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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Mar. 14–Mar. 20, 2022)

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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 orders and decisions of the Supreme Court and precedential decisions of 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 click here to subscribe to the *CRS Legal Update* and receive regular notifications of new products and upcoming seminars by CRS attorneys.

Decisions of the Supreme Court

No Supreme Court opinions were issued this past week, and no cases were added to the Court's docket.

Decisions of the U.S. Courts of Appeals

Topic headings marked with an asterisk (*) indicate cases where the appellate court's controlling opinion recognizes a split among the federal appellate courts on a key legal issue resolved in the opinion, contributing to a non-uniform application of the law among the circuits.

- **Bankruptcy:** The Second Circuit held that the Small Business Administration's decision to exclude bankrupt debtors from receiving Paycheck Protection Program loans did not violate a Bankruptcy Code provision stating that the government "may not deny . . . a license, permit, charter, franchise, or other similar grant" to a debtor based solely on bankruptcy status. The Second Circuit is the first appellate court to consider this issue,

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though several district courts have reached the same result (*Springfield Hospital, Inc. v. Guzman*).

- **Civil Rights:** The Second Circuit decided that an Americans with Disabilities Act (ADA) "tester," who visited a hotel website to determine whether it was ADA-compliant but did not indicate an intent to stay at the lodging, failed to allege a concrete and particularized injury flowing from the alleged ADA violation, and therefore failed to satisfy constitutional standing requirements. The decision is consistent with recent rulings by the Fifth and Tenth Circuits (*Harty v. West Point Realty, Inc.*).
- **Civil Procedure:** The Ninth Circuit held that 28 U.S.C. § 1404(a), which allows a district court to transfer a civil action to another district where that suit may have been brought, or to any other district where all the parties consent to the transfer, does not broadly preempt state laws governing the use of contractual forum-selection clauses (*Depuy Synthes Sales, Inc. v. Howmedica Osteonics Corp.*).
- **Class Actions:** The Second Circuit considered an appeal by Freddie Mac and its conservator, the Federal Housing Finance Agency (FHFA), where the entities challenged their inclusion as members of a settlement class, and the district court held that the entities had not opted out of the class in a timely manner. The circuit court disagreed with the appellants that a provision of the Housing and Economic Recovery Act of 2008 (HERA) barred the district court from including Freddie Mac and the FHFA in the settlement class. However, the circuit court concluded that, for reasons related to the case's factual underpinnings, the FHFA should not have been treated as a class member (*N.J. Carpenters Health Fund v. NovaStar Mortgage, Inc.*).
- **Election Law:** A divided Fifth Circuit panel reversed district court rulings in a trio of challenges to Texas voting laws, holding that the suits improperly named the Texas Secretary of State as the defendant. Two of the cases were appeals from district court orders enjoining voting regulations—specifically, Texas's system for verifying the signatures on mail-in ballots, and the state's elimination of a "straight-ticket" voting option (by which a voter could choose to vote in one step for all candidates of a single party). The third case was an appeal from a ruling rejecting a sovereign immunity defense in a challenge to provisions of the Texas Election Code regulating mail-in balloting. Without reaching the merits of the voting rights claims, a majority of the Fifth Circuit panel concluded that the claims against the Texas Secretary of State were barred on sovereign immunity grounds. While the Supreme Court recognized in *Ex Parte Young* a limited sovereign immunity exception for suits against state officials responsible for enforcing a challenged law, the circuit panel majority held that exception did not apply because local election officials, not the Secretary of State, enforced the laws at issue. The circuit court reversed the district court decisions and remanded for further proceedings (*Lewis v. Scott*; *Richardson v. Scott*; *Texas Alliance for Retired Americans v. Scott*).
- **Environmental Law:** A divided Ninth Circuit panel upheld a land-exchange agreement entered by the Secretary of the Interior, allowing a road to be built through a national wildlife refuge to connect two Alaskan communities. The Secretary had concluded that the road would give one community easier access to the other's airport for medical evacuations and other purposes, which would promote the economic and social needs of Alaskans. Reversing the district court, the majority held that the Secretary's decision was consistent with the purposes of the Alaska National Interest Lands Conservation Act, which gives the Secretary discretion to strike an appropriate balance between such needs and environmental interests. The majority also concluded that the Secretary provided an adequate explanation for departing from the position of his predecessor, who had

weighed the competing policy considerations differently and had not allowed the road to be built (*Friends of Alaska National Wildlife Refuges v. Haaland*).

