FCC demonstrated the success of the local ownership rule through the facilitation of diversity at the local level. Moreover, the court held that the FCC's allowance of limited grandfathering of LMAs was permitted by the Telecommunications Act and was not an unconstitutional Fifth Amendment taking or a violation of the First Amendment.

IMPACT: This decision permits the FCC to consider a variety of factors in applying regulations related to the Telecommunications Act of 1996 and other broadcaster related rules. By endorsing the FCC's "diversity approach" to broadcaster mergers, the court gave the FCC complete power to determine whether a merger should proceed based upon the FCC's subjective view of diversity in the local broadcast area.

UNITED STATES DISTRICT COURT

<u>**GTENet LLC v. Cox Communications, Inc.**</u>, 185 F. Supp. 2d 1141 (S.D. Cal. 2002). ***Doctrine of Primary Jurisdiction***: Congress delegated to the Federal Communications Commission ("FCC") primary jurisdiction to interpret and apply the provisions of the Federal Communications Act ("FCA"), requiring a court to stay all proceedings until the agency's determination of relevant issues.

FACTS: GTE.Net ("GTE") filed suit against Cox Communications ("Cox") alleging violations of non-discrimination requirements of the FCA after Cox negotiated an exclusive contract with a third party for high-speed Internet access services. Cox filed a motion to stay or dismiss the action on grounds that under the doctrine of primary jurisdiction, the court was required to defer to FCC decision-making before hearing the complaint. The dispute centered on the definition of Cox as a "common carrier," which would subject the company to non-discrimination requirements and void any exclusive contracts Cox had with third parties. Under the FCA, the FCC is responsible for overseeing such regulations. However, GTE filed suit in the United States District Court of the Southern District of California before filing complaint with the FCC.

ANALYSIS: The doctrine of primary jurisdiction helps a court or administrative agency properly determine who should hear a complaint. The doctrine applies when conduct falls under a regulatory statute and agency resolution of the issue is "likely to be material aid to any judicial resolution." The court stated that there are four factors to determine whether primary agency jurisdiction exists: (1) the need to resolve an issue, (2) which has been placed by Congress within the jurisdiction of an administrative body having regulatory authority, (3) pursuant to a statute that subjects an industry or activity to a comprehensive regulatory scheme, and that (4) requires expertise or uniformity in administration. The question of whether to impose the common carrier regulations on cable Internet providers has been left to the FCC by the Ninth Circuit, which has yet to decide whether cable service providers that also provide Internet services should be regulated as a telecommunication service provider. The court determined that the FCC should have primary jurisdiction over the issue, because the FCC has the authority and expertise to make such a decision.

HOLDING: The court determined that the FCC should make the first determination on the issue at hand, in congruence with the doctrine of primary jurisdiction. Additionally, the court granted Cox's motion to stay the proceedings, rather than dismiss them, so as not to relinquish jurisdiction over the issue while awaiting resolution of the issue by the FCC.

IMPACT: Where an administrative agency shows interest and expertise in the resolution of an issue that falls under its statutory powers, courts will generally allow that agency primary jurisdiction. Even where delays and a lack of a timely determination are at issue, the agency need only show that it is moving toward ultimately resolving the issue.

DISTRICT OF COLUMBIA COURT OF APPEALS

Foggy Bottom Ass'n v. D.C. Bd. Of Zoning Adjustment, 791 A.2d 64 (D.C. 2002). ***Zoning Regulation***: The omission of an environmental impact statement ("EIS") from an application for a special zoning exception in the District of Columbia is harmless error.

FACTS: George Washington University ("GWU") sought and obtained a special zoning exception from the Board of Zoning Adjustment ("BZA") to build a university hospital in a historical residential neighborhood known as Foggy Bottom. The Foggy Bottom Association ("FBA") objected to the exception on the ground that an Environmental Impact Statement ("EIS") had not been made or filed, as was required, before the exception was granted. The FBA also argued that the BZA grant was not supported by substantial evidence and failed to accord "great weight" to the views of the Advisory Neighborhood Commission ("ANC").

