Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (May 2–May 8, 2022)

May 9, 2022

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 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

Last week, the Supreme Court confirmed that a draft majority opinion written in *Dobbs v. Jackson Women's Health Organization* was leaked to a media outlet. The draft opinion, dated February 10, 2022, concluded that there is not a constitutional right to an abortion and would overrule earlier Court decisions in *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey*. Draft opinions may undergo significant revisions during the deliberative process. A final decision in *Dobbs* consistent with the draft opinion would reshape the constitutional framework governing abortion. Legal questions about restrictions on abortion access would no longer turn on whether such restrictions unduly burden the exercise of a constitutional right to abortion. Instead, many of the central legal questions surrounding abortion regulation would concern the constitutional powers of the states and federal government. These questions may include, among others, the scope of Congress's power to directly and indirectly regulate abortion access, such as through federal laws and policies that preempt inconsistent state policies; and the ability of a state to regulate travel by residents seeking abortions in other jurisdiction (e.g., in another state or on tribal lands).

Congressional Research Service
https://crsreports.congress.gov
LSB10740

The Supreme Court also issued a decision in one case for which it heard oral arguments:

- **Speech:** The Court unanimously concluded that a Boston program, which permitted private organizations to raise temporarily a flag of their choosing on a city flagpole, did not constitute government speech. The Court further held that the city's denial of a religious organization's permit to raise temporarily a flag with a Latin Cross on a city flagpole, after previously approving hundreds of flag raisings by nonreligious entities, constituted religious viewpoint discrimination in violation of the First Amendment's Free Speech Clause (*Shurtleff v. Boston*).

The Court also agreed to review three cases:

- **Bankruptcy:** The Court agreed to hear a case from the Ninth Circuit that asks whether the Bankruptcy Code—which generally bars the discharge of debt obtained by fraud—prevents discharge by a debtor on account of the fraudulent activity of her business partner, even though the debtor was unaware of the fraud herself (*Bartenwerfer v. Buckley*).
- **Health:** The Court granted certiorari in a case from the Seventh Circuit, where it is asked whether the Federal Nursing Home Reform Act—which sets minimum standards of care for nursing homes receiving federal funding in the Medicaid program—creates a private right of action for nursing home residents under 42 U.S.C. § 1983. The Court is also asked to consider more broadly whether legislation enacted pursuant to Congress's Spending Clause power can ever give rise to a private right enforceable under § 1983 (*Health and Hospital Corp. of Marion County, Indiana v. Talevski*).
- **Labor & Employment:** The Court agreed to review a case from the Fifth Circuit in which it is asked whether an employee was entitled to retroactive overtime pay under Fair Labor Standards Act (FLSA) regulations providing overtime eligibility for those paid daily, despite the worker having been classified by his employer as a "highly compensated executive employee"—a category generally exempted from overtime pay requirements by FLSA regulations (*Helix Energy Solutions Group, Inc. v. Hewitt*).

Decisions of the U.S. Courts of Appeals

Topic headings marked with an asterisk (*) show 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.

- **Arbitration:** A divided Second Circuit panel held that the plaintiff truck drivers, who delivered items on behalf of a baked goods manufacturer, were employed in the baking industry rather than the transportation industry. As a result, the truck drivers could be compelled under the Federal Arbitration Act (FAA) to arbitrate their wage dispute with the baked goods manufacturer because they did not fall under the exemption the FAA provides for "transportation workers" (*Bissonnette v. LePage Bakeries*).
- ***Bankruptcy:** Adding to circuit split, a divided First Circuit held that the Bankruptcy Code abrogates tribal sovereign immunity. Accordingly, the panel held that a debtor could enforce the Bankruptcy Code's automatic stay against a creditor that was a tribal subsidiary (*Coughlin v. Lac du Flambeau Band of Lake Superior Chippewa Indians*).
- **Criminal Law & Procedure:** The Fourth Circuit held that a continuing criminal enterprise conviction under 21 U.S.C. § 848(a) is ineligible for a sentence reduction under the First Step Act, which made retroactive amendments affecting the mandatory minimum sentences associated with crack and powder cocaine offenses. While the

continuing criminal enterprise in this case involved the distribution of crack and powder cocaine, the defendant was not convicted of a statutory offense whose penalties were altered by the First Step Act (*United States v. Thomas*).

