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To Waive or Not to Waive? Filing Deadlines and Hearing Requests in Administrative Adjudications

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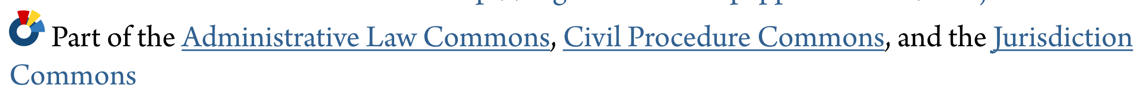
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To Waive or Not to Waive? Filing Deadlines and Hearing Requests in Administrative Adjudications

By Alice Booher Johnson*

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"I'm late! I'm late! For a very important date! No time to say hello, goodbye! I'm late! I'm late! I'm late!" – The White Rabbit, *Alice in Wonderland*

I. INTRODUCTION

A person who has filed a late request for a contested case hearing might have as much reason to panic as the White Rabbit. While they won't lose their head, they may have waived their right to that hearing.[1]

State and federal administrative agencies exercise a variety of important functions, which may include the authority to hold "quasi-judicial" hearings.[2] Such administrative adjudications are generally in

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[1] *See, e.g.*, ARNOLD ROCHVARG, PRINCIPLES AND PRACTICE OF MARYLAND ADMINISTRATIVE LAW § 10.1, at 121 (2011) ("Failure to request a hearing in a timely fashion will mean that the right to a contested case hearing . . . has been waived.").

[2] *See, e.g.*, Humphrey's Ex'r v. United States, 292 U.S. 602, 628 (1935) (explaining that the Federal Trade Commission, an "administrative body created by Congress," exercises an executive function "in the discharge and effectuation of its quasi legislative or quasi judicial powers."). In Maryland, the Court of Appeals has emphasized that the "judicial function" may only be exercised by courts enumerated in the Maryland Constitution. Shell Oil Co. v. Supervisor of Assessments of Prince George's Cty., 343 A.2d 521, 526 (Md. 1975). While the "[l]egislature may within limits delegate *quasi-judicial* functions to an administrative agency . . . the delegation of these functions is not the delegation of a judicial function or judicial authority." *Id.* at 527 (emphasis added). *Contra* 1 RICHARD J. PIERCE, JR., ADMINISTRATIVE LAW TREATISE § 2.3, at 47 (5th ed. 2010) ("Agencies, both pure Executive Branch and independent, make legislative rules based on agency policy decisions virtually every day. Agencies of both types execute the laws in every conceivable sense of the word. Agencies also adjudicate far more disputes involving individual rights than all of the federal courts combined—a function that would seem to bear most comfortably the label 'judicial.'"). *See also* Peter L. Strauss, *The Place of Agencies in Government:*

the form of a "contested case" hearing, which has been defined as a "formal evidentiary adversarial hearing."[3] These evidentiary hearings often provide certain "flexible" procedural due process safeguards.[4] While the nature of a filing deadline for a contested case hearing might seem to be a fundamental aspect of due process in an administrative adjudication, authoritative guidance on the subject—at least among the states—is sparse and contradictory.

Courts have long addressed filing deadlines outside of contested case hearings,[5] more recently in the context of whether a reviewing

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Separation of Powers and the Fourth Branch, 84 COLUM. L. REV. 573, 579 (1984) (noting that "describing what the agencies do as 'quasi-adjudication' or 'quasi-legislation'" obscures, rather than answers, questions on the "forbidden conjoining of powers" between the three branches of government).

[3] Lunde v. Iowa Bd. of Regents, 487 N.W.2d 357, 359 (Iowa Ct. App. 1992). Maryland's APA defines a "contested case" as a "proceeding before an agency to determine . . . a right, duty, statutory entitlement, or privilege of a person . . . or the grant, denial, renewal, revocation, suspension, or amendment of a license, that is required by statute or constitution to be determined only after an opportunity for an agency hearing." MD. CODE ANN., STATE GOV'T § 10-202(d)(1) (West 2014). *See also* REVISED MODEL STATE ADMIN. PROCEDURE ACT § 401 (Nat'l Conference of Comm'rs on Unif. State Laws 2010) ("This [article] applies to an adjudication made by an agency in a contested case.").

[4] *See generally* Goldberg v. Kelly, 397 U.S. 254, 260-62, 267 (1970) (setting forth due process standards in the termination of "statutory entitlements" and reiterating that the "fundamental requisite of due process of law is the opportunity to be heard"); Mathews v. Eldridge, 424 U.S. 319, 334, 349 (1976) (highlighting that due process is "flexible" and holding that an "evidentiary hearing is not required prior to the termination of disability benefits"); Motor Vehicle Admin. v. Lytle, 821 A.2d 62, 69-70 (Md. 2003) (explaining that due process procedures are determined by "balancing the individual and governmental interests affected by the property deprivation"). *See also* Bernard Schwartz, *A Decade of Administrative Law: 1987-1996*, 32 TULSA L.J. 493, 524 (1997) (arguing that "courts must be vigilant in ensuring that flexible due process does not result in dilution of due process"); Edward A. Tomlinson, *The Maryland Administrative Procedure Act: Forty Years Old in 1997*, 56 MD. L. REV. 196, 251 (1997) ("The contested case model has proved workable in Maryland, despite the breadth of adjudication covered. . . . The OAH in particular has adopted 'flexible due process' as its basic credo.").

[5] *See, e.g.*, E. King Poor, *The Jurisdictional Time Limit for an Appeal: The Worst Kind of Deadline—Except for All Others*, 102 NW. U. L. REV. COLLOQUY 151, 154 (2008) ("[T]he debate about jurisdictional deadlines . . . is really quite old. Thousands of reported decisions, reaching back to the 1840s, have concluded that a small group of deadlines—chief among them the time to appeal—are jurisdictional

court exercises original[6] or appellate[7] jurisdiction. In Part II of this Article, I provide an overview of subject matter jurisdiction in relation to filing timeframes. I review the distinction between original and appellate jurisdiction using Maryland case law and a sample survey of other state case law to provide background to the question of filing deadlines and hearing requests in administrative adjudications. Generally, a statutory filing deadline in a court of original jurisdiction is construed as a statute of limitations, which may be waived or equitably tolled or estopped under certain conditions.[8] If, on the other hand, a filing timeframe is part of a court's jurisdiction—such as an appeal to a court with appellate jurisdiction—then an untimely filing may not be waived by a party or granted an exception by the court under equitable principles.[9] State

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or 'jurisdictional in nature,' and thus cannot be altered by the parties or ignored by the courts.").

6 Original jurisdiction has been defined as "[a] *court's* power to hear and decide a matter before any other court can review the matter." BLACK'S LAW DICTIONARY 982 (10th ed. 2014) (emphasis added).

7 Appellate jurisdiction has been defined as "[t]he power of a *court* to review and revise a lower court's decision." *Id.* at 980 (emphasis added); *see also Shell Oil Co.*, 343 A.2d at 525 ("[A]ppellate jurisdiction does not arise until there is an initial exercise of *judicial power or authority by a court*." (emphasis added)).

8 *See, e.g.*, Poor, *supra* note 5, at 202 n.132 ("Statutory filing deadlines are generally subject to the defenses of waiver, estoppel, and equitable tolling."); People v. Keegan, 779 N.E.2d 904, 905-06 (Ill. App. Ct. 2002) (stating that "[o]rdinary statutes of limitation present procedural bars that may be asserted as an affirmative defense or waived" and holding that the filing period for a hearing in the circuit court with original jurisdiction under the State's constitution is "an ordinary statute of limitations . . . that [can be] waived by the State").

9 *See, e.g.*, Kim v. Comptroller of the Treasury, 714 A.2d 176, 179 (Md. 1998) ("[T]his Court has repeatedly emphasized that an action for judicial review of an administrative decision is an *original* action. It is *not* an appeal. . . . The time requirements for filing appeals are ordinarily treated as jurisdictional in nature. . . . [A]bsent a special statute or rule dealing with the matter . . . a prematurely filed appeal must be dismissed by an appellate court because the appellate court has no jurisdiction over the matter."); Cooper v. Kirkwood Cmty. Coll., 782 N.W.2d 160, 164 n.1 (Iowa Ct. App. 2010) ("On a petition for judicial review of an administrative agency decision 'the district court does not exercise original jurisdiction vested in it by the constitution. It exercises appellate jurisdiction conferred upon it by statute.'" (citation omitted)). *See generally* Mark A. Hall, *The Jurisdictional Nature of the Time to Appeal*, 21 GA. L. REV. 399, 399-400 (1986) (arguing that "appeal periods are like original jurisdiction limitation periods; they

courts are far from uniform on whether the filing deadline in a reviewing court is a jurisdictional requirement that cannot be waived. Moreover, in the administrative context, the demarcation between original and appellate jurisdiction is of limited utility.