ANALYSIS: The court of appeals rejected all three arguments of the

FBA and validated the special exception. With regard to the omission of the EIS from the special zoning exception application, the court found that such error was harmless because the Department of Health, the lead agency, ultimately ruled that no EIS was needed. An EIS is only required to produce an EIS when an application for a building permit, not just a special use exception, is submitted. With regard to the issue of lack of substantial evidence, the court found that the BZA's findings of fact and conclusions of law were supported by substantial evidence. The court outlined the components of the substantial evidence test, requiring that: (1) findings must be made on each contested issue of fact; (2) the decision must rationally follow from the facts; and (3) there must be sufficient evidence to support each finding, i.e., "such relevant evidence as a reasonable mind might accept as adequate . . . ." The court found substantial evidence to support the BZA's determinations. If there is a rational basis to support the BZA's findings, then the court will not substitute the agency's judgment. With regard to the issue of the views of the ANC, the court found because the BZA openly acknowledge the ANC's viewpoint and then went on to address the issues and concerns raised by the ANC, great weight was afforded to the ANC's views.

HOLDING: The court found in favor of GWU and upheld the special zoning exception GWU was granted, holding that any error that may have existed was harmless.

IMPACT: The court emphasized the great care and detail that the BZA had given in balancing all the interests, and also focused on all the great benefits a university hospital, a teaching institution, and clinics would provide for the neighborhood. This leads to the conclusion that where something is beneficial to the community, the court and the BZA are willing to overlook minor omissions in the application for a permit, at least a special use permit. In other words, the need outweighs the harm.

SUPREME COURT OF NEW JERSEY

In re Camden County, 790 A.2d 158 (N.J. 2002). ***Third Party Standing to Administrative Hearings***: When any party has a substantial likelihood of real and direct economic detriment or adverseness in any suit or hearing (including administrative hearings and proceedings), such a party may intervene and gain standing to be heard without proving any unique financial damages.

FACTS: Camden County sheriff William J. Simon ("Simon") had a preexisting medical condition that resulted in the partial amputation of his foot during the period of time he was employed as sheriff by Camden County ("County"). The amputation did affect Simon's performance of his work duties. After fifteen years of service for the County, Simon was not reelected to office. Shortly thereafter, Simon applied for ordinary disability benefits with the Public Employees Retirement System ("PERS"). Based on Simon's inability to stand for a prolonged period of time, the disability benefits were granted, obligating the County to assume ninety percent of Simon's medical insurance premiums and prescription drug benefits. The County requested reconsideration of the PERS Board's decision on the theory that Simon's disability claim was fraudulent. The County argued that that Simon had been working as a sheriff for the last fifteen years and had not claimed any disability or difficulty up to that point. However, the PERS Board and the administrative law judge ("ALJ") of the Initial Division denied standing for the County to challenge the award. The County claimed standing in the suit because of it's public interest in preventing fraudulent claims and its obligation to pay health care costs. The ALJ reasoned that the County did not have standing to bring a challenge to the PERS Board's decision in light of the fact that the PERS Board, not the County, was statutorily responsible for the fiscal integrity of the pension fund. The ALJ's ruling was upheld by the state appellate court, and the County appealed.

ANALYSIS: The New Jersey Supreme Court reasoned that parties have a right to seek judicial review of an administrative decision if they are directly affected by a particular action being brought before the court. In general, a party that has suffered any economic detriment at the hands of an administrative agency action can gain standing for judicial review, and is not required to prove any unique financial damages. The court stated that a claim of standing based on protecting the public interest is usually insufficient, but a direct financial interest would be sufficient.

HOLDING: The court held that the County was entitled to standing in an administrative hearing to contest the disability pension, because the County was financially obligated to assume a substantial percentage of the costs of the disability benefits. The Court held that because the County's interest was "economic and direct," the County was entitled to be involved in the issue of Simon's disability benefits.

IMPACT: In New Jersey, at least, any party who has a direct and substantial financial interest or stake in the matter may gain standing to be heard at an administrative hearing. This standard is more lenient than most standing requirements, and is contrary to federal courts standards, which limit the intervention of third parties in similar actions. This decision may create problems with the notice requirement, especially if numerous third parties have substantial interest in a hearing, but are not obvious to the ALJ. Whether the ALJ is required to seek out and notify all potential third parties could become an administrative nightmare. Without notice to all interested parties, the hearing could be moot until such a third party is notified.