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**Deferential Review of an Administrative Agency's
Decision in Federal District Court:
*International College of Surgeons v. City of Chicago***

Karen L. Vinzant

I. INTRODUCTION

The City of Chicago, like municipalities throughout the country, has an ordinance that provides for the designation and protection of historical landmarks.¹ The city's Landmark Ordinance is administered by the Commission on Chicago Historical and Architectural Landmarks (the Commission). Pursuant to the Illinois Administrative Review Law², judicial review of final decisions of a municipal landmarks commission lies in the state circuit court. In *International College of Surgeons v. City of Chicago*, the United States Supreme Court considered whether a lawsuit filed in the Circuit Court of Cook County seeking judicial review of the Chicago Landmarks Commission can be removed to federal district court, where the case contains both federal constitutional and state administrative challenges to the Commission's decisions.³

In July, 1988, the Chicago Landmarks Commission made a preliminary determination that seven buildings on Lake Shore Drive met the criteria for landmark designation set out in the Chicago Landmarks Ordinance.⁴ These elegant mansions are all that remain of the fashionable residences that were built at the turn of the century, when many of the city's wealthiest person's, led by entrepreneur Potter Palmer, moved to Lake Shore Drive from the increasingly industrial

¹ See Chicago Municipal Code, Art. XVII §§ 2-120-580 to 2-120-920. The Chicago Landmarks Ordinance creates the Commission and establishes its procedures for designating properties as Chicago Landmarks.

² Ill. Comp. Stat., ch. 735, §§5/3-103, 5/3-104 (Supp. 1997).

³ *International College of Surgeons v. City of Chicago*, 91 F.3d 981 (7th Cir. 1996), Rev'd, 118 S.Ct. 523 (1997).

⁴ *Id.* at 985.

Prairie Avenue on the city's south side.⁵ The Landmarks Commission voted to recommend to the City Council that the seven buildings receive landmark designation and, on June 28, 1989, the Chicago City Council passed the "Seven Houses on Lake Shore Drive District Ordinance" (the "Designation Ordinance") designating the landmark district.⁶ The "Seven Houses on Lake Shore Drive District" thus fell under the jurisdiction of the Commission on Chicago Landmarks, which has authority under the city's Landmarks Ordinance to grant or deny permits for the demolition or alteration of landmark buildings.⁷

Two of these seven buildings are owned by the Illinois College of Surgeons ("ICS") and its U.S. section.⁸ ICS is a 14,000 member nonprofit organization dedicated to the advancement of surgery and education of surgeons worldwide.⁹ The Edward T. Blair House, a four-story mansion at 1516 Lake Shore Drive, was designed by William Kendall of the New York architectural firm of McKim, Mead & White and completed in 1914.¹⁰ The Eleanor Robinson Countiss House, which lies adjacent to the less spacious Blair House, was completed in 1917.¹¹ Its architect, Howard Van Doren Shaw, modeled the house after the Petit Trainon, a three-story Versailles mansion built in 1770 for Louis XV's paramour, Madame de Pompadour (Shaw added a fourth floor).¹² ICS maintains offices in the Blair House and operates the "International Museum of Surgical Science" in the Countiss House.¹³ Through a contract of sale of the houses to Robin Construction Corporation ("Robin"), a co-plaintiff, ICS hoped to

⁵ International College of Surgeons v. City of Chicago, 1995 WL 9243 (N.D.Ill.) at 1.

⁶ Id.

⁷ See Chicago Municipal Code, §§ 2-120-580 to 2-120-920. The Chicago Landmarks Ordinance creates the Commission and establishes its procedures for designating properties as Chicago Landmarks.