In Part III of this Article, I elaborate upon Supreme Court precedent on administrative filing deadlines. Nearly thirty years ago, Professor Mark Hall commented that the federal courts "have made a fetish of their own authority by characterizing timing defects" in "appellate and quasi appellate time limitations" as "jurisdictional."[10] The Supreme Court subsequently adopted an important bright line for determining whether to classify such statutory time limitations as jurisdictional.[11] The Supreme Court characterizes filing deadlines—including administrative appeal timeframes—as "quintessential claim-processing rules" that are not jurisdictional unless Congress clearly prescribes that a "procedural rule" is jurisdictional.[12]

In Part IV of this Article, I analyze the nature of filing deadlines for hearing requests before various state agencies, with an emphasis on Maryland's scheme. The case law among the states is limited and contradictory, which raises the question in Part V of how to proceed with an untimely filing. What emerges from my review of time limitations in state and Supreme Court cases is that whether a jurisdictional bar exists is often a question of legislative intent. Because of the harshness of jurisdictional deadlines, I recommend that the relevant agency statute and regulations be carefully parsed to determine if there is any flexibility in the filing deadline. I review "good cause" exceptions and the *Accardi* Doctrine and apply the foregoing principles to the filing timeframe in Maryland medical assistance cases, concluding that the regulatory deadline is an administrative statute of limitations. In summary, I urge the states,

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involve primarily the interests of the immediate parties, not fundamental societal interests [and] should therefore be subject to waiver by the parties").

[10] Hall, *supra* note 9, at 399 & n.1, 401 (noting that the "attitude of the federal courts is representative of that in the state courts as well").

[11] Sebelius v. Auburn Reg'l Med. Ctr., 133 S. Ct. 817, 824 (2013).

[12] Henderson v. Shinseki, 562 U.S. 428, 435 (2011); *see also* Jessica Berch, *Waving Goodbye to Non-Waivability: The Case for Permitting Waiver of Statutory Subject Matter-Jurisdiction Defects*, 45 MCGEORGE L. REV. 635, 639, 647-48 (2014) ("The Supreme Court has concluded [that] time deadlines are generally not jurisdictional . . . .").

especially under principles of flexible due process, to unmoor themselves from "jurisdictional" time limitations and follow the example of the Supreme Court in providing clarity and uniformity in the area of administrative filing deadlines.

II. ORIGINAL AND APPELLATE JURISDICTION

A. Subject Matter Jurisdiction

The timeframe in which to appeal is often couched in terms of subject matter jurisdiction: "[T]he inveterate rule that a timely appeal is jurisdictional is not limited to federal courts; it has long been a fundamental precept of state court jurisprudence as well."[13] Subject matter jurisdiction may be defined as "[j]urisdiction over the nature of the case and the type of relief sought."[14] Subject matter jurisdiction may not be waived, and defects in subject matter jurisdiction may be raised at any stage in the proceedings.[15] These jurisdictional "appeals" are often understood as an appeal to a court with appellate jurisdiction; appellate jurisdiction has been defined in turn as "[t]he power of a court to review and revise a lower court's decision."[16] Yet, appeals are far broader than a proceeding in an appellate court and may include any proceeding that is undertaken for the purpose of reconsideration by a higher authority, for example, the submission of an agency's decision to a court for review.[17] This distinction is important because while the appeal timeframe before a court with appellate jurisdiction may be a matter of subject matter jurisdiction, the appeal timeframe before a reviewing court with original jurisdiction might not implicate subject matter jurisdiction.

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13 Poor, *supra* note 5, at 154-55.

14 BLACK'S, *supra* note 6, at 983.

15 Berch, *supra* note 12, at 635, 638-39, 647-48 (2014) ("While other defects may be waived, subject-matter jurisdiction stands alone as the single unwaivable defect. . . . The Supreme Court . . . has struggled to define the boundaries of what constitutes subject-matter jurisdiction."); *see also* Williams v. Comm'n on Human Rights & Opportunities, 777 A.2d 645, 651 (Conn. 2001) ("A conclusion that a time limit is subject matter jurisdictional has very serious and final consequences.").

16 BLACK'S, *supra* note 6, at 982.

17 *See id.* at 117.

B. Reviewing Courts

1. Maryland Case Law

Appeal timeframes before the Maryland appellate courts are "jurisdictional in nature" and are not subject to waiver absent a special statute or rule. In *Kim v. Comptroller*,[18] the Court of Appeals underscored the distinction between an original action (in a reviewing court with original jurisdiction) and an appeal before a court with appellate jurisdiction. *Kim* stated as follows:

[T]his Court has repeatedly emphasized that an action for judicial review of an administrative decision is an *original* action. It is *not* an appeal. . . . The time requirements for filing appeals are ordinarily treated as jurisdictional in nature. . . . [A]bsent a special statute or rule dealing with the matter . . . a prematurely filed–appeal must be dismissed by an appellate court because the appellate court has no jurisdiction over the matter. . . . The same cannot be said, however, of a prematurely filed petition for judicial review, because the time requirements for filing a petition for judicial review are not jurisdictional. It is in the nature of a statute of limitations.[19]

The court took pains to clarify the terminology because there are significant consequences for a party if the time requirement is jurisdictional. The appellate court must dismiss a premature or late appeal; on the other hand, the circuit court will not bar a premature or late petition for judicial review (original action) if the statute of limitations defense was not raised in the defendant's answer.[20] Thus, *Kim* clarified that the nature of a filing timeframe depends upon whether the court exercises original or appellate jurisdiction. While Maryland's highest court has provided certain parameters on the issue of timeframes and jurisdiction, it still leaves the adjudicating agency in "Wonderland" since the agency performs a "quasi-judicial"

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[18] 714 A.2d 176 (Md. 1998).

[19] *Id.* at 179-80 (emphasis in original) (citations omitted).

[20] *Id.*; *see also* State v. Sharfeldin, 854 A.2d 1208, 1214 (Md. 2004).

function and does not technically exercise original or appellate jurisdiction.[21]

2. Sample Survey of Other State Case Law

Many state courts have reviewed their constitutions and statutes to determine whether a timely filing or "appeal" in a reviewing court is a jurisdictional requirement that cannot be waived. While some courts hold that a timely filing is necessary to confer subject matter jurisdiction on the court, other courts hold that filing deadlines are flexible and not a jurisdictional prerequisite.

In Iowa, the reviewing courts exercise appellate—rather than original— jurisdiction over petitions for judicial review of agency actions.[22] In *Cooper v. Kirkwood Community College*, the Court of Appeals held that the plaintiff's premature petition for judicial review of an administrative agency decision was a "jurisdictional defect" that could not be waived.[23] Likewise, in Texas, while the Court of Appeals did not differentiate between original and appellate jurisdiction, it held that the statutory filing deadline under the Texas Labor Code for judicial review of a final agency decision was a "jurisdictional prerequisite" to the trial court's review.[24]

Illinois' and Indiana's appellate courts have also addressed statutory filing deadlines and "jurisdictional prerequisites" in the lower courts but concluded in certain cases that the filing period was either an "ordinary statute of limitations"[25] or was "analogous to the

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21 In an earlier opinion, the Court of Appeals emphasized that since an administrative agency does not perform a judicial function (unless enumerated in the Maryland Constitution), it does not exercise original jurisdiction; therefore, review of the agency's decision in the circuit court is an exercise of original rather than appellate jurisdiction. Shell Oil Co. v. Supervisor of Assessments of Prince George's Cty., 343 A.2d 521, 527 (Md. 1975). *See also supra* note 2.

22 Christiansen v. Iowa Bd. of Educ. Exam'rs, 831 N.W.2d 179, 186 (Iowa 2013); *see also* Cooper v. Kirkwood Cmty. Coll., 782 N.W.2d 160, 164 n.1 (Iowa Ct. App. 2010) ("On a petition for judicial review of an administrative agency decision 'the district court does not exercise original jurisdiction vested in it by the constitution. It exercises appellate jurisdiction conferred upon it by statute.'" (citation omitted)).

