Has the Expansion of Arbitral Immunity Reached Its Limits After *United States v. City of Hayward**?

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I. INTRODUCTION

The proliferation of lawsuits in America today has caused nothing to remain sacred or out of reach of a party who believes they have been wronged. A defeated party may try to attack any and all actors, the adjudicators and even the entire judicial process. Before 1980, a dearth of case law existed on claims against individual arbitrators, arbitration panels or sponsoring organizations for breach of contract, gross negligence, mental anguish or numerous other torts. Since 1980, the arbitration process[1] has been deluged by defeated parties claiming foul and looking for restitution. As individual arbitrators and the organizations that sponsor arbitration came under attack, courts and some state legislatures alike responded and wrapped the arbitration process in a cloak of immunity.

The cloak turned into armor as not only arbitrators and sponsoring organizations received immunity, but also architects, appraisers, engineers and labor grievance committees were given refuge when acting in a "quasi-judicial" nature. The extension of arbitral immunity to this group of nonarbitrators acting in a "quasi-judicial" role, however, has resulted in chinks in the armor as some jurisdictions refused to bestow immunity. While some exceptions exist, today a mantle of absolute immunity protects arbitrators and sponsoring organizations from civil liability for their actions and decisions throughout the arbitration process. The expansion of arbitral immunity may have reached its limit with a recent Ninth Circuit decision, *United States v. City of Hayward.*[2]

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* 36 F.3d 832 (9th Cir. 1994), *cert. denied*, 116 S. Ct. 65 (1995).

[1] Arbitration is defined as:

> A process of dispute resolution on which a mutual third party (arbitrator) renders a decision after a hearing at which both parties have an opportunity to be heard. Where arbitration is voluntary, the disputing parties select the arbitrator who has the power to render a binding decision.
>
> An arrangement for taking and abiding by the judgment of selected persons on some disputed matter, instead of carrying it to established tribunals of justice, and is intended to avoid the formalities, the delay, the expense and vexation of ordinary litigation.

BLACK'S LAW DICTIONARY 70 (Abridged 6th ed. 1991).

[2] 36 F.3d 832 (9th Cir. 1994), *cert. denied*, 116 S. Ct. 65 (1995). The court's decision in *City of Hayward* did not limit a new quasi-judicial actor from seeking arbitral immunity as much as clarify what constitutes an arbitrator or independent adjudicatory officer. However,

This Note examines the history of arbitral immunity, its development and its future in the wake of *United States v. City of Hayward.* While it is not the scope of this Note to argue for or against absolute immunity, throughout this Note the arguments supplied by advocates of a qualified immunity standard as well as the arguments for an absolute immunity standard will be presented. Part II begins with a synopsis of the doctrine of arbitral immunity, its origin and theoretical basis. Part III explores the expansion of arbitral immunity and the practical and policy justifications for its evolution. The attacks on the scope of arbitral immunity and efficacy of such attacks are examined in Part IV. Lastly, Part V focuses on the Ninth Circuit's decision in *United States v. City of Hayward* and its possible impact on other cities and the courts.

II. THE DOCTRINE OF ARBITRAL IMMUNITY

In order to better understand the evolution of arbitral immunity, one needs to examine the beginnings of arbitral immunity as the seeds for its theoretical justifications were planted at that time. The doctrine of arbitral immunity has its roots in the doctrine of judicial immunity.[3] Arbitral immunity actually depends on the degree that an individual's responsibilities and judgments exude "functional comparability" with those of judges.[4] An overview of judicial immunity, its purpose and its limitations is therefore useful to establish the foundation on which arbitral immunity stands.

A. *History of Judicial Immunity*

Judicial immunity, like most American jurisprudence, has its origins in early seventeenth century England. Lord Coke first stated the general rule of judicial immunity in *Floyd v. Barker*[5] and *The Marshalsea.*[6] The rule was based primarily on policy concerns and designed to allow judges to exercise their independent judgments, assure decisional finality and preserve confidence in the judicial process.[7] The rule granted almost absolute

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the court's classification of an arbitrator or sponsoring organizations may have repercussions for other sponsoring organizations of compulsory arbitration.

[3] *See* Michael F. Hoellering, *Arbitral Immunity Under American Law, in* ARBITRATION & THE LAW, 1990-1991, at 162 (1991).

[4] *See* Butz v. Economou, 438 U.S. 478, 512 (1978). The Court stated that immunity does not attach to a person based on their position, rather immunity is granted because of the nature of the responsibilities. *See id.* at 511.

[5] 77 Eng. Rep. 1305 (K.B. 1607).

[6] 77 Eng. Rep. 1027 (K.B. 1612).

[7] *See* Dennis R. Nolan & Roger I. Abrams, *Arbitral Immunity*, 11 INDUS. REL. L.J.

immunity to judges and protected them from personal liability for damages resulting from their judicial decisions.[8]

Lord Coke established the two main limits to judicial immunity as well: the "judicial acts" and "jurisdictional" requirements.[9] First, a judge will not be immune if acting in an administrative, legislative or personal capacity, rather than his judicial capacity.[10] Likewise, a judge will not be immune for those acts exercised in the clear absence of jurisdiction.[11] A Massachusetts court first applied the doctrine of judicial immunity in America and held that a judge is immune if the court over which he presides has jurisdiction over the parties and the subject matter of the litigation.[12] Twenty-four years later, the United States Supreme Court adopted the doctrine of judicial immunity in *Bradley v. Fisher*.[13]

The United States Supreme Court over the next 100 years broadly interpreted the doctrine of judicial immunity and expanded its scope.[14] In

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228, 230 (1989); Mark A. Sponseller, *Redefining Arbitral Immunity: A Proposed Qualified Immunity Statute for Arbitrators*, 44 HASTINGS L.J. 421, 424-425 (1993). The underlying rationale for the Supreme Court's endorsement of judicial immunity was explained in *Pierson v. Ray*:

> It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decisionmaking but to intimidation.

386 U.S. 547, 554 (1967).

[8] *See id.*

[9] *See id.*

[10] *See id.*

[11] *See id.*

[12] *See* Pratt v. Gardner, 56 Mass. (2 Cush.) 63, 71 (Mass. 1848).