- **Criminal Law & Procedure:** A divided en banc panel of the Ninth Circuit upheld a criminal defendant's conviction for second-degree murder under 18 U.S.C. § 1111(a) and for discharging a firearm during a "crime of violence" under 18 U.S.C. § 924(c)(3). The majority concluded a second-degree murder offense under § 1111(a) is categorically a "crime of violence" under § 924(c)(3) (*United States v. Begay*).
- **Election Law:** In a per curiam opinion, an Eleventh Circuit panel stayed implementation of a district court order that would have permanently enjoined three provisions of a Florida election law from being enforced, and would have also required Florida to obtain the district court's permission before enacting or amending certain election laws for the following decade. The enjoined provisions (1) regulate the use of drop boxes to collect ballots; (2) required third-party voter registration organizations to deliver applications to the county where an applicant resides in a specified period and provide certain information to a prospective registrant; and (3) bar solicitation of voters within 150 feet of a drop box or polling place. Here, the circuit panel ruled that the balance of equities warranted a stay of the district court action under the standards set by the Supreme Court in *Purcell v. Gonzalez*, which govern when a lower court has enjoined a state election law close in time to an election. The next statewide election was less than four months away, local elections were ongoing, and voter registration was under way. As a result of the stay, the challenged provisions remain in effect while the plaintiff's suit proceeds (*League of Women Voters of Florida, Inc. v. Florida Secretary of State*).
- **Environmental Law:** The Clean Water Act preserves the ability of parties to bring suits under state law against certain polluters. Applying a Supreme Court ruling that the forum state in which such suits are filed must apply the substantive law of the point source state (i.e., where the pollution originated), the Tenth Circuit held that the statute of limitations is also governed by the point source state's law, rather than by federal law or the law of the forum state (*Allen v. Environmental Restoration, LLC*).
- **Immigration**: The Second Circuit held that when assessing if an alien is removable from the United States under 8 U.S.C. § 1227(a)(2)(E)(ii) for violating a court protection order through actual or threatened violence against another, it is not appropriate to apply a categorical or modified categorical approach used when evaluating whether a criminal conviction renders an alien deportable. Those approaches focus on the elements of the criminal statute for which the alien was convicted rather than the alien's underlying conduct, and at most allow examination of a limited number of documents in the record of conviction that may shed light on the alien's underlying activities. Here, the panel held that the text of § 1227(a)(2)(E)(ii) calls for a more searching, circumstance-specific analysis, considering whether an alien's conduct violated a protection order and whether the violation involved a part the order involving protection against credible threats of violence (*Alvarez v. Garland*).
- **Immigration:** The Ninth Circuit affirmed the illegal reentry conviction of a criminal defendant who was arrested by Border Patrol agents after U.S. Marine Corps officers spotted him surreptitiously crossing the U.S.-Mexico border. The court held that the Marine surveillance was conducted under a provision of the National Defense Authorization Act for Fiscal Year 2016 and therefore did not violate the Posse Comitatus Act, which bars the military from directly enforcing civilian law except when authorized by Congress (*United States v. Hernandez-Garcia*).

- **Intellectual Property:** In an appeal brought by heirs to the late songwriter and record producer Hugo Peretti, co-composer of the well-known song "Can't Help Falling In Love," the Second Circuit affirmed the dismissal of the heirs' request for a declaratory judgment that they validly terminated a transfer of copyright interests in the song to another party. At issue was whether an earlier grant of copyright renewal rights and interests held by Peretti and his family was effectively terminated under § 203 of the Copyright Act of 1976 (17 U.S.C. § 203) by Peretti's widow and daughter after his death. Section 203 provides *authors* a limited right to terminate such copyright grants executed after 1978. Because the termination of the copyright interests in the song was not "executed by the author," the court found it was ineffective, leaving the earlier transfer of rights in place (*Peretti v. Authentic Brands Grp. LLC*).
- **International Law:** The Sixth Circuit upheld a conviction under 18 U.S.C. § 2423(c) for travelling to a foreign country and engaging in illicit sexual contact with a minor, but the panel majority questioned the statute's constitutional underpinnings. The panel majority held that Congress's power to "regulate Commerce with foreign Nations" under the Commerce Clause did not confer upon it power to regulate any conduct of U.S. citizens abroad following travel in foreign commerce. It also declared that while the Supreme Court has recognized that Congress may regulate activities that "substantially affect" *interstate* commerce, the Court has never construed Congress's power over foreign commerce as equally broad, and the circuit court declined to do so here. Even so, the majority held it was bound to conclude that § 2423(c) was a valid exercise of Congress's power, under the Necessary and Proper Clause, to implement a ratified treaty (here, the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography). The majority based this conclusion on the Supreme Court's 1920 decision in *Missouri v. Holland*, though the panel majority expressed skepticism that the Framers believed Congress could legislate in areas beyond its Article I powers that are covered by a treaty (*United States v. Rife*).

Author Information

Michael John Garcia
Deputy Assistant Director/ALD

Disclaimer