23 *Cooper*, 782 N.W.2d at 164 n.1, 167-68.

24 Stoker v. TWC Comm'rs, 402 S.W.3d 926, 929 (Tex. App. 2013).

25 People v. Keegan, 779 N.E.2d 904, 906 (Ill. App. Ct. 2002).

statute of limitations."[26] In *People v. Keegan*, the Appellate Court of Illinois contrasted statutory "jurisdictional time limitations" for administrative review proceedings with statutes of limitations for other proceedings. *Keegan* cited to its supreme court, which explained that "*except in the area of administrative review*, the jurisdiction of the circuit court flows from the constitution."[27] The statutory filing period before the reviewing court was a jurisdictional prerequisite "[b]ecause the circuit court was exercising special statutory jurisdiction under the administrative review law."[28] The supreme court emphasized that labeling time limitations in statutory actions as "jurisdictional" is "not a rule of general applicability to all statutory causes of action."[29] Against this backdrop, *Keegan* held that in those cases where the circuit court had "original subject matter jurisdiction under [the] state's constitution," the filing period for a hearing "is an ordinary statute of limitations—not a jurisdictional prerequisite that could not be waived by the State."[30]

In *Packard v. Shoopman*, the Supreme Court of Indiana held that the timely filing of a petition for judicial review to the Tax Court is "analogous to [a] statute of limitations" and does not "affect the subject matter jurisdiction of the Tax Court."[31] *Packard* stated that the "timely filing of a complaint in the Tax Court is 'jurisdictional' only in the sense that it is a statutory prerequisite to the docketing of an appeal in the Tax Court" but acknowledged that "statutory 'jurisdictional' requirements in other statutes may require a different result" depending upon the "nature of the court and the particular statutory language."[32]

In Rhode Island and Virginia, the appellate courts did not tether the statutory filing deadline for judicial review to subject matter jurisdiction. The plaintiff in *McAninch v. State of Rhode Island Department of Training & Labor* came before the Supreme Court of Rhode Island after the trial court dismissed the plaintiff's untimely

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26 Packard v. Shoopman, 852 N.E.2d 927, 932 (Ind. 2006).

27 Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc., 770 N.E.2d 177, 185 (Ill. 2002).

28 *Id.* at 187.

29 *Id.*

30 *Keegan*, 779 N.E.2d at 906.

31 852 N.E.2d 927, 931-32 (Ind. 2006).

32 *Id.* at 931.

administrative appeal—finding it was "appellate in nature"—for lack of subject matter jurisdiction.[33] The court highlighted that "the real issue before the Superior Court was whether that tribunal, *which unquestionably had subject matter jurisdiction*, should have exercised that jurisdiction."[34] The court stated that while "[s]tatutes prescribing the time and procedure to be followed by a litigant attempting to secure appellate review are to be strictly construed,"[35] the "timeframes set forth in those statutes are [not] utterly inflexible."[36] The court found that the statutory timeframe for administrative review was guided by case law and court rules and, upon review of those sources, held that the superior court rules applied to the computation of time for the administrative appeal.[37]

In *Board of Supervisors of Fairfax County v. Board of Zoning Appeals of Fairfax County*, the Supreme Court of Virginia revisited the term "jurisdiction" in order to determine the nature of the filing timeframe for administrative review by the circuit court.[38] The court elaborated that the "filing requirement set by the General Assembly does not define the class of cases, i.e. the subject matter jurisdiction, over which the circuit court has authority to adjudicate."[39] The court held that the filing timeframe was an "other jurisdictional element" subject to waiver if not properly raised.[40]

This survey illustrates the variation among the state courts on the issue of the nature of filing deadlines in the reviewing courts. More specifically, these analyses highlight that statutory filing deadlines may not be inextricably intertwined with subject matter jurisdiction.

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33 64 A.3d 84, 86-87 (R.I. 2013).

34 *Id.* at 87 (quoting Narragansett Elect. Co. v. Saccoccio, 43 A.3d 40, 44 (R.I. 2012)).

35 *Id.* at 88 (quoting Rivera v. Emps. Ret. Sys. of R.I., 70 A.3d 905, 912 (R.I. 2013)).

36 *Id.*

37 *Id.* at 88- 90.

38 626 S.E.2d 374, 378 (Va. 2006).

39 *Id.* at 379.

40 *Id.* at 381.

III. SUPREME COURT CASE LAW ON FILING DEADLINES

Courts often reiterate that timely notice of an "appeal" is "mandatory and jurisdictional."[41] The time limits imposed under the Federal Rules of Appellate Procedure have historically been interpreted as jurisdictional.[42] Outside of traditional appeals from one court to another, however, the Supreme Court, in a series of cases, has made significant incursions into "jurisdictional" time limitations.[43]

A. Scarborough v. Principi

In *Scarborough v. Principi*, the Supreme Court examined the filing period in a provision under the Equal Access to Justice Act authorizing the payment of attorney fees to a prevailing party in an action against the United States.[44] The Court began by clarifying that the timeframe for the fee award "does not concern the federal courts' 'subject-matter jurisdiction.'"[45] Although *Scarborough* addressed an application filing period rather than an appeal, the Court highlighted—citing its recent decision in *Kontrick v. Ryan*—the "more than occasional" misuse of the term "jurisdictional" to describe "emphatic time prescriptions" in rules.[46]

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41 Panhorst v. United States, 241 F.3d 367, 369-70 (4th Cir. 2001).

42 *Id.* at 371.

43 *See, e.g.*, Union Pac. R.R. Co. v. Bhd. of Locomotive Eng'rs, 558 U.S. 67, 82 (2009) (stating that "we have reaffirmed the jurisdictional character of the time limitation for filing a notice of appeal" to a court of appeals but finding that "nothing in the [Railway Labor] Act elevates to jurisdictional status the obligation to conference minor disputes or to prove conferencing"). *Id.* at 80.

44 541 U.S. 401, 405 (2004).

45 *Id.* at 413.

46 *Id.* (quoting in part Kontrick v. Ryan, 540 U.S. 443, 454 (2004)). *Kontrick v. Ryan*, written by Justice Ginsburg (who also wrote *Scarborough*), was a key case disentangling timeframes from subject matter jurisdiction. For a detailed history on jurisdictional deadlines, see E. King Poor, *Jurisdictional Deadlines in the Wake of* Kontrick *and* Eberhart*: Harmonizing 160 Years of Precedent*, 40 CREIGHTON L. REV. 181 (2007).

B. Union Pacific Railroad Co. v. Brotherhood of Locomotive Engineers

The Court steamed along in unthreading "claim-processing" rules from subject matter jurisdiction in *Union Pacific Railroad Co. v. Brotherhood of Locomotive Engineers*.[47] In *Union Pacific*, the Court decided whether it was proper for the National Railroad Adjustment Board, an arbitration panel, to dismiss employee claims for "lack of jurisdiction" because of a conferencing requirement during the pre-arbitration internal grievance process.[48] In the underlying case, a panel representative had raised on his own initiative that the record included no proof of conferencing and could not be supplemented because conferencing was a jurisdictional prerequisite to the panel's exercise of authority as an "appellate tribunal."[49] The Court underscored that "the word 'jurisdiction' has been used by courts, including this Court, to convey many, too many, meanings . . . ."[50] The Court clarified that subject matter jurisdiction "refers to a tribunal's power to hear a case" while a "claim-processing rule . . . does not reduce the adjudicatory domain of a tribunal."[51] The Court referred to a number of its decisions in which it held that procedural requirements, such as timeframes, were "nonjurisdictional and forfeitable" but "reaffirmed the jurisdictional character of the time limitation for filing a notice of appeal" to a court of appeals.[52] After reviewing the conferencing requirement, the Court held that "nothing in the [Railway Labor Act] elevates to jurisdictional status the obligation to conference minor disputes or to prove conferencing."[53]

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47 558 U.S. 67 (2009).

48 *Id.* at 71, 77.

49 *Id.* at 77-78.

50 *Id.* at 81 (quoting Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 90 (1998)) (internal quotation marks omitted).

51 *Id.* at 81 (internal quotation marks omitted).

