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## Case Note: Transportation Law - Urban Mass Transportation Act - The Absence of Statutory Provisions Relating to Standing and Judicial Review Does Not Preclude a Claimant from Seeking Relief in Federal Court

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**TRANSPORTATION LAW — Urban Mass Transportation Act — The Absence of Statutory Provisions Relating to Standing and Judicial Review Does Not Preclude a Claimant From Seeking Relief in Federal Court.** *Bradford School Bus Transit, Inc. v. Chicago Transit Authority*, 537 F.2d 943 (7th Cir. 1976), *cert. denied*, 97 S. Ct. 797 (1977).

In June 1974 the Urban Mass Transportation Administration (UMTA) executed a grant-in-aid contract with the Chicago Transit Authority (CTA) to fund the purchase of buses, rapid transit cars and other equipment.<sup>1</sup> Pursuant to section 1602(a) of the Urban Mass Transportation Act (Act),<sup>2</sup> CTA agreed to a condition which prohibited it from engaging in school bus operations in competition with existing private bus lines. Thereafter, in contravention of this condition, CTA submitted a bid to provide student transportation for the Chicago Board of Education. The bid was accepted in January 1975.<sup>3</sup>

Plaintiff private bus company sought a declaration that CTA was engaged in school bus operations in violation of section 1602.<sup>4</sup> Plaintiff also sought to enjoin further UMTA funding of CTA.<sup>5</sup> The United States District Court for the Northern District of Illinois declared that plaintiff lacked standing to sue under the Act and dismissed the complaint.<sup>6</sup> The court also concluded that UMTA's action was not subject to judicial review.<sup>7</sup>

The Seventh Circuit<sup>8</sup> held plaintiff had sufficient standing to sue under the Act. It concluded that plaintiff had adequately alleged an

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1. *Bradford School Bus Transit, Inc. v. Chicago Transit Auth.*, 537 F.2d 943, 944 (7th Cir. 1976), *cert. denied*, 97 S. Ct. 797 (1977).

2. 49 U.S.C. §§ 1601-09 (1970), *as amended*, (Supp. V, 1975) [hereinafter cited as Act]. 49 U.S.C. § 1602(g) (Supp. V, 1975) provides:

No Federal financial assistance shall be provided under this chapter for the construction or operation of facilities and equipment for use in providing public mass transportation service to any applicant for such assistance unless such applicant and the Secretary shall have first entered into an agreement that such applicant will not engage in school bus operations, exclusively for the transportation of students and school personnel, in competition with private schoolbus operators.

3. 537 F.2d at 945.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. 537 F.2d at 943.

unjust injury due to agency action,<sup>9</sup> and had sufficiently demonstrated that its interests were protected by the Act's relevant provisions.<sup>10</sup> In addition, the court of appeals stated that the absence of a provision for judicial review of agency action did not preclude such a review of UMTA decisions.<sup>11</sup> Nevertheless, it refused to review the administrative action because complaint procedures and remedies<sup>12</sup> were available and plaintiff was required to exhaust those administrative remedies.<sup>13</sup>

The doctrines of standing and nonreviewability of administrative actions have been important defenses to legal actions against federal agencies involved in the operations of mass transit.<sup>14</sup> When a court finds that a plaintiff does not have standing, it must dismiss that action for lack of jurisdiction or a justiciable question. When it finds an agency decision nonreviewable, the court cannot reach the merits of the case.<sup>15</sup>

A purpose of the standing doctrine is to prevent the federal courts from being used as a forum for the airing of "generalized grievances about the conduct of government."<sup>16</sup> The doctrine, which

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9. *Id.* at 943-46.

10. *Id.*

11. *Id.* at 947.

12. *Id.* at 948 n.3. 49 C.F.R. §§ 605.30-.35 (1976). The procedures require that the complaint be in writing and specify in detail the alleged violation of the Act. *Id.* § 605.30. The funded party must then respond by producing rebutting evidence. *Id.* § 605.32. Most important from a judicial standpoint, the UMTA, after concluding its investigation, is required to include an explanation and analysis of its findings in writing. *Id.* § 605.33(a).

