

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Oct. 4–Oct. 10, 2021)

October 12, 2021

The federal courts issue hundreds of decisions every week in cases involving diverse legal disputes. This Sidebar series selects decisions from the past week that may be of particular interest to federal lawmakers, focusing on precedential decisions of the [Supreme Court](#) and the courts of appeals for the [thirteen federal circuits](#). Selected cases typically involve the interpretation or validity of federal statutes and regulations, or constitutional issues relevant to Congress’s lawmaking and oversight functions.

Some of the cases identified in this Sidebar, or the legal questions they address, are examined in other CRS general distribution products. Members of Congress and congressional staff may contact the author to subscribe to the *CRS Legal Update* newsletter and receive regular notifications of new products published by CRS attorneys.

Decisions of the Supreme Court

On October 4, the Supreme Court issued its first [Orders List](#) of the October 2021 term. The Supreme Court summarily affirmed a D.C. Circuit decision holding that D.C. residents are not constitutionally entitled to voting representation in the House of Representatives ([Castañon v. United States](#)). The High Court also granted certiorari in and vacated the judgment of a Ninth Circuit case involving a challenge to the Trump Administration’s use of military funds to construct barriers along the U.S.-Mexico border, a practice the Biden Administration halted. The Supreme Court instructed the circuit court to remand to the district court to consider what further proceedings were necessary in light of the changed circumstances of the case ([Biden v. Sierra Club](#)).

The Supreme Court also granted certiorari in several criminal matters and a products liability suit involving transfer from state to federal court. The Court granted review for the purpose of vacating the decisions and remanding them to the circuit courts for reconsideration in light of intervening Court decisions relevant to their dispositions.

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Decisions of the U.S. Courts of Appeals

- **Abortion:** A Fifth Circuit panel issued a temporary administrative stay of a district court’s preliminary injunction barring judicial enforcement of a Texas law that generally bans physicians from performing an abortion once a fetal heartbeat is detected. The administrative stay serves as a short-term pause while the circuit court considers Texas’s emergency motion to stay the injunction pending appeal. The Department of Justice, representing the plaintiff United States, is instructed to respond to the emergency motion by 5:00 p.m. on Tuesday, October 12, 2021. The administrative stay was issued without opinion; the key issues in dispute in the case—whether the Texas statute impermissibly deprives persons of their constitutional right to an abortion; whether the state statute is preempted by federal law and violates the intergovernmental immunity doctrine; whether the United States has standing to bring suit; and whether the United States’ requested relief provides redress for its injuries—have not been decided by the circuit court (*United States v. Texas*).
- **Bankruptcy:** Federal law establishes dual bankruptcy administration programs: the Department of Justice’s Trustee Program administers proceedings for most judicial districts, while the Judicial Conference’s Bankruptcy Administrator Program administers those for the remaining. Adding to a circuit split, a divided Tenth Circuit panel held that a 2017 amendment to Chapter 11 violates the uniformity requirements of the Constitution’s Bankruptcy Clause by enabling higher disbursement fees to be imposed on certain debtors in Trustee districts than for equivalent debtors in Bankruptcy Administrator districts. Separately, the court held that the amendment’s application to pending cases did not render it impermissibly retroactive (*In re John Q. Hammons Fall 2006, LLC*).
- **Criminal Law & Procedure:** Joining other circuits, the Seventh Circuit held that criminal liability under 18 U.S.C. § 641, concerning the theft of federal government property, requires the prosecution to show the defendant’s intent to steal, but not that the defendant knew the property belonged to the government (*United States v. Hicks*).
- **Environmental Law:** A Sixth Circuit panel held that the Price-Anderson Act, which governs “any public liability action arising out of or resulting from a nuclear incident,” preempted plaintiffs’ state law claims for injuries caused by exposure to radioactive material released by a nuclear plant over an extended period. The panel also held that the Act’s displacement of state common law claims with a federal cause of action did not violate the Fifth Amendment’s Takings and Due Process Clauses (*Matthews v. Centrus Energy Corp.*).
- **Environmental Law:** The Clean Water Act (CWA) requires states to submit proposed water quality standards to the Environmental Protection Agency (EPA) for approval. EPA regulations allow a state to request a variance from approved water quality standards when full compliance is shown to be unfeasible, but require the variance to “represent the highest attainable condition” feasible for the water body. A Ninth Circuit panel held that the EPA’s regulations, which permit EPA to consider compliance costs when approving a water quality standard or variance, are a reasonable interpretation of the CWA. Furthermore, EPA may approve a variance that allows for achievement of the “highest attainable condition” by the end of the variance term, rather than from the outset (*Upper Missouri Waterkeeper v. EPA*).
- **First Amendment (Religion):** Several student athletes challenged a public university policy requiring them to receive a Coronavirus Disease 2019 (COVID-19) vaccination as a condition of participating in college sports, after the school allegedly ignored or denied their requests for discretionary religious exemptions. The district court preliminarily