52 Union Pac. R.R. Co. v. Bhd. of Locomotive Eng'rs, 558 U.S. 67, 82 (2009).

53 *Id.* at 80.

C. Henderson v. Shinseki

In *Henderson v. Shinseki*, the Court squarely addressed whether an administrative appeal had "jurisdictional consequences" and held that the 120-day filing deadline for an appeal to the United States Court of Appeals for Veterans Claims was not jurisdictional.[54] In so holding, the Court again disentangled "claim-processing rules" from jurisdiction, explaining that "[b]ecause the consequences that attach to the jurisdictional label may be so drastic, we have tried in recent cases to bring some discipline to the use of this term."[55] The Court emphasized as follows: "Among the types of rules that should not be described as jurisdictional are what we have called 'claim-processing rules.' . . . Filing deadlines, such as the 120-day filing deadline at issue here, are *quintessential claim-processing rules*."[56] The Court further elaborated that "Congress is free to attach the conditions that go with the jurisdictional label to a rule that we would prefer to call a claim-processing rule."[57] Therefore, even though the Court did not consider procedural filing deadlines to be inherently tied to subject matter jurisdiction, the Court explained that it must look to "see if there is any 'clear' indication that Congress wanted the rule to be 'jurisdictional.'"[58] The *Henderson* Court, in ascertaining Congress' intent on whether the administrative deadline was meant to have "jurisdictional attributes,"[59] distinguished a "century's worth of precedent and practice in American courts"[60] on jurisdictional appeals from one court to another court from, in this case, "review by an Article I tribunal as part of a unique administrative scheme."[61]

While the Supreme Court did not change the "jurisdictional character"[62] of the time limitation for filing a notice of appeal for certain traditional appeals from one court to another, it did adopt a

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54 562 U.S. 428, 431 (2011).

55 *Id.* at 435.

56 *Id.* (emphasis added).

57 *Id.*

58 Henderson v. Shinseki, 562 U.S. 428, 436 (2011).

59 *Id.* at 438.

60 *Id.* at 436 (quoting Bowles v. Russell, 551 U.S. 205, 208 n.2 (2007)) (internal quotation marks omitted).

61 *Id.* at 438.

62 Union Pac. R.R. Co. v. Bhd. of Locomotive Eng'rs, 558 U.S. 67, 82 (2009).

"bright line"[63] for determining whether to classify statutory time limitations as jurisdictional: "quintessential claim-processing rules" are not jurisdictional unless clearly prescribed by Congress. In the following case, the Supreme Court delivered a unanimous decision that reiterated and applied this bright line to appeals to the Department of Health and Human Services' Provider Reimbursement Review Board.[64]

D. Sebelius v. Auburn Regional Medical Center

In *Sebelius v. Auburn Regional Medical Center*, Medicare providers had appealed an initial determination of reimbursement for inpatient services to the Provider Reimbursement Review Board more than ten years beyond the 180-day statutory deadline.[65] The Court was asked to decide whether the filing deadline was jurisdictional and, if not, whether a "good cause" regulation extending the limitation up to three years was authorized under the governing statute and whether the doctrine of equitable tolling could be applied to this type of administrative appeal.[66] The Court reiterated that it had adopted a "readily administrable bright line"[67] test to "ward off profligate use of the term 'jurisdiction.'"[68] In this test, a court inquires whether Congress has "clearly stated" that the time limitation is jurisdictional; in the absence of such a clear statement, courts should treat the filing deadline as nonjurisdictional.[69] The Court highlighted "what it would mean were

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63 *Henderson*, 562 U.S. at 435 (quoting Arbaugh v. Y & H Corp., 546 U.S. 500, 516 (2006)).

64 Sebelius v. Auburn Reg'l Med. Ctr., 133 S. Ct. 817 (2013).

65 *Id.* at 821.

66 *Id.*

67 *Id.* at 824 (quoting *Arbaugh*, 546 U.S. at 516) (internal quotation marks omitted).

68 *Id.*

69 Sebelius v. Auburn Reg'l Med. Ctr., 133 S. Ct. 817, 824 (2013). The Court further explained that "[t]his is not to say that Congress must incant magic words in order to speak clearly. We consider context, including this Court's interpretations of similar provisions in many years past, as probative of whether Congress intended a particular provision to rank as jurisdictional." *Id.* (internal quotation marks omitted).

we to type the governing statute 'jurisdictional''"[70]: "Not only could there be no equitable tolling. The Secretary's regulation providing for a good-cause extension would fall as well."[71] The Court examined the congressional language and held that the time limitation was not jurisdictional and "does not bar the modest [good cause] extension contained in the Secretary's regulation."[72]

The Court then addressed whether the doctrine of equitable tolling could be applied to the late appeals. The Court emphasized that equitable tolling would "gut" the good cause regulation that limited the extension to no later than three years after a Notice of Program Reimbursement was issued to the provider.[73] While the Court had applied, in *Irwin v. Department of Veterans Affairs*,[74] a rebuttable presumption of equitable tolling to suits against the United States, the Court stated that "[t]his case is of a different order" and that the presumption had never been applied to an agency's internal appeal deadline.[75] Moreover, the Court noted that the statutory scheme at issue was not designed to be "unusually protective of claimants."[76] The Court ultimately held that equitable tolling did not apply to "administrative appeals of the kind here considered . . . ."[77] This line of Supreme Court cases clearly outlines that "administrative appeals of the kind here considered" are not tethered to the "mandatory and jurisdictional" time limitations in traditional appeals unless Congress has clearly stated that the time limitation is jurisdictional.

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70 *Id.* at 824 (citation omitted).

71 *Id.* (citation omitted).

72 *Id.* at 826.

73 *Id.* at 826.

74 498 U.S. 89, 95-96 (1990).

75 Sebelius v. Auburn Reg'l Med. Ctr., 133 S. Ct. 817, 827 (2013).

76 *Id.* at 828 (quoting Bowen v. City of N.Y., 476 U.S. 467, 480 (1986)) (internal quotation marks omitted).

77 *Id.* at 829.

IV. Nature of Filing Deadlines for Hearing Requests Before State Agencies

A. State Survey

Some state courts have addressed the nature of filing deadlines for hearing requests before state agencies—often in cases prior to the recent line of Supreme Court cases—with mixed results that predominately favor adherence to jurisdictional time limitations.[78] For example, the Court of Appeals of North Carolina, in finding that a terminated employee filed a timely petition for a contested case hearing in the Office of Administrative Hearings (OAH), stated without further elaboration that "timely filing of a petition is necessary to confer subject matter jurisdiction on the agencies as well as the courts . . . ."[79] The Court of Appeals of Washington also affixed jurisdictional time limitations to hearing requests before the OAH.[80] However, the court clarified in a footnote that a late filing did not technically divest the OAH Administrative Law Judge (ALJ) of subject matter jurisdiction because the "legislature has granted ALJs subject matter jurisdiction to conduct administrative hearings."[81] Instead, the court explained, the ALJ cannot "*exercise* jurisdiction" when a party fails to timely request a hearing.[82]

The Appellate Court of Illinois, in holding that the Educational Labor Relations Board did not have jurisdiction over an untimely filed unfair labor practice charge, examined its precedent indicating

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78 I conducted various searches in Lexis and Westlaw for state court cases addressing the nature of administrative time limitations. I could not find, unlike in the above surveys of the state reviewing courts and of the Supreme Court, a clear line of cases on administrative time limitations. While it was my intent to capture as many key cases as possible on the subject, I do not claim that the following discussion provides an exhaustive review of state court cases.

79 Gray v. N.C. Dep't of Env't, 560 S.E.2d 394, 397 (N.C. Ct. App. 2002); *see also* Little v. N.C. Dep't of Env't & Natural Res., No. COA09-441, 2010 N.C. App. LEXIS 1458, at *1 (N.C. Ct. App. Aug. 3, 2010) (holding that the Office of Administrative Hearings lacks subject matter jurisdiction when a contested case petition is untimely filed).

80 Pal v. Wash. State Dep't of Soc. & Health Servs., 342 P.3d 1190 (Wash. Ct. App. 2015).

81 *Id.* at 1197 n.6.

