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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (May 30–June 5, 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 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 took action on an emergency application:

- **Speech:** By a 5-4 vote, the Supreme Court allowed a district court's preliminary injunction to go into effect, blocking enforcement of a Texas law restricting some social media platforms' ability to moderate user content. The district court had enjoined enforcement of the law after concluding that the platforms were likely to succeed on their claim that the law violated their free speech rights under the First Amendment. The Court vacated a Fifth Circuit order that stayed the injunction pending appeal. The circuit court has not yet issued an opinion on the merits of the appeal; it could ultimately reverse the trial court's preliminary injunction if it concludes Texas's law is constitutional (*NetChoice, LLC v. Paxton*).

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Decisions of the U.S. Courts of Appeals

Topic headings marked with an asterisk (*) indicate cases in which 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.

- **Civil Liability:** The Fourth Circuit affirmed a district court's dismissal of a suit brought under the Driver's Privacy Protection Act (DPPA). Plaintiffs were recipients of unsolicited advertisements from personal injury lawyers who obtained information about the recipients from car accident reports. The circuit panel held that the plaintiffs had standing to bring suit for damages under the DPPA, which provides a cause of action against those who knowingly obtain, disclose, or use personal information "from a motor vehicle record" for an impermissible purpose. The panel found, however, that for liability to attach under the DPPA, the obtained information must have come *directly* "from a motor vehicle record," and not merely have *derived* from information that appeared in a motor vehicle record. Here, the plaintiffs did not preserve on appeal an argument that the car accident reports were "motor vehicle records," instead arguing only that the reports contained information from other sources (i.e., drivers' licenses and DMV databases) that plaintiffs contended were covered records. Because the defendants did not obtain the information directly "from a motor vehicle record," the appellate court affirmed the suit's dismissal (*Garey v. Farrin, P.C.*).
- **Civil Rights:** Sitting en banc, a divided D.C. Circuit held that an employer violates Title VII of the Civil Rights Act when it either involuntarily transfers a worker to a different position or denies that worker's request for transfer on account of race, color, religion, sex, or national origin. The majority overruled prior circuit precedent recognizing the denial or forced acceptance of a job transfer was only actionable under Title VII if objectively tangible harm occurred, after concluding that the circuit court's earlier interpretation conflicted with intervening Supreme Court decisions (*Chambers v. District of Columbia*).
- ***Civil Rights:** Joining the majority of circuit courts that have considered the issue, the Second Circuit held that an employee of a federally funded educational institution may bring a private right of action against that institution under Title IX of the Education Amendments of 1972 alleging discrimination because of the employee's sex. The circuit court remanded the case—involving a former university faculty member who alleged gender-based bias motivated disciplinary action taken against him—to the district court to consider the plaintiff's Title IX claim (*Vengalattore v. Cornell Univ.*).
- **Criminal Law & Procedure:** The Fourth Circuit decided that for misapplication of federal funds under 18 U.S.C. § 666(a)(1)(A), aggregate transactions occurring in the same one-year period could meet the value threshold for criminal liability to attach. The provision applies when the unlawful conversion involves property valued at $5,000 or more. The panel vacated the defendant's conviction for one charge under § 666(a)(1)(A) that did not meet the one-year time limit, while affirming the defendant's other convictions (*United States v. Spirito*).
- **Criminal Law & Procedure:** The Eighth Circuit held that for a criminal defendant to be liable under 18 U.S.C. § 1512(c)(1) for "corruptly" tampering with evidence "with the intent to impair the object's integrity or availability for use in an official proceeding," the defendant must know his actions are likely to have their intended effect. The court upheld the defendant's conviction under § 1512(c)(1) after concluding that this requirement was

implicit in the instructions the convicting jury received about the scienter necessary for liability to attach (*United States v. White Horse*).

- **Environmental Law:** The Ninth Circuit upheld and directed the broadening of a district court injunction blocking the federal government from issuing permits that would enable the use of unconventional oil drilling methods, including fracking, on offshore platforms along the coast of California, pending certain regulatory actions. The panel agreed with the lower court that the federal agencies violated the Endangered Species Act's (ESA's) consultation requirements and failed to complete a Coastal Zone Management Act (CZMA) consistency review to determine whether certain drilling techniques accorded with California's coastal management plan. Reversing the lower court, the circuit panel held that the federal agencies' programmatic approval of certain techniques also violated National Environmental Policy Act (NEPA) requirements because the environmental assessment concluding that certain drilling methods would have no significant impact was flawed, and an environmental impact statement (EIS) was needed. The panel therefore affirmed the lower court's injunction on the issuance of permits for offshore drilling using the challenged methods until the ESA and CZMA requirements were satisfied, and further instructed the district court to expand the injunction to bar permit issuance until an EIS was issued (*Environmental Defense Center v. Bureau of Ocean Management*).
- **Food & Drug:** The D.C. Circuit held that it lacked jurisdiction to review a complete response letter that a Food and Drug Administration (FDA) division issued to a drug sponsor. A complete response letter identifies deficiencies in a sponsor's new drug application to explain why FDA cannot approve the application as submitted. The Federal Food, Drug, and Cosmetic Act authorizes federal jurisdiction under 21 U.S.C. § 355(h) to review only final rejections of new drug applications by FDA, and in general courts cannot review interim decisions or nonbinding statements that remain subject to modification. The circuit court concluded that a complete response letter is not the culmination of the FDA's consideration of a new drug application. It observed that FDA regulations give applicants an opportunity to take further action before FDA makes its final decision, such as providing additional information, requesting a hearing on whether there are grounds for denying approval, or asking the issuing division to reconsider the application (*Nostrum Pharmaceuticals, LLC v. FDA*).
- **Food & Drug:** The Second Circuit affirmed a district court's default judgment under the Perishable Agricultural Commodities Act (PACA) against defendants who were found to have failed to pay for produce bought on credit. The circuit court ruled that certain statutory requirements applicable to PACA claims—that the defendant was a "dealer" and the transaction concerned was made in "interstate or foreign commerce"—were not jurisdictional, but instead were elements of the defendant's liability. Because the defendants conceded all well-pled allegations concerning liability by virtue of their default, the circuit court assumed the facts alleged in the plaintiff's complaint relating to these requirements were true, which the circuit court said it would not have done if the requirements were jurisdictional (*A&B Alternative Mktg. Inc. v. Int'l Quality Fruit Inc.*).

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- **Food & Drug:** A divided Fourth Circuit upheld a lower court's summary judgment for North Carolina in a suit challenging the state's ban on out-of-state wine retailers shipping wine directly to North Carolina consumers. The majority held that although a state's differential treatment of in-state and out-of-state retailers could violate the "dormant" Commerce Clause, the restriction here was permitted by Section 2 of the Twenty-First Amendment, which recognizes states' authority to restrict the "transportation or importation . . . for delivery or use therein of intoxicating liquors." The majority observed that the Supreme Court recognized that discriminatory importation restrictions were consistent with the Twenty-First Amendment if they could be justified as a public health or safety measure, or on another legitimate nonprotectionist ground. The majority concluded that requirement was satisfied here, as the importation restriction was an essential component of North Carolina's system of regulating alcohol consumption in the state, which out-of-state retailers could bypass if allowed to ship alcohol directly to consumers (*B-21 Wines, Inc. v. Bauer*).
- **Labor & Employment:** The Seventh Circuit held that an employer can violate the Family and Medical Leave Act even if it does not deny an employee's covered leave request, if the employer discourages the employee from making the FMLA request in the first place (*Ziccarelli v. Dart*).

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