[13] 80 U.S. 335, 351 (1872). The Supreme Court had tacitly endorsed the principle of judicial immunity three years earlier. *See* Randall v. Brigham, 74 U.S. 523, 536 (1869). The Court, however, expressed itself more strenuously in *Bradley* and stated: "[A] general principle of the highest importance to the proper administration of justice [is] that a judicial officer, in exercising the authority vested in him, be free to act upon his own convictions, without apprehension of personal consequences to himself." *Bradley*, 80 U.S. at 349.

[14] *See generally* J. Randolph Block, Stump v. Sparkman *and the History of Judicial Immunity*, 1980 DUKE L.J. 879; Jay M. Feinman & Roy S. Cohen, *Suing Judges: History and Theory*, 31 S.C. L. REV. 201 (1980). *See also* Yaselli v. Goff, 12 F.2d 396, 406 (2d Cir. 1926), *aff'g* 275 U.S. 503 (1927) (per curiam) (immunity given to federal prosecutors); Pierson v. Ray, 386 U.S. 547 (1967) (judicial immunity extended to state judges); Imbler v.

Stump v. Sparkman, the Court pushed the limits of judicial immunity and held a judge will not be subject to liability even if the decision made or action taken was clearly in error or ultra vires.[15] Although Judge Stump violated basic tenants of due process,[16] the Court found neither the "jurisdictional" nor "judicial acts" limitations applicable.[17] Judge Stump did not act in the "clear absence of jurisdiction" as state court judges have general jurisdiction over matters relating to minor children within their state. The Court also announced that for the purposes of judicial immunity, an act is "judicial" if the act is a function "normally performed by a judge" and if the parties "dealt with the judge in his judicial capacity."[18] Judge Stump, similar to other state judges, normally granted petitions relating to the affairs of minor children, and the girl's mother dealt with Judge Stump in his judicial capacity.[19]

Despite the harshness and criticism of the *Stump* decision, the courts have repeatedly followed the *Stump* ruling and pierced the veil of judicial immunity in the narrowest of circumstances.[20] As a general rule, judges are not immune from criminal prosecutions[21] nor from impeachment from federal or state legislatures.[22] Judges are also not immune, in many states that elect their judiciary, from the political repercussions of their conduct.[23] Except when a judge acts in "the clear abuse of all jurisdiction over the subject matter,"[24] judges will only be personally liable when acting in a administrative or ministerial manner.[25] In situations where individuals seek

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Pachtman, 424 U.S. 409 (1976) (immunity granted to state prosecutors).

[15] 435 U.S. 349, 362 (1978). Judge Stump, an Indiana circuit court judge, approved a mother's petition to allow a doctor to perform a tubal ligation on her minor daughter.

[16] *See id.* at 360-362. Judge Stump authorized the sterilization without a hearing, a guardian ad litem was never appointed to protect the minor fifteen year-old girl, and the girl did not even receive notice of the procedure.

[17] *See id.* at 362.

[18] *Id.*

[19] *See id.*

[20] *See* Nolan & Abrams, *supra* note 7, at 232.

[21] *See* O'Shea v. Littleton, 414 U.S. 488, 503 (1974).

[22] *See* Michael R. King, *Judicial Immunity and Judicial Misconduct: A Proposal for Limited Liability*, 20 ARIZ. L. REV. 549, 563 (1978).

[23] The ABA Model Code of Judicial Conduct declares that judges are to "act at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary." MODEL CODE OF JUDICIAL CONDUCT Canon 2 (1990). While it is not within the scope of this Note, many commentators have argued that the process of electing judges greatly tests and endangers the integrity of the judiciary.

[24] *Bradley*, 80 U.S. at 351.

[25] *See* King, *supra* note 22, at 576-577. The Supreme Court in *Forrester v. Allen*, 484

equitable relief, however, judges do not have absolute immunity even while acting in their judicial capacity.[26] Moreover, judicial immunity will not bar claims for attorneys' fees resulting from a successful suit against judges for injunctive relief.[27]

Over time, the principles behind judicial immunity were expanded to protect the entire judicial process, not merely judges.[28] Courts realized that jurors and prosecutors perform functions analogous to judges and need to be absolutely immune from personal liability.[29] Jurors and prosecutors, like judges, must be free from the intimidation and fear of collateral attacks from disgruntled litigants in order to act impartially.[30] Professor Nolan argues that judicial immunity "is a means to an end, not an end in itself," and that it satisfies the universal concerns common to all decisionmakers who perform any quasi-judicial function, especially arbitrators.[31]

U.S. 219, 229-230 (1988), held that a judge does not have absolute immunity in performing administrative functions such as employment decisions. The Court further stated that absolute immunity is "justified and defined by the functions it protects and serves, not by the person to whom it attached." *Id.* at 227.

[26] *See* Pulliam v. Allen, 466 U.S. 522, 537 (1984). *See also* Heimbach v. Village of Lyons, 597 F.2d 344, 347 (2d Cir. 1977) (judicial immunity does not extend to actions for injunctive relief).

[27] *See Pulliam*, 466 U.S. at 544. Injunctive relief and attorney fees may also be given for violations of The Civil Rights Act, 42 U.S.C. § 1983 (1988).

[28] *See* Nolan & Abrams, *supra* note 7, at 232.

[29] *See* Yaselli v. Goff, 12 F.2d 396, 403 (2d Cir. 1926), *aff'g* 275 U.S. 503 (1927) (per curiam) (quasi-judicial immunity); Imbler v. Pachtman, 424 U.S. 409, 423 n.20 (1976) (quasi-judicial immunity).

[30] *See id.*

[31] Nolan & Abrams, *supra* note 7, at 232. Nolan and Abrams comment:

> If judicial immunity existed simply to protect those individuals holding judicial office, there would be no reason to extend it to others. Judicial immunity exists for a broader purpose, however; to protect litigants and the litigation process by ensuring judicial independence and decisional finality. It is a means to an end, not an end in itself. That purpose requires that all who perform judge-like functions be protected from liability even if they are not true judges. A variety of decisionmakers, in both the public and private spheres, "adjudicate" disputes. They, like judges, must be free from fear of liability or harassment in order to exercise their responsibilities with complete impartiality.

Id.

