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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Sept. 26–Oct. 2, 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

The Supreme Court did not issue any opinions or grants of certiorari this past week. This week marks the beginning of the Supreme Court's new term.

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.

- **Arbitration:** In an amended opinion, a divided Second Circuit held that 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

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the FAA provides for transportation workers engaged in foreign or interstate commerce. The majority had reached the same conclusion in an opinion issued in early 2022, but the court later agreed to reconsider the case after the Supreme Court decided *Southwest Airlines Co. v. Saxon*, which provided more guidance on workers exempted from the FAA. Ultimately, the majority of the circuit panel decided the interpretive issues raised in *Saxon* were not relevant and reaffirmed the panel's earlier conclusion (*Bissonnette v. LePage Bakeries*).

- **Criminal Law & Procedure:** The Ninth Circuit held that the Crime Victims' Rights Act (CVRA) authorizes the circuit court, with the parties' consent, to extend the 72-hour deadline for its consideration of a petition for a writ of mandamus regarding a crime victim's restitution claim, so long as the extension does not stay or continue the underlying criminal proceedings in the district court by more than five days. The CVRA gives a crime victim a "right to full and timely" restitution by a criminal defendant. A CVRA provision, 18 U.S.C. § 3771(d)(3), states that an appellate court shall decide a mandamus petition over the lower court's consideration of a restitution claim within 72 hours unless otherwise agreed, but that "proceedings" shall not "be stayed or subject to a continuance of more than five days." After determining that a petition could be considered after the statutory 72-hour period with the parties' consent, the court decided that § 3771(d)(3)'s reference to "proceedings" referred to the underlying criminal proceedings in the district court, and not consideration of the mandamus petition, potentially enabling the issuance of a longer extension in the appellate court (*In re Doe*).
- **Election Law:** The Fifth Circuit reversed a district court order that directed Texas to provide plaintiffs with information including the names and identification numbers of registered voters whom the state suspected of being noncitizens. Those persons suspected of being noncitizens, therefore potentially ineligible to vote, risked cancellation of their voter registration if they could not provide proof of citizenship. Plaintiffs contended that state records relating to suspected noncitizens were subject to public disclosure requirements under the National Voter Registration Act of 1993, and that state officials violated the Act by not acting upon plaintiffs' record request. Without reaching the merits of the plaintiffs' argument, the majority of the circuit panel concluded that plaintiffs failed to allege a concrete injury from their failure to receive these records; such injury is necessary to satisfy constitutional standing requirements. The majority observed that the plaintiffs were not Texas voters and had not been wrongfully identified as a result of the state policy as being ineligible to vote (*Campaign Legal Center v. Scott*).
- **Energy:** The Tenth Circuit held that a provision of the Federal Power Act, 16 U.S.C. § 825l(b), which confers federal appellate courts with exclusive jurisdiction over petitions challenging Federal Energy Regulatory Commission (FERC) decisions, did not govern alleged violations of the National Environmental Policy Act, Endangered Species Act, and Clean Water Act by the Army Corps of Engineers in issuing a permit allowing the discharge of fill material by a hydroelectric facility licensed by FERC. Differentiating between a Corps-issued permit and a FERC-issued license, the court thus determined that plaintiffs were not limited by FERC's exclusive federal appellate court jurisdiction to challenge a permit issued by the Corps of Engineers (*Save the Colorado v. Spellmon*).
- **Foster Care:** The Sixth Circuit affirmed a district court's holding that a plaintiff group of unlicensed foster caregivers were ineligible for foster care maintenance payments (FCMPs) from an Ohio state agency under Title IV-E of the Social Security Act. Title IV-E provides federal reimbursement for foster care maintenance to state agencies for foster family homes "licensed or approved" by the State. The court considered the validity of Ohio's dual approach in awarding FCMPs for licensed foster

caregivers and a separate class of non-Title IV payments for unlicensed caregivers. Deciding that the disjunctive use of "or" was inappropriate in the context of Title IV-E, the court upheld the state's and district court's decisions that plaintiffs did not qualify as foster family homes and were thus ineligible for FCMPs (*T.M. v. Dewine*).