82 *Id.*

that "time limitations upon bringing actions before administrative agencies are matters of jurisdiction which cannot be tolled."[83] The court elaborated that a time limitation is jurisdictional "if the right being asserted is one unknown to the common law" because "the time limitation is an *inherent* element of the right and of the power of the tribunal to hear the matter."[84] Otherwise, the court explained, a time limitation is "merely a procedural matter" if it is based upon a common law right.[85] Therefore, in Illinois, statutory time limits for administrative actions involving "new rights" are held to be jurisdictional.[86]

The Texas Supreme Court held that a statutory time limit was a "prerequisite" to the Texas Workforce Commission's jurisdiction over employment discrimination claims under the Texas Commission on Human Rights Act (TCHRA).[87] The court detailed that while Congress expanded the Title VII limitations period under the Lilly Ledbetter Fair Pay Act, the Texas Legislature did not similarly amend the TCHRA.[88] Because the court found that the TCHRA and Title VII "are no longer analogous,"[89] it examined a Texas legislative amendment "mandat[ing] that all statutory prerequisites to suit are jurisdictional in suits against government entities"[90] under statutory interpretation principles in order to determine "whether the 180-day filing deadline in the TCHRA [was] a statutory prerequisite to suit as contemplated by" the amendment.[91] The court held that the timeframe was a statutory prerequisite and concluded that the claimant's suit was jurisdictionally barred because it was untimely filed with the Commission.[92]

The Superior Court of New Jersey also engaged in statutory analysis in order to determine whether the statutory deadline for a

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83 Charleston Cmty. Unit Sch. Dist. No. 1 v. Ill. Educ. Labor Relations Bd., 561 N.E.2d 331, 333, 335 (Ill. App. Ct. 1990).

84 *Id.* at 333 (emphasis added).

85 *Id.*

86 *Id.* at 334.

87 Prairie View A&M Univ. v. Chatha, 381 S.W.3d 500, 503 (Tex. 2012).

88 *Id.* at 506.

89 *Id.* at 509.

90 *Id.* at 510.

91 *Id.* at 513.

92 *Id.* at 513-14.

license renewal application was "mandatory or directory."[93] The court explained that it had discerned two rationales in deciding whether a statutory deadline "for the public to seek relief from State agencies" was directory or mandatory[94]: the jurisdiction rationale[95] and the legislative scheme analysis.[96] In concluding that the deadline was mandatory—and therefore could not be relaxed by the agency—the court "scrutinize[d] the legislation at issue" because "[e]ven under the jurisdiction rationale" whatever the "Legislature intended controls the analysis."[97]

While variations of the "jurisdiction rationale" seem to prevail in the state courts, the Supreme Court of Connecticut requires "a *strong* showing of legislative intent that such a time limit is jurisdictional" and concluded that the 180-day filing deadline for a discrimination complaint before the Commission on Human Rights and Opportunities (Commission) was mandatory but not jurisdictional.[98] The court first highlighted, in explaining the court's "presumption in favor of subject matter jurisdiction," that subject matter jurisdiction "has very serious and final consequences."[99] The court then elaborated that in seeking to discern a "strong showing of legislative intent" for a subject matter jurisdictional time limitation, the court interprets the statute "according to well established principles of statutory construction."[100] As the court examined the intent of the

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93 Cavallaro 556 Valley St. Corp. v. Div. of Alcoholic Beverage Control, 796 A.2d 938, 940 (N.J. Super. Ct. App. Div. 2002). The court explained that if a "statutory time frame is mandatory, then modification or relaxation may be granted only by the Legislature" whereas if a "particular statutory deadline is only directory . . . then the agency would have authority to excuse the untimeliness." *Id.* at 940-41.

94 *Id.* at 941.

95 "The jurisdiction rationale, reflects the well known principle that administrative agencies derive all their powers from the Legislature." *Id.*

96 The "legislative scheme analysis" "requires an analysis of the statutory scheme involved." *Id.* at 941-42.

97 *Id.* at 943-44.

98 Williams v. Comm'n on Human Rights & Opportunities, 777 A.2d 645, 651, 661 (Conn. 2001) (emphasis added).

99 *Id.* at 651.

100 *Id.* at 651-53. The court explained that

[i]n seeking to discern that [legislative] intent, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment,

statute, it outlined a number of policy considerations "for declining to read the legislation as embodying the required strong showing of legislative intent to impose subject matter jurisdictional constraints."[101] For instance, the court stated that "[t]he audience of the provision . . . may not be fully aware of the necessity of filing within the statutory time periods, and may even fail to do so because of justifiable, equitable factors."[102] The court stated, moreover, that the Commission "routinely entertains untimely complaints when the parties present adequate reasons for the delay" and that "in appropriate circumstances entertaining untimely complaints serves those [public] interests."[103]

The court further concluded that although the time limitation was not jurisdictional, it was mandatory and "must be complied with, absent such factors as consent, waiver or equitable tolling."[104] The court elaborated that the mandatory time limitation did not operate like a "pure statute of limitations" because "[c]omplaints filed with the [C]ommission are not the same as actions filed in court."[105] The court, accenting the agency's discretion, concluded that the Commission—not just a party as a special defense— may "raise the timeliness issue in conformity with its institutional responsibilities in the petition process."[106]

On the other hand, the District Court of Appeal of Florida simply stated that "the statutory deadline for requesting an administrative hearing is not jurisdictional."[107] The court addressed an "equitable argument" when an employee filed an employment discrimination

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to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter.

Id. at 653.

[101] *Id.* at 661.

[102] *Id.* (footnote omitted).

[103] Williams v. Comm'n on Human Rights & Opportunities, 777 A.2d 645, 651 (Conn. 2001).

[104] *Id.* at 661; *but cf. Cavallaro*, 796 A.2d at 940-41 (explaining that if a statutory time frame is mandatory, then modification or relaxation may be granted only by the Legislature).

[105] *Williams*, 777 A.2d at 664.

[106] *Id.*

[107] Watson v. Brevard Cty. Clerk of the Circuit Ct., 937 So. 2d 1264, 1265 (Fla. Dist. Ct. App. 2006) (footnote omitted).

complaint one day after the deadline.[108] The court explained that because the deadline was not jurisdictional, the "doctrine of equitable tolling [could] be applied to extend an administrative filing deadline" when a plaintiff "has been misl[ed] or lulled into action, has in some extraordinary way been prevented from asserting his rights, or has timely asserted his rights in the wrong forum."[109] The court found, however, that although an equitable argument could be asserted, "[n]one of these circumstances are applicable here."[110]

B. Analysis of Maryland's Scheme

Maryland's appellate courts have not directly addressed the nature of filing deadlines in an administrative scheme, but the opinions suggest that a statutory timeframe would generally be construed as a condition precedent to the right of action but not as a condition precedent to the agency's subject matter jurisdiction.[111] A

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108 *Id.*

109 *Id.* (citing Machules v. Dep't of Admin., 523 So. 2d 1132, 1134 (Fla. 1988)).

110 *Id.*

111 *See, e.g.*, Higginbotham v. Pub. Serv. Comm'n, 985 A.2d 1183, 1198 (Md. 2009) (Harrell, J., concurring and dissenting) ("[W]here a statute containing a limitation period creates both the right and the remedy, the limitation period constitutes a condition precedent to maintaining suit, not merely a statute of limitations subject to waiver if not raised by the defendant as an affirmative defense."); *see also* State *ex rel.* Stasciewicz v. Parks, 129 A. 793, 794 (Md. 1925) ("In most jurisdictions the courts have held that all the provisions of these statutes [that create a new cause of action], including that fixing the time within which the action must be brought, are essential to the maintenance of the suit.").

In a key case discussed in detail *infra* on the distinction between a statute of limitations and a condition precedent, *State v. Sharafeldin*, the Court of Appeals of Maryland stated in a footnote, while discussing federal statutes similar to the State statute at issue, that

> [w]e need not complicate the issue by addressing it in terms of whether the defense is "jurisdictional" in nature. . . . The relevant focus is on whether the time limitation for bringing an action for breach of contract is a non-waivable, non-tollable condition to the waiver of immunity. If it is and the condition is not met, an action against the State must be dismissed because the State remains immune from suit, *not because the court is without jurisdiction*.