13. 537 F.2d at 948.

14. See *South Suburban Safeway Lines, Inc. v. City of Chicago*, 416 F.2d 535 (7th Cir. 1969); *Kendler v. Wirtz*, 388 F.2d 381 (3d Cir. 1968); *Bartels v. Biernat*, 405 F. Supp. 1012 (E.D. Wis. 1975); *Pullman, Inc. v. Volpe*, 337 F. Supp. 432 (E.D. Pa. 1971). See also Thomas, *Legal Compliance with Laws and Regulations Affecting Mass Transit Operations*, 52 J. URB. L. 835 (1975) [hereinafter cited as Thomas], which discusses the difficulty plaintiffs have faced in getting courts to recognize their right to standing and their right to judicial review as well as other legal problems with the conduct of the grant-in-aid and loan programs of the Act.

15. *Harrison Halsted Community Group, Inc. v. Housing & Home Finance Agency*, 310 F.2d 99 (7th Cir. 1962). See also *Johnson v. Redevelopment Agency*, 317 F.2d 872 (9th Cir.), cert. denied, 375 U.S. 915 (1963). One commentator contends that this has resulted in situations where "no matter what the constitutional and statutory violations, no matter how arbitrary and illegal the official action, and no matter how severe the injury to the plaintiffs, the court in the name of lack of standing refuses to consider the merits!" Davis, *Standing: Taxpayers and Others*, 35 U. CHI. L. REV. 601, 623 (1968).

16. *Flast v. Cohen*, 392 U.S. 83, 106 (1968).

stems from the article III<sup>17</sup> "case or controversy" mandate imposed upon the federal judiciary, insures that disputes will be presented in an adversarial context capable of judicial resolution.<sup>18</sup> Article III requires a plaintiff to allege that the government action in question has caused him injury in fact, economic or otherwise.<sup>19</sup> But when a party bases a claim upon the provisions of a specific statute, the issue becomes whether that party's interest is "within the zone of interests to be protected or regulated by the statute . . . ."<sup>20</sup>

A plaintiff whose interest is protected by a statute is entitled to seek judicial review of an injury to that interest; but absent that statutory concern, a plaintiff is not so entitled even if he has suffered actual injury as a result of governmental action.<sup>21</sup> In the past, claimants have had difficulty suing under the Act because it contains no express provision conferring standing on any particular person or group. Courts have interpreted the absence of an express provision as implying that Congress has denied standing to any group or person.<sup>22</sup> This restrictive interpretation has continued in spite of the Supreme Court's decision in *Data Processing Service Organizations, Inc. v. Camp*,<sup>23</sup> where the Court held that legislation, which is not explicit in protecting an identifiable group, is not presumed to preclude plaintiffs from seeking vindication of their rights in federal court.<sup>24</sup>

In *South Suburban Safeway Lines v. City of Chicago*,<sup>25</sup> defendants City of Chicago and CTA were constructing a rapid transit system along the median strip of a major expressway. Defendants Department of Housing and Urban Development and UMTA had approved a grant to CTA to facilitate the construction. Plaintiff

17. U.S. CONST., art. III, §2, cl. 1, provides: "[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and treaties made, or which shall be made, under their Authority . . . ."

18. *Flast v. Cohen*, 392 U.S. 83, 181 (1968).

19. *Data Processing Serv. Organizations, Inc. v. Camp*, 397 U.S. 150, 152 (1970).

20. *Id.* at 153.

21. *Hardin v. Kentucky Utilities Co.*, 390 U.S. 1, 5-7 (1968). See Jaffe, *Standing Again*, 84 HARV. L. REV. 633 (1971) [hereinafter cited as Jaffe].

22. *South Suburban Lines, Inc. v. City of Chicago*, 285 F. Supp. 676, 678 (N.D. Ill. 1968), *aff'd*, 416 F.2d 535 (7th Cir. 1969).