- **Food & Drug:** The Ninth Circuit held that the Family Smoking Prevention and Tobacco Control Act (TCA) neither expressly nor impliedly preempted the County of Los Angeles's ban on the sale of flavored tobacco products. The court held that TCA gives the federal government sole authority to establish standards for tobacco products, while preserving state, local, and tribal authority to regulate or ban those products' sale (*R.J. Reynolds Tobacco Co. v. County of Los Angeles*).
- **Immigration:** Joining other circuits, the Second Circuit held that a conviction under 18 U.S.C. § 1001(a), which criminalizes the making of false statements in matters within the jurisdiction of a federal agency or department, is a crime of moral turpitude, a category of criminal offenses that carries serious immigration consequences (*Cupete v. Garland*).
- **Immigration:** The Eleventh Circuit held that a federal statute precluded judicial review of U.S. Citizenship and Immigration Services' (USCIS') denial of national security waivers to persons seeking immigration visas under 8 U.S.C. § 1153(b)(2), which addresses persons with advanced degrees or exceptional abilities who have job offers from U.S. employers. The circuit court indicated that while judicial review was barred because waiver decisions were statutorily committed to agency discretion, the court's ruling did not address whether a challenge could be brought if USCIS failed to follow its own rules and procedures in making a waiver determination (*Brasil v. Secretary of the Dep't of Homeland Security*).
- **International Law:** The Ninth Circuit held that the Foreign Sovereign Immunities Act (FSIA) did not provide the Consulate of Kuwait with immunity from a suit by an administrative assistant who alleged employment discrimination. While the FSIA generally recognizes foreign states as immune from suit, several exceptions exist, including for suits "based upon a commercial activity" by the foreign state in the United States. The court held that the commercial activity exception applied here because, unlike in the case of military, diplomatic, or civil service personnel, the administrative assistant's duties did not involve powers peculiar to sovereigns (*Mohammad v. General Consulate of the State of Kuwait in Los Angeles*).
- **International Law:** The Sixth Circuit affirmed a district court's decision to dismiss a civil suit brought by a Mexican government agency against a U.S. corporation alleged to have bribed Mexican officials. The district court dismissed the case after determining that the Mexican courts were a more appropriate forum. The circuit court held that the United Nations Convention Against Corruption did not foreclose the district court's application of *forum non conveniens*. The circuit court also ruled that the district court did not abuse its discretion in concluding that the Mexican courts offered an available and adequate forum, and that the balance of interests favored adjudication in Mexico (*Instituto Mexicano del Seguro v. Stryker Corp.*).
- **Labor & Employment:** The Eleventh Circuit held that a restaurant's 18% "mandatory minimum service charge" to customer bills—which was then redistributed to certain employees on a pro rata basis to cover the restaurant's minimum and overtime wage obligations—was not a "tip" for purposes of the Fair Labor Standards Act, which would have prevented the restaurant from using the collected money for that purpose. The court emphasized that the Act's implementing regulations described a tip amount as being determined solely by the customer, which the court viewed as a critical distinction from the nondiscretionary, flat service charge set by the restaurant (*Compere v. Nusret Miami, LLC*).

- **Speech:** A Ninth Circuit panel upheld a district court's preliminary injunction to halt enforcement of a California labeling law (Prop. 65) on First Amendment grounds. The law, as applied, requires the placement of cancer warnings on food and beverage products containing acrylamide, and can be enforced through suits filed by the government or private actors. The panel held that the district court properly employed the multifactor test for commercial disclosure requirements set forth by the Supreme Court in *Zauderer v. Office of Disciplinary Counsel* to assess whether the acrylamide warning label violated the plaintiff's First Amendment right against compelled speech. Among other things, the panel held that the district court had adequate grounds to conclude the label was controversial and misleading given scientific uncertainty about the cancer risk from acrylamide, and therefore did not satisfy *Zauderer* review (*California Chamber of Commerce v. Council for Education & Research on Toxics*).
- ***Tax:** Splitting with the Eleventh Circuit, a Sixth Circuit panel rejected procedural and substantive challenges to the validity of a Department of Treasury regulation, 26 C.F.R. § 1.170A-14(g)(6), that addresses the disposition of proceeds that result from judicial extinguishment of a conservation easement. The challenged rule is relevant to taxpayers' ability to claim a charitable deduction on federal income tax returns for the donation of an easement in land to a conservation organization (*Oakbrook Land Holdings, LLC v. Commissioner of Internal Revenue Service*).
- **Veterans:** The Federal Circuit held that a veteran was not entitled to Department of Veterans Affairs (VA) service-connected disability benefits for an alleged mental condition. The veteran had not received a formal diagnosis of a mental condition, and the panel concluded that such a diagnosis was a precondition to receive VA benefits (*Martinez-Bodon v. McDonough*).
- **Veterans:** The Federal Circuit held that, although the VA must reimburse veterans for coinsurance payments incurred during non-VA emergency medical treatment, it correctly denied reimbursement for deductible payments. The court also effectively ended a class action pending before the U.S. Court of Appeals for Veterans Claims, holding that the Veterans Court improperly granted relief (*Wolfe v. McDonough*).

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