B. *Arbitral Immunity*

Common-law arbitral immunity resembles judicial immunity. Both are limited by "jurisdictional" requirements, and like judges, only the arbitrators' "arbitral acts" will be afforded absolute immunity.[32] Arbitral immunity in America was embraced by an Iowa court in *Jones v. Brown*.[33] In *Jones*, an arbitrator brought suit to collect outstanding fees.[34] The losing party counterclaimed and charged the arbitrator with fraud and conspiracy to defraud.[35] The court dismissed the action and held the arbitrator was immune for his quasi-judicial acts.[36]

Similar to judicial immunity, arbitral immunity "exists for the parties and the public, not for the arbitrators themselves."[37] A neutral arbitrator is paramount to preserve the integrity of the arbitration process and by necessity must act independently without undue influence.[38] The role of an arbitrator has traditionally been deemed to be quasi-judicial in nature[39] in which the arbitrator is disinterested in the outcome and the parties before her.[40] It is this quasi-judicial role, which has been held to be "functionally comparable" to a judge, that bestows immunity comparable to judicial immunity on an arbitrator.[41]

The "functional comparability" standard was first set forth by the Supreme Court in *Butz v. Economou*.[42] In *Butz*, the Court extended immunity to executive branch officials sued for alleged violations of citizens' constitutional rights.[43] The Court explained that immunity is not

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32 *See id.* at 237.

33 6 N.W. 140 (Iowa 1880).

34 *See id.* at 141.

35 *See id.*

36 *See id.* at 143.

37 *See* Nolan & Abrams, *supra* note 7, at 237.

38 This belief, embraced in New York in *Babylon Milk & Cream Co. v. Horvitz*, 151 N.Y.S.2d. 221, 224 (N.Y. Sup. Ct. 1956), *aff'd*, 165 N.Y.S.2d 717 (N.Y. App. Div. 1957), and later in the Third Circuit in *Cahn v. International Ladies' Garment Union*, 311 F.2d 113, 114–115 (3d Cir. 1962) (per curiam), has been adopted throughout federal and state courts.

39 In *Burchell v. Marsh*, the Supreme Court stated: "Arbitrators are judges chosen by the parties to decide the matters submitted to them . . . ." Burchell v. Marsh, 58 U.S. 344, 349 (1855). *See also Cahn*, 311 F.2d at 114–115.

40 I. & F. Corp. v. International Ass'n of Heat and Frost Insulators and Asbestos Workers Local 8, 493 F. Supp. 147, 149 (S.D. Ohio 1980).

41 *See, e.g.*, Corey v. New York Stock Exch., 691 F.2d 1205, 1209–1211 (6th Cir. 1982).

42 438 U.S. 478 (1978).

43 *See id.* at 480. Quasi-judicial immunity was granted to administrative law judges,

based on the identity of the actor but rather on the quasi-judicial nature of the responsibilities and actions performed.[44] In other words, immunity depends on the "functional comparability" of an individual's acts and judgments to those of judges.[45] Courts seized upon an arbitrator's adjudicatory role as analogous to a judge's when applying the "functional comparability" standard.[46]

The Supreme Court cited other policy reasons justifying absolute immunity to those performing quasi-judicial functions. The Court reasoned absolute immunity is important to preserve the independence necessary for decisionmakers to perform "without harassment or intimidation."[47] Second, quasi-judicial proceedings share many of the same characteristics as judicial ones and as a result should be afforded the same safeguards to secure impartiality.[48] Because both proceedings have built-in procedural safeguards to prevent possible constitutional infringements, the extension of immunity would not endanger the integrity of the decisionmaking process.[49] When these safeguards are deficient, however, the Court pointed out that private damage actions may be needed in order to deter misconduct.[50]

The debate between absolute and qualified immunity centers around whether the arbitration process contains the same procedural safeguards as the judicial process to warrant absolute immunity. Professor Nolan, an advocate of absolute immunity, concedes that the analogy between the judicial process and the arbitration process is not perfect.[51] Primarily, arbitrators do not have to follow precedent. Second, arbitration awards are not easily appealable.[52] Mark A. Sponseller, an advocate for qualified immunity for arbitrators, adds that arbitrators are not bound by the rules of

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federal agency examiners and various agency officials performing either quasi-judicial or prosecutorial functions.

[44] *See id.* at 511–512.

[45] *See id.*

[46] *See* Corey v. New York Stock Exch., 691 F.2d 1205, 1211 (6th Cir. 1982) ("The functional comparability of the arbitrators' decisionmaking process and judgments to those of judges and agency hearing examiners generates the same need for independent judgment, free from the threat of lawsuits. Immunity furthers this need.").

[47] Butz v. Economou, 438 U.S. 478, 512 (1978); *accord* Corey, 691 F.2d at 1211; Feichtinger v. Conant, 873 P.2d 1266 (Alaska 1995).

[48] *See Butz*, 438 U.S. at 512.

[49] *See id.* Both quasi-judicial and judicial proceedings are adversarial in nature, conducted before a trier of fact insulated from political influence and have the right of judicial review. *See id.*

[50] *See id.*

[51] *See* Nolan & Abrams, *supra* note 7, at 234.

[52] *See id.*

evidence and rules of legal procedures.[53] Additionally, Sponseller argues that arbitrators are not politically insular because they are often participants in the same industry in which they arbitrate disputes.[54] The absence of a transcript of the proceedings and the lack of declared findings of fact and conclusions of law in the arbitration process, according to Sponseller, also nullifies any parallelism between the judicial and the arbitration process.[55]

Professor Nolan maintains that notwithstanding the differences between the judicial and arbitration processes ample safeguards exist to justify absolute immunity.[56] Nolan points out that arbitration is voluntary and thus both parties are aware of the risks.[57] Self-preservation will also serve to negate "political pressures" on arbitrators: "political" decisions would be professional suicide as disputants would have no confidence in an arbitrator's neutrality.[58] Arbitrators, being members of the industry they arbitrate in, generally follow the accepted practices and ethical codes similar to precedent.[59] Finally, Nolan asserts arbitration is an adversarial process and arbitration awards are subject to judicial review through vacatur.[60]

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[53] *See* Sponseller, *supra* note 7, at 436.

[54] *See id.* at 436-437.

[55] *See id.* at 436.