854 A.2d 1208, 1215 n.5 (Md. 2004) (emphasis added).

In *Engineering Management Services, Inc. v. Maryland State Highway Administration*, a case decided by the Court of Appeals a year before *Sharafeldin*,

condition precedent operates in many respects like a jurisdictional bar and is non-waivable and non-tollable and can be raised at any time.[112] A statute of limitations, on the other hand, is subject to waiver by the failure of a respondent to raise the defense in a proper manner, but it is not subject to discretionary extension.[113] Equitable exceptions, such as tolling and estoppel,[114] may also be available under a statute of limitations but these exceptions are narrow.[115]

The Court of Appeals' opinion in *State v. Sharafeldin*[116] is a key opinion on the distinction between a statute of limitations and a condition precedent. The court addressed whether a statutory timeframe for breach of contract claims against the State "constitute[d] a condition to the waiver of sovereign immunity and thus to the right of action itself against the State or [was], instead,

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the court "comment[ed] on" a "potentially erroneous" determination made by the Maryland State Board of Contract Appeals (Board) that it did not have jurisdiction to hear a contested case appeal on a procurement claim because the petition for a first level appeal was allegedly untimely (but not initially raised by the agency) and an "absolute" condition precedent to the Board's subject matter jurisdiction. 825 A.2d 966, 969, 981 (Md. 2003). The court concluded that the Board's "analysis appears incorrect" and that "the statute of limitations in question here is not an issue of subject matter jurisdiction." *Id.* at 981, 985. The court further elaborated that "[s]imply because a statutory provision directs a court or an adjudicatory agency to decide a case in a particular way, if certain circumstances are shown, does not create an issue going to the court's or agency's subject matter jurisdiction." *Id.* at 984.

112 *See, e.g.*, Kearney v. Berger, 7 A.3d 593, 610 (Md. 2010) ("A condition precedent cannot be waived under the common law and a failure to satisfy it can be raised at any time because the action itself is fatally flawed if the condition is not satisfied." (internal quotation marks omitted)); *Sharafeldin*, 854 A.2d at 1215 n.5.

113 S.B. v. Anne Arundel Cty. Dep't of Soc. Servs., 6 A.3d 329, 341 (Md. Ct. Spec. App. 2010).

114 In *Engineering Management*, the court stated, in further explaining why the Board should not have dismissed the contractor's claim on summary disposition, that

> *[b]ecause a condition precedent can be met by estoppel*, and estoppel is a factual matter which can be determined only upon a full hearing on the merits, it is inappropriate to view a statute [of limitations] which exists as a condition precedent to a claim in a summary judgment context to be a matter of subject matter jurisdiction to which issues of estoppel and waiver may not be considered [under Maryland administrative law].

825 A.2d at 983 (emphasis added).

115 *See, e.g.*, Elat v. Ngoubene, 993 F. Supp. 2d 497, 537-38 (D. Md. 2014).

116 854 A.2d 1208.

merely a statute of limitations."[117] The statutory provision provided that "[a] claim under this subtitle is *barred unless* the claimant files suit within 1 year . . . ."[118] The court held that the filing deadline was not a statute of limitations but a condition to the action itself and that "[t]he waiver of the State's immunity vanishes at the end of the one-year period."[119]

In reaching its holding, the court emphasized that the "nature and effect" of the deadline was a "matter of statutory construction" and reviewed the statute for its legislative intent.[120] The court stated:

[I]n attempting to divine legislative intent, we look first to the words of the statute, but if the true legislative intent cannot readily be determined from the statutory language alone, we look to other indicia of the intent, including the title to the bill, the structure of the statute, the inter-relationship of its various provisions, its legislative history, its general purpose, and the relative rationality and legal effect of various competing constructions.[121]

The court was concerned about construing the deadline as a "mere statute of limitations, waivable at will by State agencies or their respective attorneys," as "limitations is an affirmative defense that can be waived and that *is* waived unless raised in the defendant's answer."[122] The court highlighted the use of the term "barred" in the applicable statute and stated that "traditional statutes of limitations . . . normally state only that an action 'shall be filed within' the allowable period."[123] The court then explained that when "a limitation period is stipulated in a statute *creating a cause of action* it is not to be considered as an ordinary statute of limitations, but is to be considered as a limitation upon the right as well as the remedy" and concluded that the time limitation in the statute was a condition to the waiver of immunity and was not subject to waiver or tolling.[124]

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117 *Id.* at 1209.

118 *Id.* (emphasis added).

119 *Id.* at 1219.

120 *Id.* at 1212.

121 *Id.* at 1212-13 (internal quotation marks omitted).

122 *Id.* at 1214 (emphasis in original).

123 *Id.*

124 *Id.* at 1218-19 (internal quotation marks omitted) (emphasis added); *cf.* Charleston Cmty. Unit Sch. Dist. No. 1 v. Ill. Educ. Labor Relations Bd., 561 N.E.2d 331, 333 (Ill. App. Ct. 1990) (explaining that a time limitation is

In Maryland, it is probably most apt to analyze filing timeframes for contested case hearings under a statute of limitations and condition precedent paradigm. In a Court of Special Appeals case prior to *Sharafeldin*, *Maryland Securities Commissioner v. U.S. Securities Corp.*, the Appellant argued that the statute of limitations embodied in the Courts and Judicial Proceedings Article did not apply to *administrative actions* for monetary fines or penalties.[125] The court agreed that the statute applied "only to judicial proceedings as opposed to administrative hearings"[126] and explained its holding based upon the "spirit, reasoning, and holding" of its majority opinion in an earlier case, which stated that "an administrative hearing was not a 'prosecution' or 'suit' within the meaning of [the Courts and Judicial Article], and (2) the underlying purpose of protecting the public from unscrupulous practices by [professionals licensed by an agency] preempted the defense of limitations."[127]

While *Maryland Securities Commissioner* held that a specific statute of limitations in a judicial proceeding should not be exported to an administrative scheme, it did not directly stand for the proposition that a limitations period in an administrative scheme could not be interpreted as a statute of limitations. Moreover, in *Engineering Management Services, Inc. v. Maryland State Highway Administration*, a Court of Appeals case decided a year before *Sharafeldin*, the court "comment[ed] on" a "potentially erroneous" determination made by the Maryland State Board of Contract Appeals that it did not have jurisdiction to hear a contested case appeal on a procurement claim because the petition for a first level appeal was allegedly untimely (but not initially raised by the agency).[128] The court concluded that the "*administrative statute of limitations*" pertinent to the agency's appeal "is not an issue of subject matter jurisdiction."[129]

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jurisdictional "if the right being asserted is one unknown to the common law" because "the time limitation is an inherent element of the right and of the power of the tribunal to hear the matter.").

125 716 A.2d 290, 298 (Md. Ct. Spec. App. 1998) (emphasis added).

126 *Id.*

127 *Id.* at 299.

128 825 A.2d 966, 981 (Md. 2003).

129 *Id.* at 981, 984-85 (emphasis added). For a more detailed discussion of this case, see *supra* note 111.

V. HOW TO PROCEED?

A. Statutory Construction

The preceding sections illustrate the continued vitality of jurisdictional time limitations but also demonstrate that statutory filing deadlines are generally not an inherent element of subject matter jurisdiction.[130] Instead, the consensus that emerges from my review of state and Supreme Court cases is that the legislature dictates whether a statutory filing timeframe is a jurisdictional prerequisite to an agency's authority to hear a case. The Supreme Court is clear that in the federal landscape administrative filing deadlines are "quintessential claim-processing rules" but that "Congress is free" to attach the jurisdictional label.[131] The Superior Court of New Jersey described what might be summarized as the "jurisdiction rationale" in the varied State landscape: whatever the "Legislature intended controls the analysis."[132]

Because of the harshness of jurisdictional deadlines, the adjudicating agency should determine whether there is any flexibility in the filing deadline. Unless a State's appellate court is explicit that, for instance, the "timely filing of a petition is necessary to confer subject matter jurisdiction"[133] on the adjudicating agency, the time limitation in the authorizing statute should be carefully reviewed for its legislative intent under principles of statutory construction. These principles for discerning legislative intent may be summarized as follows:

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130 *See, e.g.*, Bd. of Supervisors of Fairfax Cty. v. Bd. of Zoning Appeals of Fairfax Cty., 626 S.E.2d 374, 379 (Va. 2006) ("[The] filing requirement set by the General Assembly does not define the class of cases, i.e. the subject matter jurisdiction, over which the circuit court has authority to adjudicate."); *but cf.* Charleston Cmty. Unit Sch. Dist. No. 1 v. Ill. Educ. Labor Relations Bd., 561 N.E.2d 331, 333 (Ill. App. Ct. 1990) (explaining that a time limitation is jurisdictional "if the right being asserted is one unknown to the common law" because "the time limitation is an inherent element of the right and of the power of the tribunal to hear the matter.").