⁸ 1995 WL 9243 (N.D.Ill.) at 1.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

realize a return of \$17 million.¹⁴ ICS sought permits to demolish the rear, side and coach house portions of the properties so that Robin could build a 41-story mixed use condominium tower on the site, leaving only the front facades of the original structures.¹⁵

The Commission denied the Illinois College of Surgeons' permit applications.¹⁶ The Illinois College of Surgeons then filed actions in state court under the Illinois Administrative Review Law for judicial review of the Commission's decisions, alleging, among other things, that the two ordinances and the manner in which the Commission conducted its proceedings violated the Federal and State Constitutions, and seeking on-the-record review of the Commission's decisions.¹⁷ The City of Chicago removed the suits to federal district court on the basis of federal question jurisdiction.¹⁸ The District Court consolidated the cases, exercised supplemental jurisdiction over the state law claims, and granted summary judgment for the City, ruling that the ordinances and the Commission's proceedings were consistent with the Federal and State Constitutions and that the Commission's findings were supported by the evidence and not arbitrary and capricious.¹⁹ The Seventh Circuit reversed and remanded to state court, ruling that a federal district court lacks jurisdiction of a case containing state law claims for on-the-record, deferential review of local administrative action.²⁰ The United States Supreme Court subsequently held when reversing the Seventh Circuit that a case containing claims that a local administrative action violates federal law, but also containing state law claims for on-the-record, deferential review of administrative findings, can be removed to federal district court.²¹

¹⁴ Report of Proceedings Re: Economic Hardship Exception Hearing ("Hardship Hearing Record"), at 34.

¹⁵ 1995 WL 9243 (N.D.Ill.), at 2.

¹⁶ *Id.*

¹⁷ 1995 WL 9243 (N.D.Ill.), at 2.

¹⁸ *Id.*

¹⁹ *Id.* at 32.

²⁰ 91 F.3d at 994.

²¹ 118 S.Ct. 523 (1997).

II. PROCEDURAL HISTORY

On October 10, 1990, ICS applied to the Commission for four permits that would allow ICS to demolish the coach houses and the side and rear portions of the Blair and Countiss houses.²² The Commission gave the permits preliminary disapproval on October 23, 1990, and conducted a public hearing on December 18, 1990.²³ The four demolition permits received the Commission's final disapproval on January 9, 1991.²⁴

ICS then filed its first complaint in the Circuit Court of Cook County (No. 91 CH 1361); it sought judicial review of the administrative decision to deny the permits.²⁵ The City removed this complaint to the United States District Court for the Northern District of Illinois, where it was docketed as No. 91 C 1587.²⁶ Pursuant to §21-86 of the Landmark's Ordinance, ICS also filed an application seeking an economic hardship exception to the Landmarks Commission's denial of the demolition permits.²⁷ The Commission held a public hearing on March 5, March 7, and May 8 of 1991.²⁸ The Commission concluded

²² Id.

²³ Chicago Municipal Code, Ch.2-120 §740. The Commission should issue a "preliminary disapproval" of an application of such a permit if the Commission finds the proposed work will "adversely affect or destroy any significant historical or architectural feature of the improvement or the district or is inappropriate or inconsistent with the designation of the structure, area, or district, or is not in accordance with the spirit and purposes of the ordinance"; §800. If an informal conference does not result in an accord or if one is not requested, the application goes to a public hearing before the Commission, which then issues a written decision, containing findings of fact, approving or disapproving the application.

²⁴ Id. at §810; 735 ILCS 5/3-101. The written decision is a final administrative decision appealable to the state court under the Illinois Administrative Review Law. The Commission's regulations governing demolition permit applications in landmark districts call for the agency to evaluate whether the property sought to be demolished contributes to the character of the district. *Rules and Regulations of the Commission on Chicago Landmarks*, Art. IV(C)(1).

²⁵ See *supra* note 24.

²⁶ 91 F.3d at 985.

²⁷ Chicago Municipal Code, Ch.2-120 §830. If the Commission makes a final decision to deny any permit, the applicant may ask the Commission for an "economic hardship exception" on the basis that the denial will result in the loss of all reasonable and beneficial use of or return from the property.

²⁸ 1995 WL 9243 at 2.

that its denial of the demolition permits had not resulted in the "loss of all reasonable and beneficial use of or return from the property" - the standard that appears in the Landmarks Ordinance.²⁹ On July 3, 1991, the Commission issued its final written denial of an economic hardship exception.³⁰ ICS then filed its second complaint in the Circuit Court of Cook County (No. 91 CH 7289) seeking judicial review of the administrative decision to deny the economic hardship exception.³¹ Again, the City removed the action to the federal district court, where it was docketed separately as No. 91 C 5564.³² Because the property is also governed by the Lake Michigan and Chicago Lakefront Protection Ordinance, the College was required to obtain approval for its proposed development under that ordinance as well.³³ The Chicago City Council rejected ICS's application for permits under the Lakefront Protection Ordinance, and ICS filed a "Complaint for Declaratory Judgment and Other Relief" in the district court, where it was docketed as No. 91 C 7849.³⁴