[56] *See* Nolan & Abrams, *supra* note 7, at 234; *see also* Lois J. Cole & John B. Lewis, *Defamation Actions Arising from Arbitration and Arbitration Related Resolution Procedures—Preemption, Collateral Estoppel, and Privilege: Why the Absolute Privilege Should Be Expanded*, 45 DEPAUL L. REV. 677 (1996). Cole and Lewis maintain that absolute immunity must be extended to the entire arbitral process to protect libel and slander litigation arising from the allegedly defamatory statements made during the arbitration process. *See id.*

[57] *See* Nolan & Abrams, *supra* note 7, at 234. Sponseller denounces Nolan's contention that parties presumably know the risks that are involved in arbitration. Sponseller argues that many parties are not aware or assume that an arbitrator will not act with malice or bias. Sponseller, *supra* note 7, at 437. I would add that Professor Nolan also fails to address the fact that arbitration clauses are frequently included in many consumer adhesion contracts. Nolan also states: "Only those who wish to will use [arbitration]." Nolan & Abrams, *supra* note 7, at 234. Again, this simplistic view does not reflect the amount of compulsory arbitration clauses that consumers must agree to when purchasing products.

[58] *See* Nolan & Abrams, *supra* note 7, at 234. This assumes, however, that both sides would become aware of an arbitrator's bias. A newcomer to the arbitration process may presume that an arbitrator will be fair and not attempt to determine the arbitrator's reputation.

[59] *See id.* According to Sponseller, familiarity with industry practices is not binding and "no substitute for the rules of precedent and the threat of appellate review." Sponseller, *supra* note 7, at 437.

[60] *See* Nolan & Abrams, *supra* note 7, at 234 n.37. Nolan does acknowledge that parties cannot easily overturn an erroneous arbitration award. *See id.* The Federal Arbitration Act also provides for the right to mandatory right of review. *See generally* 9 U.S.C. §§ 1-14

Although the Federal Arbitration Act (FAA)[61] does not address the issue of arbitral immunity, the courts have developed their own policy justifications[62] for affording absolute immunity to arbitrators. Referring to the FAA, courts have declared that federal policy encourages arbitration and arbitrators are indispensable actors in furtherance of that policy.[63] Arbitrators have no interest in the outcome of the dispute and should not be forced to become parties to the dispute simply because one party is unhappy with the arbitrator's decision.[64] Furthermore, the threat of lawsuits would deter arbitrators from volunteering their expertise and services, in effect, emasculating the federal policy promoting arbitration.[65] These policy justifications are professed by the courts as the rationale behind expanding arbitral immunity to sponsoring organizations, arbitration panels, appraisers and others performing "arbitral" roles.

III. EXPANSION OF ARBITRAL IMMUNITY

A. *Arbitration Proceedings*

The doctrine of arbitral immunity has been expanded to encompass much more than an arbitrator's decision. Just as judicial immunity was extended to include the administrative workings of the court, arbitral immunity has been held to include the entire arbitral process. In *Corbin v. Washington Fire & Marine Ins. Co.*, a South Carolina federal court held that evidence presented, even libelous, was absolutely privileged.[66]

(1988).

[61] 9 U.S.C. §§ 1-14 (1988).

[62] Most of these policy arguments are in addition to the reasons cited for extending judicial immunity—independence of the decisionmaking process and decisional finality—into the arbitration process.

[63] *See, e.g.*, Hill v. ARO Corp. 263 F. Supp. 324, 326 (N.D. Ohio 1967); *see also* I. & F. Corp. v. International Ass'n of Heat and Frost Insulators and Asbestos Workers, Local 8, 493 F. Supp. 147, 150 (S.D. Ohio 1980).

[64] *See* Corey v. New York Stock Exch., 691 F.2d 1205, 1211 (6th Cir. 1982) (citing Tamari v. Conrad, 552 F.2d 778, 781 (7th Cir. 1977)).

[65] *See id.* Nolan calls this the "recruitment" policy strand. *See* Nolan & Abrams, *supra* note 7, at 235. Sponseller contends that arbitrators today rarely serve infrequently and without pay. Rather, arbitration is becoming a profession, and similar to professionals like doctors, lawyers or accountants, arbitrators can obtain malpractice insurance to cover liability for misconduct. Sponseller admits that qualified immunity needs to be legislated, because qualified immunity that is too lenient would frustrate the national policy favoring arbitration. *See* Sponseller, *supra* note 7, at 437-438.

[66] 278 F. Supp. 393, 400 (D.S.C.), *aff'g* 398 F.2d 543 (4th Cir. 1968).

The court reasoned:

> [If] arbitration is to be safely utilized as an effective means of resolving controversy, the absolute immunity attaching to its proceedings must extend beyond the arbitrators themselves; it must extend to all 'indispensable' proceedings . . . . To urge that the immunity should be limited to the arbitrators would be similar to arguing that judicial immunity should go no farther than the judge.[67]

Arbitral immunity thereafter grew to envelop an arbitrator's capacity to resolve disputes.

The Seventh Circuit extended arbitral immunity to protect arbitrators from actions challenging their authority in *Tamari v. Conrad*.[68] In this case, the plaintiffs insisted that the selection and composition of the arbitration panel did not comply with the terms of the agreement to arbitrate.[69] The plaintiffs asserted that the suit was comparable to a mandamus action filed against a judge and asked the court to declare the arbitration panel illegal and void its award.[70] The court disagreed and found the action analogous to dissatisfied litigants trying to void a jury verdict by suing members of the jury claiming the jury selection was improper.[71] Instead of a direct suit against the arbitrators, the court stated the plaintiffs could seek to vacate the award or assert their claim as a defense in an action brought to enforce the award.[72]

B. *Labor Relations*

Federal courts have determined all arbitration agreements involving commercial disputes are enforceable through the FAA.[73] So long as arbitration clauses are contained in contracts that implicate interstate commerce, the FAA will preempt state arbitration law.[74] Outside the commercial context, arbitration is most widely used in settling labor disputes. The FAA, however, excludes "contracts of employment of

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[67] *Id.* at 398.

[68] 552 F.2d 778 (7th Cir. 1977).

[69] *See id.* at 780.

[70] *See id.* at 780–781.

[71] *See id.* at 781.

[72] *See id.*

[73] *See, e.g.*, Medical Dev. Corp. v. Industrial Molding Corp., 479 F.2d 345 (10th Cir. 1973).