131 *See supra* notes 56-57 and accompanying text.

132 *See supra* notes 94-97 and accompanying text.

133 *See supra* note 79 and accompanying text.

> [W]e look first to the words of the statute, but if the true legislative intent cannot readily be determined from the statutory language alone, we look to other indicia of the intent, including the title to the bill, the structure of the statute, the inter-relationship of its various provisions, its legislative history, its general purpose, and the relative rationality and legal effect of various competing constructions.[134]

B. Good Cause Provisions

The Supreme Court highlighted that a good cause regulatory extension "would fall" under a jurisdictional time limitation.[135] A legislature or regulatory body may expressly grant, however, a good cause exception to a non-jurisdictional filing timeframe.[136] And any such good cause exception in a statute or regulation tends to support that the filing timeframe is not jurisdictional.[137] Indeed, various state

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134 State v. Sharafeldin, 854 A.2d 1208, 1212-13 (Md. 2004) (internal quotation marks omitted); *see also* Williams v. Comm'n on Human Rights & Opportunities, 777 A.2d 645, 653 (Conn. 2001) (stating that in "seeking to discern that intent, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter.").

135 Sebelius v. Auburn Reg'l Med. Ctr., 133 S. Ct. 817, 824 (2013) ("We reiterate what it would mean were we to type the governing statute . . . 'jurisdictional.' . . . Not only could there be no equitable tolling. The Secretary's regulation providing for a good-cause extension would fall as well." (citations omitted)).

136 In Maryland, the Court of Appeals analyzed whether there was good cause to extend the deadline for the filing of a proper certificate of qualified expert, which operated as a condition precedent to the claim. Although the court did not find good cause to extend the deadline, it highlighted the flexibility in the "deadline extension provision" provided by the statute, which served as an "escape valve[] for the harshness of the penalty . . . ." Kearney v. Berger, 7 A.3d 593, 612 (Md. 2010) (internal quotation marks omitted).

137 A good cause exception in a statute would certainly support legislative intent for a non-jurisdictional timeframe. A good cause exception in the relevant agency regulations would also provide support that the filing timeframe is not jurisdictional, although the regulation could be felled by a court if it was found to be outside the scope of the enabling statute. *See, e.g.*, *Sebelius*, 133 S. Ct. at 824; *see generally* JoAnne Sweeny, *Filling in the Gaps: The Scope of Administrative Agencies' Power to Enact Regulations*, 27 WHITTIER L. REV. 621 (2006).

agencies have provided good cause regulatory exceptions for untimely hearing requests. For example, under Oregon's administrative rules for a "late-request for hearing" in its employment department, the regulation provides as follows:

> "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control. . . . The appellant shall set forth the reason(s) for filing a late request for hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for the late filing, and whether the request was filed within a reasonable time.[138]

Other states, such as California, Connecticut, and Michigan, have also enacted regulatory provisions providing for good cause extensions to certain late filings.[139] While these extensions provide for flexibility in the filing deadline, the adjudicating agency should apply these exceptions carefully in order to avoid arbitrary or capricious decisions.[140]

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[138] OR. ADMIN. R. 471-040-0010(1), (4).

[139] CAL. CODE REGS. tit. 2, § 599.904(c) ("Except as otherwise limited by statute or case law, the Department of Personnel Administration or the Director may allow such an appeal to be filed within 30 days after the end of the period in which the appeal should have been filed if the petitioner demonstrates good cause for a late filing."); CONN. AGENCIES REGS. § 17a-451(t)-5(a) ("[A] grievance shall be filed not later than forty-five calendar days after the receipt of notice of the action complained of, unless good cause is shown for a late filing, as determined by the client rights officer."); MICH. ADMIN. CODE r. 451.2601 ("If a pleading or other paper is not filed in accordance with applicable time limits, the right of a party to make that filing is waived. The administrator in its discretion may, upon a showing of good cause for the late filing, permit the late filing of a pleading or other paper.").

[140] *See, e.g.*, 1 M.L.E. *What Constitutes an Improper Delegation of Power* § 4 (2009) ("A statute or ordinance placing discretionary power in an administrative agency must furnish standards for those who administer such power in order to avoid arbitrary decisions . . . ."); Falcone v. O'Connor, 986 N.Y.S.2d 265, 266 (N.Y. App. Div. 2014) ("[The licensing official] did not abuse her discretion in denying petitioner's application . . . . [The] official is vested with considerable discretion in ruling on a permit application and may deny it for any good cause. This Court will not disturb such a determination unless it is arbitrary or capricious." (internal quotation marks and citations omitted)).

C. Accardi Doctrine

Under the *Accardi* Doctrine, named for the United States Supreme Court case *United States ex rel. Accardi v. Shaughnessy*,[141] administrative agencies must generally follow their own rules and regulations.[142] While *Accardi* "involved much more than mere technical violations of an internal agency regulation pertaining to the orderly transaction of agency business," subsequent Supreme Court cases have limited the Doctrine by providing an exemption for "agency housekeeping regulations" unless a violation of such regulations causes substantial prejudice.[143] As discussed earlier in this Article, an agency cannot waive a jurisdictional deadline or a time limitation that is a condition precedent.[144] Moreover, an agency does not have discretion to waive a statute of limitations on the basis of good cause.[145] If a timeframe is read to be a "claim-processing" rule that does not operate like a "pure statute of limitations," however, then an adjudicating agency might arguably waive it under

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141 347 U.S. 260 (1954).

142 Pollock v. Patuxent Inst. Bd. of Review, 823 A.2d 626, 639-40 (Md. 2003); *see also* ROCHVARG, *supra* note 1, § 22.2, at 272-73.

143 *See Pollock*, 823 A.2d at 637-38.

144 *See* discussion *supra* Part II, IV.B.

145 *See, e.g.*, S.B. v. Anne Arundel Cty. Dep't of Soc. Servs., 6 A.3d 329, 341 (Md. Ct. Spec. App. 2010) ("[T]he deadline [for judicial review] has consistently been treated as an absolute statute of limitations, subject to waiver by failure of a respondent to raise the defense in a proper manner *but not subject to discretionary extension*. . . . The Court of Appeals has explained that it deliberately changed the former rule governing judicial review of administrative agency decision, by eliminating judicial authority to extend the filing period for good cause." (emphasis added)); Dep't of Pub. Safety & Corr. Servs. v. Neal, 864 A.2d 287, 294 (Md. Ct. Spec. App. 2004) ("In *Colao* we recognized that rule 7-203, which governs the time for filing a petition for judicial review, does not confer *discretion* on the circuit court to accept an untimely filed petition, and therefore operates as a statute of limitations." (emphasis added) (citation omitted)).

the *Accardi* exception.[146] Yet, the waiver may be vacated if prejudice is shown.[147]

The Supreme Court of New Hampshire was directly confronted with the issue of whether an administrative board should have waived the filing deadline for a petitioner's untimely appeal because the agency had not met several of its time limitations.[148] The court first noted that the petitioner had not raised any objections to—or availed himself of any remedies for—the agency's tardiness throughout the appeal process.[149] The court then highlighted that under the State's Administrative Procedure Act, agencies must follow their own rules and regulations and concluded that it was proper for the Administrative Board to dismiss the untimely appeal.[150] In light of the *Accardi* Doctrine—coupled with the murky nature of administrative filing timeframes—an adjudicating agency should not generally exercise its discretion in waiving the filing deadline for a late hearing request unless a good cause exception is expressly granted in the statute or regulation.

D. Maryland's Medical Assistance Case Study

Medical Assistance (MA) is provided through Maryland's participation in the federal Medicaid program.[151] Under Maryland's MA program, an appellant must request an MA fair hearing within ninety days of the receipt of the notification of eligibility or of

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146 Williams v. Comm'n on Human Rights & Opportunities, 777 A.2d 645, 664 (Conn. 2001) (stating that the administrative time limitation did not operate like a "pure statute of limitations" and accenting the agency's discretion to raise the timeliness issue "sua sponte").

147 *See, e.g.*, *Pollock*, 823 A.2d at 630, 650 (adopting a "modif[ied]" *Accardi* Doctrine for administrative hearings in Maryland and holding that "a complainant must . . . show prejudice to have the agency action invalidated").