The United States District Court, Northern District, consolidated the three cases and stayed case 91 C 7849 (the declaratory judgment action) pending disposition of the other cases.³⁵ The district court exercised federal question jurisdiction over ICS's federal claims, and recognized that it could also exercise supplemental jurisdiction over ICS's state law claims.³⁶ In a memorandum opinion dated January 10, 1992, the court dismissed with prejudice several of ICS's equal protection and due process claims, including the claim that the Landmarks Ordinance effected an unconstitutional "taking" of ICS's

²⁹ *Rules and Regulations of the Commission on Chicago Landmarks*, Art. V(A)(1-4). The application for an economic hardship carries the burden of proving by clear and convincing evidence "that the existing use of the property is not economically infeasible and that the sale, rental or rehabilitation of the property is not possible, resulting in the property not being capable of earning any reasonable economic return."

³⁰ 1995 WL 9243 at 2.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ 1995 WL 9243 at 2.

³⁶ *Id.*

property.³⁷ Several claims remained, including ICS's claim that the Designation Ordinance violated ICS's federal and state equal protection and due process rights by unfairly treating the subject properties differently from other properties with respect to landmark status.³⁸ In their First Amended Consolidated Complaint for Administrative Review, ICS sought review of the Commission's decisions, and raised several state and federal constitutional challenges.³⁹ The challenges were raised against the Constitutional validity of the city's ordinance governing the designation and preservation of landmark buildings (the Landmarks Ordinance), its ordinance designating the ICS property as a landmark building (the Designation Ordinance), and the Commission's application of the Landmark's Ordinance to the ICS property.⁴⁰ On December 30, 1994, the district court applied Illinois law which grants the trial court the power to affirm or reverse the administrative agency in whole or in part, noting that the decision must be made on the basis of the administrative record.⁴¹ On January 9, 1995, the district court affirmed the Commission's decisions and entered summary judgment for the City.⁴² Having reached this conclusion, the court dismissed case 91 C 7849 with prejudice as moot and with leave to reinstate if the court's judgments were vacated, reversed, or remanded on appeal.⁴³ ICS filed a notice of appeal in all three cases.⁴⁴

On August 1, 1996, the United States Court of Appeals for the Seventh Circuit reversed and remanded the suit, stating that claims for administrative review require the state court to proceed on the basis of more deferential review of the state agency's decisions.⁴⁵ Removal of the action would require the district court to perform the appellate role

³⁷ Id. at 3.

³⁸ Id.

³⁹ Id.

⁴⁰ 1995 WL 9243 at 2.

⁴¹ Id. at 3.

⁴² Id.

⁴³ Id. at 32.

⁴⁴ 91 F.3d at 981.

⁴⁵ Id.

with respect to the decision of the state administrative agency.⁴⁶ Since the state proceeding could not be termed a "civil action," it could not be removed.⁴⁷ The City petitioned the United States Supreme Court for writ of certiorari.⁴⁸

III. THE UNITED STATES SUPREME COURT

The United States Supreme Court considered two issues: (1) propriety of removal for federal constitutional claims raised by way of a cause of action created by state law, namely the Illinois Administrative Review Law; and (2) supplemental jurisdiction for state law claims that require on-the-record review of a state or local administrative determination.⁴⁹

A. Removal to Federal District Court of an Administrative Decision.

1. State law claims may be properly removed for federal constitutional claims raised by way of a cause of action created by state law.

As a general matter, title 28 of the U.S. code provides defendants the right to remove to the appropriate federal district court "any civil action brought in a state court of which the district courts of the United States have original jurisdiction."⁵⁰ The propriety of removal thus depends on whether the case could originally be filed in federal court.⁵¹ Congress granted original jurisdiction to federal district courts primarily under 28 U.S.C. §1331: "The district courts have original jurisdiction under the federal question statute over cases arising under the Constitution, laws, or treaties of the United States."⁵² It is long settled law that a cause of action arises under federal law only when the Plaintiff's well-pleaded complaint raises issues of federal

⁴⁶ Id. at 994.

