SUPREME COURT OF THE UNITED STATES

No. 03–1601

CITY OF RANCHO PALOS VERDES, CALIFORNIA, ET AL., PETITIONERS *v.* MARK J. ABRAMS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[March 22, 2005]

JUSTICE BREYER, with whom JUSTICE O'CONNOR, JUSTICE SOUTER and JUSTICE GINSBURG join, concurring.

I agree with the Court. It wisely rejects the Government's proposed rule that the availability of a private judicial remedy "*conclusively establishes* . . . a congressional intent to preclude [Rev. Stat. §1979, 42 U. S. C.] §1983 relief." *Ante*, at 8 (emphasis added). The statute books are too many, federal laws too diverse, and their purposes too complex, for any legal formula to provide more than general guidance. Cf. *Gonzaga Univ.* v. *Doe*, 536 U. S. 273, 291 (2002) (BREYER, J., concurring in judgment). The Court today provides general guidance in the form of an "ordinary inference" that when Congress creates a specific judicial remedy, it does so to the exclusion of §1983. *Ante*, at 8. I would add that context, not just literal text, will often lead a court to Congress' intent in respect to a particular statute. Cf. *ibid.* (referring to "implicit" textual indications).

Context here, for example, makes clear that Congress saw a national problem, namely an "inconsistent and, at times, conflicting patchwork" of state and local siting requirements, which threatened "the deployment" of a national wireless communication system. H. R. Rep. No. 104–204, pt. 1, p. 94 (1995). Congress initially considered a single national solution, namely a Federal Communica-

tions Commission wireless tower siting policy that would pre-empt state and local authority. *Ibid.;* see also H. R. Conf. Rep. No. 104–458, p. 207 (1996). But Congress ultimately rejected the national approach and substituted a system based on cooperative federalism. *Id.*, at 207–208. State and local authorities would remain free to make siting decisions. They would do so, however, subject to minimum federal standards—both substantive and procedural—as well as federal judicial review.

The statute requires local zoning boards, for example, to address permit applications "within a reasonable period of time;" the boards must maintain a "written record" and give reasons for denials "in writing." 47 U. S. C. §§332(c)(7)(B)(ii), (iii). Those "adversely affected" by "final action" of a state or local government (including their "failure to act") may obtain judicial review provided they file their review action within 30 days. §332(c)(7)(B)(v). The reviewing court must "hear and decide such action on an expedited basis." *Ibid*. And the court must determine, among other things, whether a zoning board's decision denying a permit is supported by "substantial evidence." §332(c)(7)(B)(iii).

This procedural and judicial review scheme resembles that governing many federal agency decisions. See H. R. Conf. Rep. No. 104–458, at 208 ("The phrase 'substantial evidence contained in a written record' is the traditional standard used for judicial review of agency actions"). Section 1983 suits, however, differ considerably from ordinary review of agency action. The former involve plenary judicial evaluation of asserted rights deprivations; the latter involves deferential consideration of matters within an agency's expertise. And, in my view, to permit §1983 actions here would undermine the compromise—between purely federal and purely local siting policies—that the statute reflects.

For these reasons, and for those set forth by the Court, I

agree that Congress, in this statute, intended its judicial remedy as an exclusive remedy. In particular, Congress intended that remedy to foreclose—not to supplement—§1983 relief.