



# Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Jan. 9–Jan. 16, 2023)

January 18, 2023

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 granted certiorari in eight disputes:

- **Civil Forfeiture:** The Court agreed to review a case from the Eighth Circuit on whether a local government’s foreclosure and sale of a home to satisfy a debt, where the government keeps the surplus value as a windfall, violates the Fifth Amendment’s [Takings Clause](#), and whether the forfeiture of property worth more than needed to satisfy a debt owed the government is a fine within the Eighth Amendment’s [ban on excessive fines](#) (*Tyler v. Hennepin Cnty*).
- **Civil Procedure:** The Court granted certiorari in a case from the Fourth Circuit, where the Court is asked to resolve a circuit split on whether purely legal claims denied at summary judgment are reviewable on appeal after a jury trial, where those claims have not been reasserted in a post-trial motion (*Dupree v. Younger*).
- **Civil Rights:** The Court agreed to hear a case from the Third Circuit, in which the Court is asked to revisit its test from *Trans World Airlines, Inc. v. Hardison*, where it held that an employer

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suffers an undue hardship in accommodating an employee's religious exercise whenever doing so would require the employer to bear more than a de minimis cost. The Court also agreed to consider whether an employer may demonstrate undue hardship on the conduct of the employer's business under [Title VII of the Civil Rights Act of 1964](#) by showing that the requested accommodation burdens the employee's co-workers rather than the business itself (*Groff v. DeJoy*).

- **Criminal Law & Procedure:** In a pair of consolidated cases from the Ninth Circuit, the Court agreed to reconsider its decision in *RJR Nabisco, Inc. v. European Community*, which held that a plaintiff states a cognizable claim under the [Racketeer Influenced and Corrupt Organizations Act \(RICO\)](#) private right of action only if it alleges a domestic, rather than a foreign, injury. The Court granted certiorari in *Yegiazaryan v. Smagin* on the question of whether a foreign plaintiff states a cognizable civil RICO claim when it suffers an injury to intangible property and, if so, under what circumstance. The Court granted certiorari in *CMB Monaco v. Smagin* on the question of whether a foreign plaintiff with no alleged connection to the United States may nevertheless allege a “domestic” injury under *RJR Nabisco* sufficient to maintain a RICO action based only on injury to intangible property (*Yegiazaryan v. Smagin*; *CMB Monaco v. Smagin*).
- **False Claims Act:** In a pair of consolidated cases from the Seventh Circuit, the Court granted certiorari to consider whether and when a defendant's contemporaneous subjective understanding or beliefs about the lawfulness of its conduct are relevant to whether it “knowingly” violated the [False Claims Act](#) (*U.S. ex rel. Schutte v. SuperValu*; *U.S. ex rel. Proctor v. Safeway*).
- **Immigration:** In consolidated cases from the Fourth and Ninth Circuits, the Court granted certiorari on whether, in order to qualify as an aggravated felony offense under [8 U.S.C. § 1101\(a\)\(43\)\(S\)](#) of the Immigration and Nationality Act (e.g., obstruction of justice), the predicate offense must require a nexus with an existing or pending investigation or judicial proceeding (*Pugin v. Garland*; *Garland v. Cordero-Garcia*).
- **Indian Law:** The Court agreed to hear a case from the First Circuit regarding a circuit split over whether Congress unequivocally abrogated tribal sovereign immunity in the [Bankruptcy Code](#) (*Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*).
- **Speech:** In a case from the Court of Appeals of Colorado, the Supreme Court is asked whether, in order to establish that a statement is a true threat unprotected by the Free Speech Clause, the government must show that the speaker subjectively knew or intended the threatening nature of the statement, or whether it is enough to show that an objectively reasonable person would regard the statement as a threat of violence (*Counterman v. Colorado*).

## 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.

- **Bankruptcy:** The Eleventh Circuit held that a Bankruptcy Code section protecting mortgage lenders prevails over a section covering the finality of confirmed plans. Under the Bankruptcy Code's [antimodification provision](#), a bankruptcy plan may not modify a creditor's claim secured by only a security interest in the debtor's principal residence. Under the [finality provision](#), the confirmation of a plan precludes relitigation of the issues in the plan. The Eleventh Circuit held that a debtor-home owner's bankruptcy plan, which eliminated all remaining mortgage payments and removed a lien on the property, violated the antimodification principle because the plan impermissibly affected the rights of the plaintiff home-mortgage lender. The court determined

that the lien survived the bankruptcy, and as such, the plan should not have been confirmed (*In re Bozeman*).