⁴⁷ Id.

⁴⁸ 118 S.Ct. at 528,529.

⁴⁹ Id.

⁵⁰ 28 U.S.C. §1441(a).

⁵¹ *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 2845-2846

(1987).

⁵² 28 U.S.C. §1331.

law.⁵³

ICS's state court complaints raised a number of issues of federal law in the form of various federal constitutional challenges to the Landmarks and Designation Ordinances, and to the manner in which the Commission conducted the proceeding. While the federal constitutional claims were raised by way of a cause of action created by state law, namely, the Illinois Administrative Review Law, its claims still "arise under" the laws of the United States because its well pleaded complaint established that its right to relief under state law requires resolution of a substantial question of federal law.⁵⁴ The Supreme Court cited *Howard v. Lawton* for the proposition that constitutional issues may be raised in claims seeking administrative review.⁵⁵ The *Lawton* court noted that requiring separate trials for the review of the administrative body's decision and the test of constitutional validity of the statute that brought on the decision would lead to piecemeal litigation.⁵⁶ By raising claims that arise under federal law, ICS subjected itself to the possibility that the City would remove the case to the federal courts.

2. *A state law claim requiring on-the-record review of an administrative action is removable as a civil action.*

ICS argued that the District Court was without jurisdiction over its actions because they contain state law claims that require on-the-record review of the Commission's decisions.⁵⁷ A claim that calls for deferential judicial review of a state administrative determination, ICS asserts, does not constitute a "*civil action* ... of which the district courts

⁵³ Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 63, 107 S.Ct. 1542,1546 (1987).

⁵⁴ Franchise Tax Bd. Of Cal. v. Construction Laborers Vacation Trust for Southern Cal., 463 U.S. 1, 7-12, 103 S.Ct. 2841, 2845-2848 (1983).

⁵⁵ 118 S.Ct. at 529.

⁵⁶ Howard v. Lawton, 22 Ill.2d 331, 175 N.E.2d 556 (1961). *Lawton* dealt with an action for administrative review of a decision of the zoning board of appeals of the city of Chicago upholding the refusal of the city's zoning administrator to grant a building permit an denying an application for installation of trailer facilities in a trainyard as a special use. The superior court of Cook County affirmed the board's decision and upheld the constitutionality of the zoning ordinance. In its opinion, the court noted that the trial court's review extends to all issues raised in an administrative proceeding.

⁵⁷ 118 S.Ct. at 525.

of the United States have original jurisdiction” under 28 U.S.C. §1441(a). (emphasis added).⁵⁸ The Supreme Court found that the relevant inquiry is not, as ICS asserts, whether its state claims for on-the-record review of the Commission’s decisions are “civil actions” within the “original jurisdiction” of a district court. The district court’s original jurisdiction derives from ICS’s federal claims, not its state law claims.⁵⁹ Those federal claims suffice to make the actions “civil actions” within the “original jurisdiction” of the district courts for purposes of removal.⁶⁰ The Court of Appeals, in fact, acknowledged that ICS’s federal claims, if brought alone, would be removable to federal court.⁶¹ Nothing in the jurisdictional statutes suggests that the presence of related state law claims somehow alters the fact that ICS’s complaints, by virtue of their federal claims, were civil actions within the federal courts’ original jurisdiction.

B. Supplemental Jurisdiction.

1. The District court could exercise supplemental jurisdiction over the state claims once the case was removed on federal question grounds.

Pendent and ancillary jurisdiction are principles by which the federal courts’ original jurisdiction carries with it jurisdiction over state law claims that derive from a “common nucleus of operative fact,” such that “the relationship between the federal claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional case.”⁶² Congress has codified these principles in the supplemental jurisdiction statute, which combines the doctrines of pendent and ancillary jurisdiction under a common heading in 28 U.S.C. §1367. The statute provides, “in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States

⁵⁸ Id. at 526.

⁵⁹ Id.

⁶⁰ U.S.C. §1441(a).

⁶¹ 91 F.3d, at 993.

⁶² *Mine Worker’s v. Gibbs*, 383 U.S. 715, 725 (1966).

