PREFACE

Welcome to the second edition of Volume 33 of Federal Practice and Procedure, Judicial Review of Administrative Action. To understand the purpose and contents of this volume, it is helpful to know a little bit about its evolution. The late Professor Charles Koch, Jr., was the author of another treatise, the four-volume Administrative Law and Practice. In the early 2000s, he agreed to condense this treatise into two volumes as additions to Federal Practice and Procedure, and these became Volumes 32 and 33. Volumes 1 through 31, of course, already contained a vast amount of information concerning litigation by and against federal agencies. This information, however, is scattered through a series of books that take up a couple of yards of shelf space. Also, notwithstanding the length of the treatise, given the range of topics that its first thirty-one volumes cover, they cannot address every administrative law topic with the depth they ideally deserve. By drawing together various doctrines of administrative law into a (relatively) condensed space, Volumes 32 and 33 highlight relationships among these doctrines and make them easier to comprehend. They also provide space to address various issues in greater depth.

Volume 33 concentrates in particular on various doctrines governing access to the courts to challenge agency action (e.g., standing, reviewability, timing doctrines, etc.) as well as doctrines governing scope of judicial review (e.g., review for “arbitrariness,” the Chevron doctrine, etc.). Many of these doctrines—especially those governing scope of review for issues of law—have changed a great deal since Charles’s first edition of Volume 33 was published in 2006. For some time, these changes have been addressed by increasingly lengthy supplemental updates—which I have authored since Charles’s untimely passing. Twelve years on, it is now time for a full-blown revision that prunes and integrates old and new law and restructures its presentation to better fit the law’s current state and aid the puzzled reader.

A brief word concerning the underlying “philosophy” or attitude underlying this new edition: Long ago in the closing years of the last century, I was a junior associate at a large law firm. Like so many others in that situation, when I found that I was confused or ignorant regarding a point of federal procedure that I desperately needed to understand, I turned first to Federal Practice and Procedure to get the proverbial “lay of the land.” Administrative law’s “lay of the land” can be an especially confusing one—especially for those who have not encountered it in any organized, systematic form before. With this in mind, one of my primary goals in authoring this new edition has been to provide a clear structure that will enable lawyers who are not deeply versed in administrative law to see the relationships among its various
doctrines, understand their logic, and navigate among them safely.

One last thing—this volume can exist in its current form only because of the incredible work of the late Professor Charles H. Koch, Jr., Dudley W. Woodbridge Professor of Law, College of William and Mary, Marshall-Wythe School of Law. His four volumes of Administrative Law and Practice and his two volumes of Federal Practice and Procedure are truly enormous contributions to the field of administrative law. How he found the time, energy, and creativity to author them—as well as his many other academic works—bewilders me. I hope that this second edition of Volume 33 would meet with his approval.

RICHARD MURPHY

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