Judicial Review of Administrative Action

There is a strong presumption that Congress intends judicial review of administrative action: "[A]survey of our cases shows that judicial review of a final agency action by an aggrieved person will not be cut off unless there is persuasive reason to believe that such was the purpose of Congress."[161]

The Court requires that a statute contain "clear and convincing evidence" of an intent to preclude judicial review of decisions made under it.[162] Also, the Court tends to construe preclusions narrowly. Thus, even where a statute has barred judicial review of the merits of individual cases, the Court nevertheless has found that the regulations and practices for determining cases may be reviewed.[163]

While the presumption of reviewability predated the enactment of the Administrative Procedure Act in 1946, the APA embodied the presumption in statute. Under the APA, final agency actions for which there is no other adequate remedy in a court are subject to judicial review,[164] "except to the extent that statutes preclude judicial review; or agency action is committed to agency discretion by law."[165]

As to the first exception, the presumption of reviewability may be overcome by specific statutory language, but it also "may be overcome by inferences of intent drawn from the statutory scheme as a whole."[166] The second exception applies "in those rare instances where 'statutes are drawn in such broad terms that in a given case there is no law to apply.'"[167]

References:

[161] Abbott Laboratories v. Gardner, 387 U.S. 136, 140 (1967).
[162] E.g., Bowen v. Michigan Academy of Family Physicians, 476 U.S. 667, 671 (1986) ("This ['clear and convincing evidence'] standard has been invoked time and again...."); Kucana v. Holder, 558 U.S.233, 251-52 (2010).

[163] Bowen vs. Michigan Academy of Family Physicians, 476 U.S. 667 (1986) (finding that the method for determining the amount of benefits that is payable under Medicare Part B is reviewable even though the individual determinations themselves are not). See also McNary v. Haitian Refugee Center, 498 U.S. 479, 496 (1991) ("It is most unlikely that Congress intended to foreclose all forms of meaningful judicial review," given the presumption "that Congress legislates with knowledge of our basic rules of statutory construction."); Kucana vs. Holder, 558 U.S. 233, 252-53 (2010) (stressing that it is for Congress, and not an executive agency, to determine whether a discretionary agency decision is subject to review, and thus a statutory bar on review of discretionary agency decisions was limited to certain decisions made discretionary by Congress and did not include procedural decisions made discretionary through agency regulation). See also Lindahl v. OPM, 470 U.S. 768, 778 (1985) (provision in Civil Service Retirement Act stating that OPM's "decisions . concerning these matters are final and conclusive and are not subject to review" interpreted as precluding review only of OPM's factual determinations, but as not precluding review of legal interpretations). The Lindahl Court contrasted other statutory language said to be "far more unambiguous and comprehensive" in

precluding review. Id. at 779-80 & n.13 (citing 5 U.S.C. §8128(b)) ("Action of the Secretary is final and conclusive for all purposes and with respect to all questions of law and fact."); and 38 U.S.C. §211(a) ("Decisions of the Administrator on any question of law or fact .shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision.").

[164] 5 U.S.C. §704.

[165] 5 U.S.C. §701(a).