Constitution.”⁶³ That provision applies with equal force to cases removed to federal court as to cases originally filed there; a removed case is necessarily one that the district courts have original jurisdiction.⁶⁴

Once the case was removed, the District Court had original jurisdiction over ICS’s claims arising under the federal law, and thus could exercise supplemental jurisdiction over the state law claims so long as those claims constitute “claims that form part of the same case or controversy.”⁶⁵ The Supreme Court found that the District Court was correct in its determination that the claims for review of the Commission’s decisions are legal “claims” in the sense that the term is generally used in the context to denote a judicially cognizable cause of action.⁶⁶ The state and federal claims derive from a common nucleus of operative fact, namely, ICS’s unsuccessful efforts to obtain demolition permits from the Chicago Landmarks Commission.⁶⁷ That is all the statute requires to establish supplemental jurisdiction.⁶⁸ ICS seemed to recognize as much in the amended complaint it filed it filed with the District Court following removal, stating that the nonfederal claims are subject to this Court’s pendent jurisdiction.⁶⁹

2. State law claim requiring on-the-record review of Administrative Action as a Civil Action.

The essential premise of ICS’s argument is that Sec. 1367(a), which presupposes a “civil action” of which the district courts have original jurisdiction is inapplicable.⁷⁰ The Supreme Court explained that ICS in fact raised claims not bound by the administrative record (its facial constitutional claims), and the facial and as-applied federal constitutional claims raised by ICS “arise under” federal law for

⁶³ 28 U.S.C. §1367(a).

⁶⁴ 28 U.S.C. §1441(a).

⁶⁵ 118 S.Ct. at 530.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ U.S.C. §1367(a).

⁶⁹ *Appellate Record* p.143.

⁷⁰ *Brief for Respondents* 15-21.

purposes of federal question jurisdiction.⁷¹ ICS suggested not only that a claim involving deferential review of a local administrative decision is not a “civil action” in the “original jurisdiction” of the district courts, but also that such a claim can never constitute a claim “so related to claims ... within original jurisdiction that it forms part of the same case or controversy” for purposes of supplemental jurisdiction.⁷²

The Supreme Court found nothing in the text of U.S.C. §1367(a) that indicates an exception to supplemental jurisdiction for claims that require on-the-record review of a state or local administrative determination.⁷³ Instead, the statute generally confers supplemental jurisdiction over “all other claims” in the same case or controversy as a federal question, without reference to the nature of the review.⁷⁴ Congress could, of course, establish an exception to supplemental jurisdiction for claims requiring deferential review of state administrative decisions, but the statute, as written, does not bear that construction. The ICS Court noted that neither Supreme Court decision on which ICS principally relies, *Chicago, R.I. & P.R. Co. v. Stude*, 346 U.S. 574, 74 S.Ct. 290 (1954), and *Horton v. Liberty Mutual Ins. Co.*, 367 U.S. 348, 81 S.Ct. 1570 (1961), require that an equivalent exception be read into 28 U.S.C. §1367(a).⁷⁵

Both *Stude* and *Horton*, to the extent that either might be read to establish limits on the scope of federal jurisdiction, address only whether a cause of action for judicial review of a state administrative decision is within the district court’s original jurisdiction under the diversity statute, 28 U.S.C. §1332, not whether it is a claim within the district courts’ pendent jurisdiction in federal question cases.⁷⁶ Both *Stude* and *Horton* indicate that federal jurisdiction generally encompasses judicial review of state administrative decisions.⁷⁷ In *Stude*, a railroad company challenging the amount of a condemnation

⁷¹ 118 S.Ct. at 531; see *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350, 372, 109 S.Ct. 2506,2520-2521 (1989) (“a facial challenge to an allegedly unconstitutional ... zoning ordinance is a claim which we would assuredly not require to be brought in state courts.”).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at 532.

⁷⁶ *Stude* at 346 U.S. at 581, *Horton* at 367 U.S. at 348.