enjoined enforcement of the vaccination requirement against the students (while still permitting the university to require them to undergo COVID-19 testing and wear face coverings during athletic events). A Sixth Circuit panel declined the university's request to stay the injunction while the university appealed the lower court's decision, concluding that the students were likely to succeed in their claim that the university's failure to grant them a religious exemption would not withstand strict scrutiny under the First Amendment's Free Exercise Clause (*Dahl v. Board of Trustees of Western Michigan University*).

- **Immigration:** A divided Ninth Circuit panel reversed and remanded a district court decision that largely upheld a California law phasing out private detention centers in the state and denied a preliminary injunction motion by the United States and a private detention center operator. The panel concluded that plaintiffs would likely succeed in their claims that the state law impermissibly interfered with the Secretary of Homeland Security's statutory authority to contract with private facilities to detain aliens targeted by the federal government for removal. The panel majority also ruled that the state law violated the intergovernmental immunity doctrine, which bars states from directly regulating or discriminating against the federal government, by providing certain exemptions for state agencies that were unavailable to federal authorities (*Geo Group, Inc. v. Newsom*).
- **Separation of Powers:** In a case largely turning on application of the Supreme Court's decision in *Collins v. Yellen* earlier this year, the Eighth Circuit addressed a pre-*Collins* district court decision that reviewed Freddie Mac and Fannie Mae shareholders' challenge to a financing arrangement reached by the Federal Housing Finance Agency (FHFA). The Eighth Circuit held that (1) any defect to the arrangement that turned on it having been initiated by an acting FHFA Director was cured when it was ratified by later, Senate-confirmed Directors; (2) Congress's delegation of authority to the FHFA to enter the financing arrangement comported with the non-delegation doctrine's requirements; and (3) the lower court's dismissal of plaintiffs' separation-of-powers claim was improper given the intervening *Collins* decision, and on remand the lower court must consider whether the shareholders suffered compensable harm and were entitled to retrospective relief (*Bhatia v. Federal Housing Finance Agency*).
- **Tax:** In 2017, Congress capped the state and local tax (SALT) deduction available to taxpayers who itemize their federal income tax deductions. A Second Circuit panel rejected a constitutional challenge brought by several states to the SALT cap, holding that Congress's taxing power enabled it to reduce or eliminate the SALT deduction, and that the 2017 law did not give rise to claims under the Tenth Amendment of undue coercion or otherwise unconstitutionally infringe upon state sovereignty (*New York v. Yellen*).
- **Veterans:** Federal law bars veterans from being assigned a total disability rating "during any period during which the veteran is incarcerated in a Federal, State, local, or other penal institution or correctional facility for conviction of a felony." A Federal Circuit panel held this bar does not apply to situations where a veteran is found guilty, but insane, with respect to a criminal offense and committed to a mental institution (*Philbrook v. McDonough*).

Author Information

Michael John Garcia
Section Research Manager

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