[74] *See id.*; Howard Fields & Assocs. v. Grand Wailea Co., 848 F. Supp. 890 (D. Hawaii 1993).

seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."[75] Nevertheless, Congress and the Supreme Court have recognized the consequences of not resolving labor disputes quickly and have embraced labor arbitration.[76]

Although some collective bargaining agreements make the labor arbitration process unique from other industries engaged in arbitration, the courts have clothed labor arbitration in arbitral immunity. Collective bargaining agreements often mandate that labor disputes be "adjudicated" by either statutorily created boards of adjustments, joint trade boards or special joint committees of labor and management. The courts have relied on the quasi-judicial role that these boards and committees perform[77] and the national policy favoring the settlement of labor disputes in extending immunity.[78]

Labor arbitration also raises the question whether absolute immunity is appropriate.[79] Bipartite and tripartite arbitration boards containing party-appointed arbitrators, representing either labor or management, are common in labor arbitration. Additionally, these party-appointed arbitrators are expected to act in a partisan manner, as agents of their respective affiliations.[80] Arbitral immunity rests on the premise that the arbitrators' role is "functionally comparable" with that of a judge.[81] Although labor

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[75] 9 U.S.C. § 1 (1988).

[76] *See* Nolan & Abrams, *supra* note 7, at 236 nn.44–47.

[77] *E.g.*, Larry v. Penn Truck Aids, Inc., 567 F. Supp 1410, 1416 (E.D. Pa. 1983) (special joint committee of labor and management); I. & F. Corp. v. International Ass'n of Heat and Frost Insulators and Asbestos Workers, Local 8, 493 F. Supp. 147, 150 (S.D. Ohio 1980) (joint trade board); Fong v. American Airlines, Inc., 431 F. Supp. 1340, 1343–1344 (N.D. Cal. 1977) (statutory airline board of adjustment); Merchant Despatch Transportation Corp. v. Systems Fed'n Number One Ry. Employees' Dept. AFL-CIO Carmen, 444 F. Supp. 75, 77 (N.D. Ill. 1977) (special Board of Adjustment established under National Railway Labor Act).

[78] *See I. & F. Corp.*, 493 F. Supp. at 150.

[79] Professor Nolan asserts that the lack of neutrality inherent when arbitrators are interested in the outcome vitiates absolute immunity. *See* Nolan & Abrams, *supra* note 7, at 238-239.

[80] *See id.* at 239. In *City of Hayward*, the court found the city-appointed arbitrator was an agent and refused to extend arbitral immunity to the agent and the city as a sponsoring organization. *See infra* Part V. For an excellent discussion on the ethical and neutrality difficulties in tripartite arbitrations, see Desiree A. Kennedy, *Predisposed with Integrity: The Elusive Quest for Justice in Tripartite Arbitrations*, 8 GEO. J. LEGAL ETHICS 749 (1995). Kennedy argues that partisan arbitration panels' lack of impartiality and neutrality greatly stretches the integrity of the entire arbitration process. *See id.* at 781–787.

[81] *See supra* Part II.B.

arbitrators adjudicate disputes like judges, they cannot be considered as indisputably neutral as judges. Arbitrators have been given immunity to preserve independence, encourage recruitment and secure finality in decisions.[82] In the labor arbitration context, however, independence and recruitment are not desirable objectives; therefore, only decisional finality serves to justify an absolute immunity standard.[83] Courts have, nonetheless, widely granted absolute immunity to "partisan" labor arbitrators.[84]

C. *Arbitral Institutions*

Arbitration associations acquire their immunity from the arbitrator.[85] In other words, an arbitration association can only be held vicariously liable for those acts which an arbitrator is deemed personally liable. In 1982, the Sixth Circuit broadened the net of immunity to include organizations that sponsor arbitration proceedings.[86] The plaintiff, Corey, was denied damages by a New York Stock Exchange arbitration panel after a brokerage firm allegedly allowed an incapacitated broker to advise Corey and other clients.[87] Corey sued the brokerage firm and the stock exchange separately for conspiracy to deprive him of a fair hearing.[88] After laying the foundation of arbitral immunity, the court stated:

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[82] *See* Nolan & Abrams, *supra* note 7, at 239.

[83] *See id.*

[84] *See supra* note 77. Courts have interpreted the term arbitration broadly to include joint trade boards and special grievance committees as dispute resolution mechanisms. The Southern District of Ohio stated:

> [It] is not arbitration per se that federal policy favors, but rather final adjustment of differences by a means selected by the parties. If the parties agree that a procedure other than arbitration shall provide a conclusive resolution of their differences, federal labor policy encourages that procedure no less than arbitration.

I. & F. Corp. v. International Ass'n of Heat and Frost Insulators and Asbestos Workers, Local 8, 493 F. Supp. 147, 149 (S.D. Ohio 1980).

[85] *See* Baar v. Tigerman, 189 Cal. Rptr. 834, 839 (Cal. App. 3d 1983).

[86] *See* Corey v. New York Stock Exch., 691 F.2d 1205 (6th Cir. 1982).

[87] *See id.* at 1208.

[88] *See id.*

> Extension of arbitral immunity to encompass boards which sponsor arbitration is a natural and necessary product of the policies underlying arbitral immunity; otherwise the immunity extended to arbitrators is illusionary. It would be of little value to the whole arbitral procedure to merely shift the liability to the sponsoring association.[89]

This policy of protecting sponsoring organizations was further advanced as the rationale for ruling that organizations are immune in their administration of the arbitral process.

In *Austern v. Chicago Board Options Exchange, Inc.* (CBOE), the plaintiffs sought relief for the mental anguish and damages caused by the CBOE's negligent administration of an arbitration hearing.[90] At issue was whether the CBOE could be liable for its failure to give the plaintiffs proper notice of the arbitration proceedings.[91] The plaintiffs asserted that the acts "being of an administrative or ministerial nature, d[id] not merit [arbitral] immunity."[92] Judge Meskill, writing for the court, disagreed and found that all functions integrally related to the arbitral process should be entitled to immunity.[93] Arbitral immunity is "defined by the functions it protects and serves," not by the characterization of acts as ministerial or administrative.[94] Additionally, the court explained that organizations found liable would be discouraged to sponsor future arbitrations, undermining the federal policy favoring arbitration.[95]

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[89] *Id.* at 1211.

[90] 898 F.2d 882, 884 (2d Cir. 1990).

[91] *See id.* at 882.

[92] *Id.* at 885. *See also supra* notes 8-10, 25 and accompanying text. Sponseller argues that the "judicial acts" limitation to immunity should dictate that arbitration associations be liable for the damages caused by improper administrative acts. Additionally, Sponseller contends that innocent parties should not bear the cost of the sponsoring organizations' negligence. Arbitration associations, not unlike companies strictly liable for their products, should bear the burden of their defective products. "[A]rbitration associations can insure against th[e] risk of damages and distribute the cost among its clientele." Sponseller, *supra* note 7, at 439.

