

# Administrative Process

Class #22 · November 10, 2021 🏖️

## Reviewability doctrines

- **Reviewing agency action**
  - Express and implied preclusion
  - Committed to agency discretion
- **Reviewing agency inaction**
- **Final agency action**
- **Ripeness and mootness**
- **Standing**
- **Exhaustion of administrative remedies**

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## **Constitution, Article III, Section 2, clause 2.**

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, **with such exceptions, and under such regulations as the Congress shall make.**

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## 5 U.S.C. § 701. Application; definitions

- (a) This chapter applies, according to the provisions thereof, except to the extent that—
- (1) **statutes preclude** judicial review; or
  - (2) agency action is **committed to agency discretion by law.**

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## 5 U.S.C. § 702. Right of review

**A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.** An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party.

\* \* \*

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## 5 U.S.C. § 702. Right of review

\* \* \* The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance.

**Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.**

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## 5 U.S.C. § 703. Form and venue of proceeding

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter **in a court specified by statute** or, **in the absence or inadequacy thereof, any applicable form of legal action**, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, **in a court of competent jurisdiction**. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. **Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.**

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## 5 U.S.C. § 704. Actions reviewable

**Agency action made reviewable by statute** and **final agency action for which there is no other adequate remedy in a court** are subject to judicial review. A **preliminary, procedural, or intermediate agency action or ruling** not directly reviewable is subject to review on the review of the final agency action. **Except as otherwise expressly required by statute**, agency action **otherwise final** is final for the purposes of this section **whether or not** there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, **unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative**, for an appeal to superior agency authority.

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## 5 U.S.C. § 705. Relief pending review

When an agency finds that justice so requires, it **may postpone the effective date of action taken by it, pending judicial review.** On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.