23. 397 U.S. 150 (1970).

24. *Id.* at 157. See Davis, *The Liberalized Law of Standing*, 37 U. CHI. L. REV. 450 (1970); Jaffe, *supra* note 21 at 633.

25. 416 F.2d 535 (7th Cir. 1969).

private bus line alleged that the proposed CTA service would compete with and destroy its operation. Thus, it claimed a deprivation of property without compensation.<sup>26</sup> The United States District Court for the Northern District of Illinois dismissed plaintiff's action for lack of standing.<sup>27</sup>

On appeal, the Seventh Circuit affirmed.<sup>28</sup> The court concluded plaintiff lacked standing as a federal taxpayer, citing *Frothingham v. Mellon*<sup>29</sup> and *Flast v. Cohen*.<sup>30</sup> The court also noted that section 702 of the Administrative Procedure Act (APA)<sup>31</sup> did not apply. That section provides: "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."<sup>32</sup> Although it appeared that defendant's actions would adversely affect plaintiff's operation the court found that plaintiff had not alleged an invasion of a recognized legal right,<sup>33</sup> and thus it was not a member of a class protected "within the meaning of a relevant statute."<sup>34</sup> The court reasoned that plaintiff could not claim protection under any provision of the Act,<sup>35</sup> because

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26. *Id.* at 536.

27. 285 F. Supp. at 678.

28. 416 F.2d at 537.

29. 262 U.S. 447 (1923). *Frothingham* was a suit brought challenging the constitutionality of an act to provide funds to states to reduce infant mortality. The Court held that a suit by a taxpayer may not be entertained to enjoin the enforcement of an appropriations statute.

30. 392 U.S. 83 (1968). In *Flast* the Supreme Court granted standing to taxpayers to challenge the constitutionality of expenditures specifically prohibited under a provision of the Constitution.

31. 5 U.S.C. §§ 701-06 (1970)[hereinafter cited as APA].

32. *Id.* § 702.

33. 416 F.2d at 537. Beginning with *Hardin v. Kentucky Utilities Co.*, 390 U.S. 1 (1968), and followed by *Data Processing Serv. Organizations, Inc. v. Camp*, 397 U.S. 150 (1970) and *Barlow v. Collins*, 397 U.S. 159 (1970), the Supreme Court abandoned previous concepts of the law of standing which were based on a series of seemingly contradictory cases. These cases held that a person was not entitled to standing unless the right violated was a private, substantially protected interest. Specifically, a plaintiff would have to do more than merely allege economic injury. See *Perkins v. Lukens Steel Co.*, 310 U.S. 113 (1940); *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470 (1940); *Tennessee Electric Power Co. v. TVA*, 306 U.S. 118 (1939). *South Suburban* based its holding on language from *Tennessee Power Co. v. TVA*, which held that a person injured by governmental action may not challenge that action "unless the right invaded is a legal right, — one of property, one arising out of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege." 306 U.S. at 137-38.

34. 416 F.2d at 537, quoting APA, 5 U.S.C. § 702 (1970).

35. *Id.*

the type of competition alleged was not prohibited by section 1602.<sup>36</sup> While section 1602 expressed a legislative concern that preexisting private mass transit systems should be dealt with fairly,<sup>37</sup> the Seventh Circuit could find no legislative intent in section 1602(c)<sup>38</sup> to support plaintiff's claim that its interests as a private transit facility were protected under the statute.<sup>39</sup> Thus, the *South Suburban* decision seemed to compel the plaintiff to identify its interest as one explicitly protected under the Act regardless of the degree of its injury.