[93] *See Austern*, 898 F.2d at 886.

[94] *Id.* (quoting Forrester v. Allen, 484 U.S. 219, 227 (1988)). The court, in delivering its opinion, explored the policies underlying the extension of judicial immunity to the arbitration process in great length. Absent was any discussion on the common law limitations to judicial immunity. Surprisingly, the court quotes *Forrester*, a case denying absolute immunity to a judge for performing nonjudicial, administrative acts. *See supra* note 25.

[95] *See Austern*, 898 F.2d at 886. *See also supra* note 65 and accompanying text.

The *Austern* court's refusal to allow alleged "non-judicial" acts to vitiate arbitral immunity for sponsoring organizations was reaffirmed by a California federal district court.[96] In *Cort v. American Arbitration Association*, the plaintiff argued that the American Arbitration Association's (AAA) spoliation of evidence and breach of contract fell outside the scope of arbitral immunity.[97] The district court held that AAA's actions were performed "during the course of resolving a dispute between the parties" and, thus, fell into the category of acts traditionally afforded absolute immunity.[98]

D. *Quasi-arbitrators*

Private individuals are often selected to resolve disputes in a quasi-judicial role.[99] The amount of immunity that these independent actors enjoy, like arbitrators, depends on the "functional comparability" between the decisionmaker and a judge.[100] Contrary to the immunity extended to arbitrators, a large variation among jurisdictions exists as to the extent quasi-judicial immunity should be applied.[101] The genesis of this discrepancy lies in whether the parties intended to arbitrate, and the responsibilities and functions the neutral third-party performs in the arbitration process.

Engineers and architects, for instance, often serve as quasi-arbitrators to resolve construction disputes between owners and contractors and usually enjoy immunity.[102] Appraisers, either court-appointed or contract-required, asked to value property for commercial purchases or divorce settlements, however, are not usually afforded immunity.[103] Courts, questioning whether

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[96] *See* Cort v. American Arbitration Ass'n, 795 F. Supp. 970 (N.D. Cal. 1992).

[97] *See id.* at 972.

[98] *See id.* at 973; *accord* Ozark Air Lines, Inc. v. National Mediation Bd., 797 F.2d 557, 564 (8th Cir. 1986) (NMB given immunity in deciding whether an issue is arbitrable); Griffin v. American Arbitration Ass'n, 455 N.W.2d 322 (Mich. App. 1990) (arbitration association not under continuing duty to rescreen all potential arbitrators after initial screening); Olson v. National Ass'n of Sec. Dealers, 85 F.3d 351 (8th Cir. 1996) (NASD immune from selecting a "tainted" arbitrator).

[99] *See* Nolan & Abrams, *supra* note 7, at 233.

[100] *See id.*

[101] *See* Sponseller, *supra* note 7, at 434–444 n.123.

[102] *E.g.*, Lundgren v. Freeman, 307 F.2d 104 (9th Cir. 1962); Craviolini v. Scholer & Fuller Associated Architects, 357 P.2d 611 (Ariz. 1960); Wilder v. Crook, 34 So. 2d 832 (Ala. 1948).

[103] *See* Horsell Graphics Indus., Ltd. v. Valuation Counselors, Inc., 639 F. Supp. 1117 (N.D. Ill. 1986) (appraisal firm not immune from the negligence of its appraisers in

binding audits are an equivalent to an agreement to arbitrate, have denied immunity to auditors.[104] Yet, a psychologist hired by parents to help in a child custody dispute was granted immunity by a California court.[105] The court held quasi-judicial immunity was appropriate for:

> [N]eutral third-parties for their conduct in performing dispute resolution services which are connected to the judicial process and involve either (1) the making of binding decisions, (2) the making of findings or recommendations to the court or (3) the arbitration, mediation, conciliation, evaluation or other similar resolution of pending disputes.[106]

Although no set rule has been declared regarding "quasi-arbitrators," the unique facts of each case along with the exact function an independent third-party performs in the arbitration process will dictate the scope of immunity extended.

IV. ATTACKS ON ARBITRAL IMMUNITY

An action to vacate an arbitration award is the most accepted way to challenge an award.[107] Parties subjected to arbitral misconduct have always been able to have an arbitration award set aside through judicial review.[108]

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establishing the value of stock plaintiff was contractually obligated to purchase); Levine v. Wiss & Co., 478 A.2d 397 (N.J. 1984) (accounting firm appointed by the trial court to value a business interest to procure a divorce settlement refused immunity). *But see* Wasyl, Inc. v. First Boston Corp., 813 F.2d 1579 (9th Cir. 1987) (appraiser granted immunity after resolving asset valuation dispute).

[104] *See* Gammel v. Ernst & Ernst, 72 N.W.2d 364 (Minn. 1955) (quasi-judicial immunity not extended to auditors in a stockholders action). The *Gammel* court stated:

> [J]udicial immunity was held dependent upon some contractual provision which called for the exercise of independent judgment or discretion by a person acting as an arbitrator .... [W]here the agreement does not call for the exercise of judicial authority, ordinarily the person selected to perform skilled or professional services is not immune from charges of negligence and is required to work with the same skill and care exercised by an average person engaged in the trade or profession involved.

Id. at 368; *see also* Coopers & Lybrand v. Superior Court, 260 Cal. Rptr. 713 (Cal. App. 3d 1989) (auditors denied immunity from binding audit).

[105] *See* Howard v. Drapkin, 271 Cal. Rptr. 893 (Cal. App. 3d 1990).

[106] *Id.* at 903.

[107] *See* Sponseller, *supra* note 7, at 422.

[108] *See id.*

Arbitration awards are not self-executing; thus, compliance can be enforced only through judicial order.[109] The FAA, which controls commercial arbitration, has adopted the common law grounds for vacating an arbitration award: (1) when the award was "procured by corruption, fraud, or undue means;" (2) when an arbitrator exhibits "evident partiality;" (3) when misconduct by an arbitrator prejudices the right of a party; or (4) when an arbitrator exceeds his or her power.[110] Most states follow these same grounds through the adoption of the Uniform Arbitration Act.[111]

These limited grounds for review have led some disappointed parties to attempt civil suits against arbitrators or organizations in charge of the administration of the arbitration process.[112] Akin to judicial immunity, the scope of arbitral immunity is limited to "arbitral acts" and acts within the arbitrator's jurisdiction.[113] Most attacks on the scope of arbitral immunity are rooted in claims of improper conduct that violate one of these restrictions on immunity.[114]

A number of theories have nevertheless been advanced without success in attempts to defeat arbitral immunity.[115] Plaintiffs' attempts to challenge the arbitrator's jurisdiction have been dismissed,[116] as well as collateral attacks on an arbitrator's award.[117] Tort actions alleging negligence, mental anguish, conspiracy to defraud and various other torts have also been dismissed on the grounds of arbitral immunity.[118] Courts have

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[109] *See* Tamari v. Conrad, 552 F.2d 778, 781 (7th Cir. 1977).