148 *In re* Murdock, 943 A.2d 757, 763 (N.H. 2008).

149 *Id.* at 764.

150 *Id.*

151 *See What Is Medicaid?,* DEP'T OF HEALTH & MENTAL HYGIENE, https://mmcp.dhmh.maryland.gov/pages/Medicaid-Medical-Assistance-Overview.aspx (Jan. 5, 2015) (stating that "[e]ach state establishes its own eligibility standards, benefits package, provider requirements, payment rates, and program administration under broad federal guidelines).

services provided or denied.[152] The ninety-day timeframe is codified in both the state and federal regulations rather than in the authorizing statutes, and neither regulation specifically mandates that the filing deadline is jurisdictional.[153] There is no good cause exception expressly granted in the statutes or regulations. In order to determine the nature of the filing timeframe, the principles outlined in the preceding sections of this Article may be applied.

Under Supreme Court precedent, the federal filing deadline is a "quintessential claim-processing rule" that is not jurisdictional unless "clearly stated" by Congress.[154] In *Sebelius v. Auburn Regional Medical Center*, where the Court was asked to decide whether the filing deadline for Medicare *providers* was jurisdictional, the Court examined the congressional language and held that the time limitation was not jurisdictional.[155] The *Sebelius* Court, however, did not specifically examine the regulation at issue here. Moreover, the limitation period at issue is under a state plan administered by Maryland's Department of Health and Mental Hygiene rather than directly administered through the federal government.

In accordance with the Medicaid program, Maryland's limitation period must comply with federally mandated standards and the due process opportunity to be heard.[156] Maryland's appellate courts have construed statutory time limitations more strictly than the Supreme Court[157] and have applied the rules of statutory construction to

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152 MD. CODE REGS. 10.01.16.04; *see also* 42 C.F.R. § 431.221(d) (2014).

153 MD. CODE REGS. 10.01.16.04.

154 *See supra* Part III.

155 Sebelius v. Auburn Reg'l Med. Ctr., 133 S. Ct. 817, 821 (2013).

156 *See* MD. CODE REGS. 10.09.24.16 ("Except if the language of a specific regulation indicates an intent by the Department [of Health and Mental Hygiene] to provide reimbursement for covered services to [MA] Program recipients without regard to the availability of federal financial participation, State regulations shall be interpreted in conformity with applicable federal statutes and regulations."); *see also* Goldberg v. Kelly, 397 U.S. 254, 267-68 (1970) (setting forth due process standards in the termination of "statutory entitlements" and reiterating that the "fundamental requisite of due process of law is the opportunity to be heard"); Pashby v. Delia, 709 F.3d 307, 314 (4th Cir. 2013) (stating that "[i]f a state participates in Medicaid, it must comply with federally mandated standards").

157 *See* Ferguson v. Loder, 975 A.2d 284, 294-95 (Md. Ct. Spec. App. 2009) ("[T]he Court of Appeals of Maryland declined to follow [the Supreme Court in] *Irwin* with respect to conditions precedent under Maryland law. . . . Thus,

determine whether a time limitation for bringing an action operates as a statute of limitations—which may be waived under certain conditions—or as a condition precedent to the action—which is non-waivable and can be raised at any time because the action itself is "fatally flawed if the condition is not satisfied."[158] In harmonizing the state and federal filing deadlines, *Schreur v. Department of Human Services*[159] and *State v. Sharafeldin*[160] are instructive.

In *Schreur*, the Michigan Court of Appeals reviewed federal Medicaid law when the Appellant filed a request for a fair hearing 368 days after the date of the notice and 278 days after the expiration of the 90 day period.[161] The Court of Appeals did not specifically address whether the time limitation was in the nature of a statute of limitations or jurisdictional but did address whether the time period should be "tolled" because the denial notice "contained incorrect citations to the" administrative regulations.[162] While the Court distinguished between an applicant and a recipient—which is not a relevant factor in either the Maryland regulations or in the Michigan Supreme Court's judgment—*Schreur*'s tolling analysis suggested that the timeframe was a more flexible statute of limitations.

In addition to *Schreur*, a number of courts have characterized various appeal timeframes that are worded similarly to the federal Medicaid regulation—although outside of medical assistance and sometimes in the context of a traditional suit—as a statute of limitations.[163] Moreover, and perhaps most importantly, the filing deadline is codified in the federal regulations rather than in the

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Sharafeldin established a bright line between the treatment of conditions precedent under Maryland law, and the more liberal treatment of jurisdictional requirements under the FTCA and similar statutes by recent federal court decisions.").

158 *See, e.g.*, Kearney v. Berger, 7 A.3d 593, 610 (Md. 2010); State v. Sharafeldin, 854 A.2d 1208, 1212-13 (Md. 2004).

159 795 N.W.2d 192 (Mich. Ct. App. 2009), *aff'd in part, vacated in part*, 795 N.W.2d 124 (Mich. 2011).

160 854 A.2d 1208 (Md. 2004).

161 *Schreur*, 795 N.W.2d at 195.

162 *Id.* at 195-96.

163 *See, e.g.*, Savina v. Litton Indus., 330 N.W.2d 456, 457; (Minn. 1983); Wilson v. Shannon, 386 S.E.2d 257, 258 (S.C. 1989); Johnston v. Bowen, 437 S.E.2d 45, 64 (S.C. 1993); McDougal v. Weed, 945 P.2d 175, 176-77 (Utah Ct. App. 1997); Roemhildt v. Gresser Co., Inc., 729 N.W.2d 289, 293 (Minn. 2007).

authorizing statute. This congressional silence is far from a clear legislative statement of jurisdictional intent.[164]

In *Sharafeldin*, which concerned a waiver of sovereign immunity rather than a "statutory entitlement," the Court of Appeals of Maryland highlighted the use of the term "barred" in the applicable statute and stated that "traditional statutes of limitations . . . normally state only that an action 'shall be filed within' the allowable period."[165] Indeed, Maryland's MA regulation states that the request for a fair hearing should be filed "within 90 days of the receipt of the notification."[166] In light of the plain language of the limitation period—and its placement in the regulation rather than in the authorizing statute—the time limitation does not appear to be a condition precedent to the right of action itself. The nature of the MA filing deadline can most likely be characterized in harmony with federal standards as an "administrative statute of limitations" that is not an unwaivable condition precedent to the administrative right and remedy.

VI. CONCLUSION

As the Supreme Court and some state courts have highlighted, jurisdictional deadlines are "drastic," "serious," and "final." For over a decade the Supreme Court has reigned in the "more than occasional" misuse of the term "jurisdictional" to describe "emphatic time prescriptions."[167] The perhaps reflexive reaction that a filing deadline is inextricably intertwined with subject matter jurisdiction is generally not supported outside of traditional appeals from one court to another. Instead, the thread through the patchwork of state cases is that the Legislature dictates whether a statutory filing timeframe is a jurisdictional prerequisite to an agency's authority to hear a case. The adjudicating agency should, therefore, carefully parse the relevant

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164 *See* Sebelius v. Auburn Reg'l Med. Ctr., 133 S. Ct. 817, 824 (2013) (explaining that "[t]his is not to say that Congress must incant magic words in order to speak clearly" (internal quotation marks omitted)).

165 *Sharafeldin*, 854 A.2d at 1214.

166 MD. CODE REGS. 10.01.04.04D.

167 Scarborough v. Principi, 541 U.S. 401, 413 (2004) (internal quotation marks omitted).

agency statute and regulations for any flexibility in the filing deadline, including any express good cause exceptions.

The sparse and often contradictory analyses among the states on a rather fundamental aspect of administrative law—the nature of a filing deadline for a contested case hearing—is troubling. An adjudicating agency is often without guidance, which fosters inefficiency and unfairness. Although a time limitation should not stretch indefinitely, flexible due process should also not support an unduly harsh deadline that may be overbroad and which may not serve the public interest.[168] While I have striven to bring some cohesiveness to this area, I urge the states to visit—or revisit—this subject and to follow the example of the Supreme Court in providing greater clarity and uniformity in the area of administrative filing guidelines.

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168 *But see* Poor, *supra* note 5, at 151-52 ("[P]ractical experience teaches that the judicial system as a whole works far better—with greater stability and overall fairness—when the time for an appeal cannot be manipulated by the parties or overridden by the trial court and thus is treated as jurisdictional.").