In *Pullman, Inc. v. Volpe*,<sup>40</sup> plaintiff bidder sought to enjoin local transportation authorities from awarding contracts to supply railroad commuter cars to defendant electric company. The bidder also sought to prohibit the Secretary of Transportation from approving the contract awards.<sup>41</sup> Plaintiff contended that defendant electric company had not complied with bidding specifications in the invitation to bid. Therefore, it claimed to be the lowest responsive bidder and argued that the UMTA concurrence in the contract awards rendered it a party aggrieved by federal agency action.<sup>42</sup>

The United States District Court for the Eastern District of Pennsylvania acknowledged that plaintiff had been "adversely affected" by agency action. However, the court denied standing to plaintiff, since its claim was not within the zone of interests to be protected or regulated by the statute in question.<sup>43</sup> Plaintiff had complained as a disappointed bidder seeking redress under the Act, but it could not point to any express or implied legislative concern to protect these interests. The Act merely outlined the procedures to be used in the absence of any bidding.<sup>44</sup> Therefore, plaintiff could not rely

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36. *Id.* at 539.

37. 49 U.S.C. § 1602(e) (1970) provides:

No financial assistance shall be provided . . . for the purpose of . . . acquiring any interest in, or purchasing any facilities . . . of, a private mass transportation company . . . or for the purpose of providing any contract . . . for the operation of mass transportation facilities . . . in competition with . . . the service provided by an existing mass transportation company . . . .

38. *Id.* § 1602(c).

39. 416 F.2d at 538.

40. 337 F. Supp. 432 (E.D. Pa. 1971).

41. *Id.* at 435.

42. *Id.*

43. *Id.* at 440.

44. 49 U.S.C. § 1608(b) (1970).

on this language as a basis for standing under the Act.

The district court assumed that a bidder who is unable to point to legislation providing for the protection of his competitive interests is without a protectable interest and thus without standing to sue. But the Supreme Court has granted bidders standing to challenge administrative action despite the absence of an explicit legislative purpose to protect a competitive interest.<sup>45</sup> Moreover, other courts have been moving toward recognizing an expanded class of persons entitled to sue under the Act.

In *Bartels v. Biernat*,<sup>46</sup> "mobility handicapped persons," brought a class action to prevent the execution and funding of contracts until the plaintiffs' needs were given greater consideration pursuant to the Act.<sup>47</sup> Section 1612 of the statute provides that special efforts must be made in the planning and design of mass transit facilities so that they are accessible to handicapped persons.<sup>48</sup> The United States District Court for the Eastern District of Wisconsin had little difficulty in recognizing the plaintiffs' standing to sue. It found that plaintiffs were, under a literal reading of section 1612, "within the zone of interests to be protected by the [Act]."<sup>49</sup>

*Bartels* is distinguishable from *South Suburban*. *Bartels* involved section 1612(a) of the Act, which provides that handicapped persons are protected. *South Suburban* was brought under section 1609(a) which is not explicit in articulating a legislative concern for existing private transit facilities. Nonetheless, the court's reasoning in *Bartels* represents a progression in expanding the list of proper plaintiffs under the Act. This progression culminated in the instant decision.

In *Bradford*, the Seventh Circuit overruled *South Suburban* and abandoned its previous policy of denying standing under the Act.<sup>50</sup> Writing for the majority, Judge Robert A. Sprecher recognized the general trend towards expanding the class of aggrieved persons who

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45. See *United States ex rel. Chapman v. FPC*, 345 U.S. 153 (1953); *Alton R.R. v. United States*, 315 U.S. 15 (1942); *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470 (1940).

46. 405 F. Supp. 1012 (E.D. Wis. 1975).

47. 49 U.S.C. § 1612(a) (1970).

48. 405 F. Supp. at 1016.