[110] 9 U.S.C. § 10 (1988).

[111] *See* UNIF. ARB. ACT § 12, 7 U.L.A. 140 (1985).

[112] *See* Nolan & Abrams, *supra* note 7, at 239–240. *See also supra* notes 9–12 and accompanying text.

[113] *See* Nolan & Abrams, *supra* note 7, at 239–240.

[114] *See id.* at 240.

[115] *See generally* Nolan & Abrams, *supra* note 7, at 240–250. For purposes of this Note, only an overview of the scope and limits of arbitral immunity is presented. Nolan and Abrams cover the attacks on arbitral immunity in great detail.

[116] *See* Tamari v. Conrad, 552 F.2d 778, 778 (7th Cir. 1977). Although the jurisdictional challenge was correctly brought prior to the arbitration hearing, the court held that the arbitrator is not a proper party to the suit. *See id.* at 780. The party questioning the arbitrator's jurisdiction can bring pre-hearing declaratory action against the opposing party. *See id.* at 781.

[117] Courts universally dismiss arbitrators or sponsoring organizations when included in suits brought to vacate an arbitration award. *See* Nolan & Abrams, *supra* note 7, at 242–243.

[118] *E.g.*, Cort v. American Arbitration Ass'n, 795 F. Supp. 970 (N.D. Cal. 1992) (negligence and spoliation of evidence); Austern v. Chicago Bd. Options Exch., Inc., 898 F.2d 882 (2d Cir. 1990) (mental anguish); Larry v. Penn Truck Aids, Inc., 567 F. Supp. 1410 (E.D. Pa. 1983) (tortious interference with contractual rights); Cahn v. International

systematically dismissed claims for constitutional and statutory violations,[119] as well as claims for breach of contract.[120] Lastly, although still untested in the courts, arbitrators may face potential liability if deemed to be "fiduciaries" under federal pension laws.[121]

As a general rule, arbitrators also possess a "testimonial privilege" when subpoenaed or deposed in order to clarify or impeach an award.[122] The exception to the rule occurs when a reasonable basis of arbitral misconduct exists.[123] Courts have also allowed two other exceptions to absolute arbitral immunity. As a matter of law, arbitral immunity does not act to bar claims for equitable relief.[124]

Arbitral immunity has similarly been held not to extend to the nonperforming arbitrator, "one guilty of nonfeasance rather than

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Ladies' Garment Union, 203 F. Supp. 191 (E.D. Pa.), *aff'd*, 311 F.2d 113 (3d Cir. 1962) (per curiam) (conspiracy to defraud); Olson v. National Ass'n of Sec. Dealers, Inc., 85 F.3d 381 (8th Cir. 1996) (negligence and fraudulent misrepresentation).

[119] *E.g.*, Shrader v. National Ass'n of Sec. Dealers, Inc., 855 F. Supp. 122, 124 (E.D.N.C. 1994) (NASD is not a state actor for purposes of violations of the Civil Rights Act (42 U.S.C. § 1983)); UAW Local 656 & 985 v. Greyhound Lines, Inc., 701 F.2d 1181, 1187 (6th Cir. 1983) (court held Congress did not intend to abrogate arbitral immunity when passing ERISA statute); Calzarano v. Liebowitz, 550 F. Supp. 1389 (S.D.N.Y. 1982) (Eighth Amendment only applies to criminal punishment, not to an arbitration decision); Raitport v. Provident Nat'l Bank, 451 F. Supp. 522 (E.D. Pa. 1978) (action for civil rights violations dismissed); Feichtinger v. Conant, 893 P.2d 1266 (Alaska 1995) (arbitrator held immune from claims alleging that the arbitrator deprived a party of its due process rights).

[120] *See* Hill v. ARO Corp., 263 F. Supp. 324 (N.D. Ohio 1967). The plaintiff creatively claimed to be a third-party beneficiary of the arbitrator's implied agreement with the Federal Mediation and Conciliation Service to comply with its regulations. The court dismissed the suit citing arbitral immunity. *See id.* at 326. Courts have held that arbitrators have breached their employment contract with parties, but only for complete nonperformance. *See infra* notes 125–136 and accompanying text.

[121] *See* Nolan & Abrams, *supra* note 7, at 249–250. *Greyhound Lines* held that ERISA did not abrogate arbitral immunity. The court, though, failed to make any determinations on whether arbitrators were "fiduciaries" under ERISA. *See Greyhound Lines*, 701 F.2d at 1181. Nolan and Abrams argue: "The policy bases of the arbitral immunity doctrine—finality, independence, and recruitment—weigh as powerfully against liability in pension cases as in others." Nolan & Abrams, *supra* note 7, at 251.

[122] *See* Andros Compania Maritima v. Marc Rich, 579 F.2d 691 (2d Cir. 1978); Gramling v. Food Mach. & Chem. Corp., 151 F. Supp. 853 (W.D.S.C. 1957).

[123] *See* Carolina-Virginia Fashion Exhibitors, Inc. v. Gunter, 230 S.E.2d 380 (N.C. 1976).