- **Immigration:** In a case involving an alien whose removal order was reinstated following her unauthorized reentry into the United States, a divided Fifth Circuit held that it had jurisdiction to review the petitioner's claim that she was improperly denied cancellation of removal, but concluded that she was statutorily ineligible for such relief. If an alien is ordered removed from the United States but then unlawfully reenters, 8 U.S.C. § 1231(a)(5) provides that the prior removal order is reinstated and not subject to reopening or review, and that the alien is also ineligible for immigration "relief." Here, the majority understood the petitioner's claim not to involve a challenge to her reinstated removal order, which might have compelled it to consider whether intervening Supreme Court decisions abrogated circuit precedent recognizing that the reinstatement of a prior removal order may be reviewable. Instead, the majority held that petitioner's claim centered on a separate issue of eligibility for cancellation of removal. While concluding that it had jurisdiction to consider that claim, the majority ruled that it involved "relief" for which she was ineligible under § 1231(a)(5) (*Ruiz-Perez v. Garland*).
- **Immigration:** Sitting en banc, a divided Ninth Circuit ruled that a California law phasing out private detention centers in the state was likely unlawful under the Supremacy Clause as applied to private facilities that contract with Immigration and Customs Enforcement (ICE) to detain aliens targeted for removal. The majority determined that the state law would compel ICE to cease its current immigration detention operations in California, which rely almost exclusively on private contractors, and adopt a new approach in the state. The court decided that this interference likely violated the Supremacy Clause, whether analyzed under the doctrines of intergovernmental immunity or preemption (*GEO Group, Inc. v. Newsom*).
- **Labor & Employment:** The Tenth Circuit joined the Sixth, Seventh, and Eleventh Circuits in ruling that exposure to coal dust during coal mine employment was sufficient as a "partial cause" of respiratory impairment for the purpose of a legal pneumoconiosis claim under the Black Lung Benefits Act (*Energy West Mining Co. v. Bristow*).
- **Tax:** The Eleventh Circuit issued a decision that a defendant's petition for a protective order does not fall within the scope of the Anti-Injunction Act's command under 26 U.S.C. § 7421(a) that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person." The panel held that the Act does not prevent a defendant in a suit brought by the government from seeking a protective order barring the government from using his discovery responses against him in a separate administrative proceeding. The court decided that a motion for a protective order in an action filed by the government does not constitute the maintenance of a "suit" under § 7421(a). The panel distinguished case law from the Seventh Circuit that recognized § 7421(a) as potentially applicable when the taxpayer sought to broadly prohibit the government from subpoenaing any of his documents (*United States v. Meyer*).
- **Torts:** In reversing the district court's determination that former President Trump's public 2019 responses to plaintiff's assault and rape allegations were not in the scope of employment, a divided Second Circuit asked the District of Columbia's highest court for a definitive determination of the same under D.C. law. After plaintiff filed a defamation case against the former President based on his responses, the United States moved to

- substitute itself for Trump under the Federal Employees Liability Reform and Tort Compensation Act of 1988 (commonly known as the "Westfall Act"), which would result in immunity from personal liability for the former President and, because the United States has not waived sovereign immunity for claims of defamation, end the case. The Second Circuit ruled the President is an "employee of the Government" under the Westfall Act, and thus immune from suit if acting within the scope of his employment. (*Carroll v. Trump*).
- **Transportation:** In the latest installment of a railroad takings case, the Federal Circuit found a federal Notice of Interim Trail Use or Abandonment to discontinue rail line operations for a potential rails-to-trails project was sufficient to effect a physical taking for the duration of the notice, even if not immediately acted upon. Under a provision of the National Trails System Act, 16 U.S.C. § 1247(d), the taking began when the Surface Transportation Board issued the Notice and, in this particular case, ended when the deadline stated in the notice expired, even absent further action by the railroad (*Memmer v. United States*).

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