49. *Id.*

50. 537 F.2d at 945. The court dismissed the district court's reliance upon the decision in *South Suburban* as being "misplaced." *Id.*

may protest administrative actions.<sup>51</sup> Adhering to the Supreme Court's two-pronged test for standing,<sup>52</sup> the court found that plaintiffs had: (1) claimed a sufficient injury in fact due to agency action;<sup>53</sup> and (2) as private bus operators, fell within the zone of interests protected by the Act.<sup>54</sup> Contrary to prior holdings, the court held that the provisions of the Act prohibiting competition with existing private facilities indicated a legislative intent to protect interested parties from the adverse effects of violations of these provisions.<sup>55</sup>

Although *Bradford* does not represent a pioneering trend of conferring standing upon anyone adversely affected by UMTA action, it does align the Seventh Circuit with the latest trend in the law of standing as pronounced by the Supreme Court.<sup>56</sup> Persons injured by UMTA action must establish that they are members of a class protected by the Act.<sup>57</sup> *Bradford* liberalized the reading of the statute by expanding the zone of interests to be protected. Under this reading, a disappointed bidder would still be denied standing since its interest is not expressly mentioned, but operators of preexisting private transit facilities and handicapped and elderly persons alleging injury by a UMTA grant-in-aid would be granted standing.<sup>58</sup>

*Bradford* also addressed the issue of the right to judicial review of administrative actions. Together with the concept of standing, this doctrine had provided the UMTA with a defense to suits under the Act. Although the Act does not expressly provide for judicial

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51. *Id.* at 946.

52. *Data Processing Serv. Organizations, Inc. v. Camp*, 397 U.S. 150 (1970), involved an association of data processors challenging a ruling of the Comptroller of the Currency which allowed national banks to make data processing services available to their banks and bank customers. The Court held that plaintiffs had standing since undoubtedly the ruling was going to affect adversely their business. *Id.* at 154.

53. 537 F.2d at 946.

54. *Id.*

55. *Id.*

56. See notes 33, 52 *supra*.

57. 537 F.2d at 946. The court declared that plaintiffs represented the only parties protected by the relevant provisions of the statute. *Id.*

58. The court in *Bradford* interpreted the proscription of competition with private school bus operators contained in 49 U.S.C. § 1602(g) (Supp. V, 1975). In *South Suburban*, the court dealt with the prohibition on providing funds to facilities competing with any existing transit company. 416 F.2d at 536. See 49 U.S.C. § 1602(e) (1970). There is no reason to believe, however, that under the liberal interpretation of *Bradford*, the decision would not have resulted in a similar holding. Both provisions are nearly identical in wording and scope.



review,<sup>59</sup> it does not expressly preclude it.<sup>60</sup>

The APA makes agency action reviewable "except to the extent that — (1) statutes preclude judicial review; or (2) agency action is committed to agency discretion by law."<sup>61</sup> Nevertheless, there has been a reluctance in the courts to find any broad right to judicial review for suits brought under the Act.<sup>62</sup> The court in *Pullman* had established the criteria to determine whether a particular agency decision is sufficiently committed to agency discretion so as to preclude judicial review.<sup>63</sup> That court concluded that Congress drafted the Act in broad concepts rather than specific guidelines<sup>64</sup> thereby granting UMTA the authority to fulfill the broad congressional purposes of the statute "on such terms and conditions as it may prescribe."<sup>65</sup> Determination of a plaintiff's cause of action required the discretion and expertise specially possessed by the UMTA,<sup>66</sup> leaving only the question of abuse to the court's review.<sup>67</sup>

Although the *Pullman* court refused to review the UMTA's exercise of discretion, it conceded that the agency's broad discretion is limited in some undefined way to five special areas by express provisions in the Act.<sup>68</sup> These provisions concern: (1) competition with private enterprises;<sup>69</sup> (2) relocation of displaced persons;<sup>70</sup> (3) coordi-

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59. 337 F. Supp. at 436.

60. 537 F.2d at 947.

61. 5 U.S.C. § 701(a) (1970). The Supreme Court, acknowledging committee hearings, has stated that it is unlikely that a statute will expressly withhold judicial review unless a congressional intent to withhold such review is shown. *Heikkila v. Barber*, 345 U.S. 229, 232 (1953).

62. See *South Suburban Safeway Lines, Inc. v. City of Chicago*, 416 F.2d 535 (7th Cir. 1969); *Pullman, Inc. v. Volpe*, 337 F. Supp. 432 (E.D. Pa. 1971).