[124] *See* Trans World Airlines, Inc. v. Sinicropi, No. 93 CIV. 3094 (CSH), 1994 WL 132233 (S.D.N.Y. Apr. 14, 1994).

misfeasance."[125] In all three cases on point, the arbitrator failed to render an award within a reasonable amount of time.[126] In *E.C. Ernst, Inc. v. Manhattan Construction Co.*, the architect acting as a "quasi-arbitrator" failed to evaluate and submit plans and specifications.[127] The court held that the architect's inaction was not "functionally judge-like" to warrant immunity.[128]

Graphic Arts International Union Local 508 v. Standard Register Co. is another leading case holding an arbitrator liable for nonperformance.[129] The union filed suit against Standard Register and the arbitrator after the company refused to allow the arbitrator to be replaced.[130] The district court found the arbitrator liable for failing to render a decision.[131]

The final example of the "nonperformance exception" to arbitral immunity is unique in that the court's ruling was overruled by legislation instead of an appeals court.[132] In *Baar v. Tigerman*, the arbitrator was sued after failing to furnish an award within seven months after the hearing.[133] The appellate court held that an arbitrator who does not render a timely decision is not entitled to immunity.[134] Additionally, the court found that an arbitration association derives its immunity from the arbitrator.[135] Thus, the plaintiff's cause of action against the AAA for negligently selecting an arbitrator was valid.[136] The California legislature responded to the *Baar* ruling by passing a statute reaffirming absolute arbitral immunity as a matter of state law.[137]

The limits to arbitral immunity are, in brief, the following:

1. Arbitrators, like all other citizens, are liable for any crimes they commit;
2. Arbitrators are liable for negligence or breach of contract if they totally fail to perform their obligations;

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[125] Nolan & Abrams, *supra* note 7, at 251.

[126] *See id.*

[127] 551 F.2d 1026, 1034, *reh'g granted in part*, 559 F.2d 268 (5th Cir. 1977), *cert. denied*, 434 U.S. 1067 (1978).

[128] *See id.* at 1033.

[129] 103 L.R.R.M. (BNA) 2212 (S.D. Ohio 1978).

[130] *See id.*

[131] *See id.*

[132] *See* Baar v. Tigerman, 189 Cal. Rptr. 834 (Cal. App. 3d 1983).

[133] *See id.* at 836.

[134] *See id.* at 835.

[135] *See id.* at 839.

[136] *See id.* at 839–840.

[137] *See* CAL. CIV. PROC. CODE § 1280.1 (West Supp. 1988).

3. Arbitrators who violate a person's constitutional or civil rights, an unlikely event, might be subject to injunctive or declaratory relief; and
4. Arbitrators might be compelled to testify or produce documents (a) when they fail to make a timely assertion of their testimonial privilege; (b) when the request does not pertain to the arbitrator's decisional process ...; or (c) when the request involves the arbitrator's own misconduct and the moving party has previously demonstrated an "objective basis" for a "reasonable belief" that the asserted misconduct actually occurred.[138]

V. *UNITED STATES V. CITY OF HAYWARD*

Arbitral immunity does not extend to a city that requires its citizens to submit to the decision of a city-appointed arbitrator.[139] The court's holding in *City of Hayward* seems to establish an outer boundary to absolute immunity. At issue was whether the City of Hayward could be held liable for an arbitrator's decision violating the Fair Housing Act (FHA).[140] S.G. Borello & Sons, Inc. (Borello) owned and operated a mobile home park in Hayward, California.[141] In response to a 1988 amendment of the FHA, Borello terminated the park's adults-only policy and permitted families to live in the park.[142]

Tenants of the park responded by filing a petition with the City of Hayward's Rent Review Office seeking rent reduction due to a decrease in housing services.[143] The City's rent control ordinance mandated that an arbitrator be appointed to determine whether Borello's action in fact reduced services.[144] The city-appointed arbitrator agreed with the tenants that permitting children in the park was a reduction in services that effectively resulted in an increase of rent.[145] The arbitrator awarded a rent reduction, and Borello filed an administrative complaint with the federal government alleging the arbitrator's awarded rent reduction interfered with Borello's compliance with the FHA.[146]

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[138] Nolan & Abrams, *supra* note 7, at 260–261.

[139] *See* United States v. City of Hayward, 36 F.3d 832, 838 (9th Cir. 1994), *cert. denied*, 116 S. Ct. 65 (1995).

[140] *See id.*

[141] *See id.* at 834.

[142] *See id.*

[143] *See id.*

[144] *See id.*

[145] *See id.*

[146] *See id.* at 835.

The United States brought suit against the City for violation of § 3617 of the FHA.[147] The district court granted summary judgment in favor of the United States and permanently enjoined the City from interpreting its ordinance in a manner that penalized Borello's compliance with the FHA.[148] The court, however, denied the United States' claim for compensatory and punitive damages and both parties appealed.[149]

On appeal, the City claimed arbitral immunity applies because the arbitrator was an independent adjudicatory officer, rather than a city employee, and the City was merely a sponsoring organization.[150] The Ninth Circuit disagreed and found the arbitrator was in reality an agent of the City with delegated powers to interpret and enforce the City's rent control ordinance.[151] Further, the court concluded that sponsoring organizations administer voluntarily submitted disputes, which was not the case at bar.[152] Because Borello was compelled to submit to arbitration mandated by a city ordinance before a city-appointed arbitrator, the court held the City liable for any compensatory damages resulting from the arbitrator's interpretation and enforcement of the rent control ordinance.[153]

The Ninth Circuit's ruling, clearly the right decision, may be the end to the expansion of arbitral immunity. Arbitral acts have been deemed to be as broad as judicial acts.[154] Despite the common law "administrative acts" exception to judicial immunity, sponsoring organizations have been given absolute immunity in administering the arbitration process. Yet, the court's categorization of the city-required arbitration as an administrative proceeding was consistent with the "administrative acts" exception. An alternative interpretation for the court's decision may be that the court did not limit arbitral immunity in any real way; rather, the court clarified what constitutes arbitration. It is unclear whether other courts will extend arbitral immunity to non-voluntary legislatively mandated arbitration proceedings even if arbitrators are appointed by a truly neutral sponsoring organization. Regardless, the ruling should put other cities, states and municipalities on notice that the shield of arbitral immunity may not protect them in legislatively mandated arbitration.

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[147] *See id.*

[148] *See id.*

[149] *See id.*

[150] *See id.* at 838.

[151] *See id.*

[152] *See id.*

[153] *See id.* at 840.

[154] *See* Nolan & Abrams, *supra* note 7, at 237.

VI. CONCLUSION

The arbitration process and its participants enjoy immunity from liability second only to the judicial process. The strong national policy in favor of arbitration has been the impetus behind the expansion of arbitral immunity. Sponsoring organizations and others performing quasi-judicial functions within private dispute mechanisms now enjoy almost absolute immunity. This Note has examined the evolution of the doctrine of arbitral immunity to illustrate its universal acceptance in Congress and the courts. *City of Hayward* presents the possible end to the continuing extension of arbitral immunity. Its full impact, however, remains to be seen.