⁷⁷ *Id.*

assessment attempted to establish federal jurisdiction by two separate routes.⁷⁸ First, the railroad filed a complaint seeking review of the amount of the assessment in federal court on the basis of diversity jurisdiction, and, second, it filed an appeal from the assessment in state court and then undertook to remove that case to federal court.⁷⁹ As to the action filed directly to federal court, the Supreme Court upheld its dismissal, finding that state eminent domain proceedings were still pending and that the complaint thus improperly attempted to “separate the question of damages and try it apart from the substantive right from which the claim arose.”⁸⁰ ICS emphasized the Court’s observation in this interlocutory context that a district court “does not sit to review on appeal action taken administratively or judicially in a state proceeding.”⁸¹ The ICS Court noted that the *Stude* Court did not mean by this remark that jurisdiction turned on whether judicial review of the administrative determination was deferential or de novo.⁸² The decision makes no reference to the standard of review.

The ICS court went on to state that ICS’s reading of the *Stude* court’s statement to suggest that federal courts can never review local administrative decisions would conflict with the court’s treatment of the second action in the case: the railroad’s attempt to remove its state court appeal to federal court.⁸³ With respect to that action, the Court held that removal was improper in the particular circumstances because the railroad was the plaintiff in the state court action.⁸⁴ But the Court observed that, as a general matter, a state court action for judicial review of an administrative action is “in its nature a civil action and subject to removal by the defendant to the United States District Court.”⁸⁵ If anything, then, *Stude* indicates that the jurisdiction of federal district courts encompasses ICS’s claims for review of the Commission’s decisions. *Horton*, to the same effect, held that a district court had jurisdiction under the diversity statute to review a state

⁷⁸ *Stude* at 346 U.S. at 582.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 346 U.S. at 581.

⁸² 118 S.Ct. at 532.

⁸³ *Id.*

⁸⁴ *Stude* at 346 U.S. at 578-579.

⁸⁵ *Id.*

worker's compensation award.⁸⁶ The bulk of the opinion addresses the central issue in the case, whether the suit satisfied the amount-in-controversy threshold for diversity jurisdiction.⁸⁷ But the plaintiff alleged, based on *Stude*, that diversity jurisdiction was lacking because the action was an appeal from a state administrative order, to which the Court simply responded that, aside from many other relevant distinctions which need not be pointed out, the suit was a trial de novo, and not an appellate proceeding.⁸⁸ The Court in *Horton* did not purport to hold that the de novo standard was a precondition to federal jurisdiction.⁸⁹ The ICS Court noted that any negative inference that might be drawn from that aspect of *Horton*, would be insufficient to trump the absence of indication in 28 U.S.C. §1367(a) that the nature of review bears on whether a claim is within a district court's supplemental jurisdiction.⁹⁰

District courts routinely conduct deferential review pursuant to their original jurisdiction over federal questions, including on-the-record review of federal administrative action.⁹¹ Nothing in 28 U.S.C. §1367(a) suggests that the district courts are without supplemental jurisdiction over claims seeking precisely the same brand of review of local administrative determinations.

CONCLUSION

ICS raised claims not bound by the administrative record (its facial constitutional claims), as well as facial and as-applied federal constitutional claims "arising under" federal law for purposes of federal question jurisdiction. Claims involving deferential review of a local administrative decision remain "civil actions" in the original jurisdiction of the district courts, as set forth in 28 U.S.C. §1331. These claims constitute claims "so related to claims ..." within such original jurisdiction that they form the same case or controversy for purposes of supplemental jurisdiction under 28 U.S.C. §1367. The federal court

⁸⁶ *Horton* at 367 U.S. at 352.

⁸⁷ *Id.* at 367 U.S. at 352.

⁸⁸ *Id.* at 367 U.S. at 354.

⁸⁹ *Id.*

⁹⁰ 118 S.Ct. at 533.

⁹¹ See *Califano v. Sanders*, 430 U.S. 99, 105-107 (1977).

may properly review such state claims even though deferential on the record review of administrative finding is required.⁹² Such review is, after all, similar to federal court deferential review of federal administrative agency actions.⁹³

⁹² 118 S.Ct. 533. The dissenters, Justices Ginsburg and Stevens, dispute this point but the opinion for the court alleges that it is unclear why the dissent does so. The dissenting opinion indicates unease with the court's construction of "civil action" to permit cross-system appellate review of local agency decisions. 118. S.Ct. 539.

⁹³ 118 S.Ct. at 533.