63. 337 F. Supp. at 436.

64. *Id.*

65. *Id.* at 438.

66. *Id.* The court found UMTA authorized by the Act to determine the legal, financial and technical capacities of the applicant to carry out satisfactorily the project. *Id.* It is also within the province of the UMTA to tie the grants to the federal standards to fulfill the broad scheme of uniformity in the program. *Id.* at 438-39.

67. *Id.* at 439. The court refused to decide if the defendant conformed to the specifications. The court held that this type of technical inquiry was precisely the kind of question that courts should defer to the expertise of the appropriate agency. *Id.*

68. *Id.* at 437.

69. 49 U.S.C. § 1602(e) (1970).

70. *Id.* § 1606 (1970), as amended, (Supp. V, 1975).

nation of transportation systems;<sup>71</sup> (4) labor standards;<sup>72</sup> and (5) environmental protection.<sup>73</sup>

Two cases, *Kendler v. Wirtz*<sup>74</sup> and *South Suburban Safeway Lines v. City of Chicago*,<sup>75</sup> refused to permit judicial review and committed the questions of labor standards<sup>76</sup> and competition with private facilities<sup>77</sup> to agency discretion. In *Kendler*, employees of the Pennsylvania Railroad challenged a proposed railroad improvement plan which would be funded by the UMTA.<sup>78</sup> Believing their jobs to be in jeopardy, they sued to enjoin the Secretary of Labor and the Secretary of Housing and Urban Development<sup>79</sup> from certifying that the "fair and equitable" arrangements required by section 1609 of the Act<sup>80</sup> had been made.

The Third Circuit noted that achievement of the broad statutory policies<sup>81</sup> of providing "fair and equitable" safeguards against possible loss of employment were committed to agency discretion.<sup>82</sup> The accommodation of diverse, competing interests required a delicate balancing of social and economic concerns that the UMTA was best suited to perform.<sup>83</sup> The provision's concern was the reasonable accommodation of these various unavoidable conflicting interests. Therefore, Congress intended to leave the determination of what was "fair and equitable" to the sole judgment of the Secretary of Labor.<sup>84</sup>

In *South Suburban*, the Seventh Circuit<sup>85</sup> recognized the congressional concern over the public acquisition of private facilities with UMTA funds. But the court failed to find a need for judicial re-

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71. *Id.* § 1603(a) (Supp. V, 1975).

72. *Id.* § 1609 (1970).

73. *Id.* § 1610.

74. 388 F.2d 381 (3d Cir. 1968).

75. 416 F.2d 535 (7th Cir. 1969).

76. 388 F.2d at 384.

77. 416 F.2d at 538.

78. See 49 U.S.C. § 1602 (1970), as amended, (Supp. V, 1975).

79. 388 F.2d at 383.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* at 384.

84. *Id.*

85. 416 F.2d 535.

view,<sup>86</sup> because the agency had complied with the provisions of section 1602.<sup>87</sup> Therefore, the court concluded that the UMTA could not have abused its discretion.<sup>88</sup>

The Seventh Circuit in *Bradford* greatly modified the line of reasoning exemplified in *South Suburban* and *Pullman*.<sup>89</sup> The *Bradford* court recognized its ultimate power to review UMTA actions.<sup>90</sup> Thus, it rejected the district court's holding which precluded judicial review.<sup>91</sup> Unable to isolate a specific and explicit legislative provision granting judicial review, the court found that such intent was inchoate in the Act.<sup>92</sup> *Bradford* concluded that the right to judicial review is the rule rather than the exception; consequently, it required the defendant to show a clear legislative intent which excluded the plaintiff from the statute's protection.<sup>93</sup> Only with clear and convincing evidence of contrary legislative intent would it restrict access to judicial review of administrative action.

*Bradford* greatly expanded the scope of judicial review under the Act. Prior to *Bradford*, the courts recognized decisional finality as resting with the UMTA, and were reluctant to look beyond the threshold question of whether the agency had committed a clear abuse of discretion.<sup>94</sup> *Bradford* not only undermined nonreviewability as a defense, but it also allowed the courts to do more than determine whether an agency action was arbitrary, capricious, or unreasonable.<sup>95</sup>

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86. *Id.* at 539-40. The court held that a reading of the statute revealed a primary concern over the possibility of public acquisition of private facilities with agency funds and not the competition with and supplementation of existing facilities as plaintiff claimed. *Id.*

87. *Id.* at 538-40.

88. *Id.* at 538. The court held that each standard calls for an administrative decision which is ultimately an exercise of discretion. *Id.*

89. 537 F.2d at 945.

90. *Id.* at 947.

91. *Id.* The district court concluded that the aid applicants had to enter into a noncompetitive agreement according to the provisions of the Act.

92. *Id.*

93. *Id.*, citing *Barlow v. Collins*, 397 U.S. 159 (1970).

94. Thomas, *supra* note 14, at 841.

95. 537 F.2d at 947. The court rejected the district court's inference of unreviewability because of UMTA's discretion with respect to breaches of contract. *Id.* But see *McDonald v. Stockton Metropolitan Transit*, 36 Cal. App. 3d 436, 111 Cal. Rptr. 637 (Ct. App. 1974). In *McDonald* a suit was brought by bus riders to compel the local transit district to install bus shelters with UMTA funds according to the provisions of the agreement. The court held that it was the sole authority of the Secretary to bring suits to enforce compliance under the Act. *Id.*

Nevertheless, the court in *Bradford* refrained from ruling on the merits of the case.<sup>96</sup> Noting the complaint procedures which the agency had established after the initiation of the suit, the court dismissed the plaintiff's action for its failure to exhaust these administrative remedies.<sup>97</sup> It recognized that the resolution of issues was under the special competence of an administrative body.<sup>98</sup>

The UMTA complaint procedures<sup>99</sup> cited in *Bradford* allow UMTA to remedy violations of federal standards in the grant-in-aid program. The court concluded that the purpose of the Act is the coordination of mass transit systems. Consequently, the particular expertise of the UMTA should be utilized before submitting the merits to a court.<sup>100</sup> Without its newly mandated investigative procedures and written determinations, a reviewing court would face complex examinations of fact and law.<sup>101</sup>

*Bradford* ultimately stands for the right of plaintiffs to seek redress in the courts when wronged by administrative action. It places the Seventh Circuit squarely in line with the Supreme Court's latest attempts at defining a manageable law of standing.<sup>102</sup> Parties may gain vindication of their rights under the Act alleging little more than injury in fact. Moreover, plaintiffs will not be denied standing because Congress has failed to provide specific identification of protected parties by the legislation.

The result of the case should make judicial review necessary in fewer cases since the complaint procedures should resolve many disputes. Where they do not, the courts will at least have the benefit of the agency's views. The courts will also be free to conduct limited inquiries into whether the UMTA acted within the proper scope of

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96. 537 F.2d at 948.

97. *Id.* at 949.

98. *Id.*

99. 49 C.F.R. § 605.35 (1976), allows for judicial review of final administrative action under the procedures.

100. 537 F.2d at 949. The Supreme Court, in *Rosado v. Wyman*, 397 U.S. 397 (1970) suggested that the doctrine of primary jurisdiction might apply when the federal agencies have a formal complaint process. The Court stated: "[plaintiffs] do not seek review of an administrative order, nor could they have obtained an administrative ruling since HEW has no procedure whereby welfare recipients may trigger and participate in the Department's review of state welfare programs." *Id.* at 406.

101. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971).

102. See notes 33, 52 *supra* and accompanying text.

its authority. They will be able to determine whether the agency discretion was arbitrary, capricious or unreasonable, and more importantly to complaining parties, whether an agency has observed the applicable procedural requirements to protect a plaintiff under the Act.

*Terry L. Barnich*