- **Government Processes:** The Tenth Circuit rejected constitutional challenges to the [Congressional Review Act](#) (CRA) and the Senate Cloture rule. The court held that the CRA—which in relevant part creates special procedures for Congress to repeal executive agency rules through joint resolution—is a valid exercise of legislative power and is not a usurpation of executive power. The court further determined that the plaintiffs’ equal protection and substantive due process claims failed, reasoning, respectively, that the CRA does not discriminate against any cognizable class of individuals and does not implicate a fundamental right. The court also held that the plaintiffs, two advocacy organizations, lacked standing to challenge the Senate Cloture rule, which allows the Senate to end debate by three-fifths vote of the Senators duly chosen and sworn (*Citizens for Constitutional Integrity v. United States*).
  - **International Law:** The Eleventh Circuit joined the Third and Fifth Circuits in holding that a U.S. national who possesses a claim to property in Cuba that was confiscated by the Cuban government and that was then used by cruise lines without his permission had standing to sue the cruise lines under Title III of the Cuban Liberty and Democratic Solidarity Act (known as the [Helms-Burton Act](#)). Title III gives U.S. nationals a private right of action against traffickers of property confiscated by the Cuban government. The private right of action had been suspended by presidential decree since its enactment, but the suspension was lifted by the Trump Administration and remains in effect. The court explained that the plaintiff had standing, holding that the plaintiff suffered a concrete financial injury, specifically the cruise lines’ use of the property without obtaining authorization or providing compensation. The court determined that the lawsuit failed on the merits, however, because [the act applies](#) in relevant part to property acquired prior to March 12, 1996. The Eleventh Circuit held that a U.S. national who acquires or inherits the property after this date does not qualify for the right of action under the act. The court therefore affirmed the district court’s dismissal of the action (*Garcia-Bengochea v. Carnival Corp.*).
  - **Labor & Employment:** The First Circuit clarified that, in determining whether a worker is an exempt “administrative” employee not entitled to overtime pay under [29 U.S.C. § 213](#) of the Fair Labor Standard Act (FLSA), a court should examine whether the employee’s activities are directly related to management policies or general business operations. The Department of Labor filed suit against a company that provides operational and administrative services to its subsidiary utilities, arguing that the company’s dispatchers and controllers were not exempt administrative employees. The district court disagreed, relying on and analogizing the relevant employees’ functions to those listed in the FLSA’s regulations. The First Circuit reversed, explaining that the district court should have employed a relational analysis that compares the employees’ functions to the company’s business operations. The First Circuit vacated the district court’s ruling, instructing the court to apply this relational approach in the first instance (*Walsh v. Unitol Service Corp.*).
  - **Medicaid:** The Ninth Circuit held that the Center for Medicare & Medicaid Services (CMS) must approve the state of Washington’s request to amend the state’s Medicaid plan to include dental health aide therapists (DHATs) on the list of licensed providers who can be reimbursed through Medicaid. CMS rejected Washington’s amended plan on the basis that it violated the Medicaid free choice of providers statute, [42 U.S.C. § 1396a\(a\)\(23\)\(A\)](#), which guarantees eligible Medicaid beneficiaries equal access to qualified healthcare professionals. CMS rejected the state plan because, under Washington state law, the DHATs are only authorized to treat tribal members and others eligible for Indian Health Service benefits, regardless of whether the individuals receive Medicaid. The court granted Washington’s petition for review and remanded to CMS with
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- instructions to approve the state plan, reasoning that the amended plan did not violate § 1396a(a)(23)(A) because the plan merely authorized where and how DHATs can practice rather than restricting Medicaid recipients' ability to obtain services from DHATs relative to non-Medicaid recipients (*Washington State Health Care Authority v. Centers for Medicare & Medicaid Services*).
- **Public Health:** The Sixth Circuit upheld a lower court's preliminary injunction barring implementation of a Coronavirus Disease 2019 (COVID-19) vaccination policy for certain federal contractors in Kentucky, Ohio, and Tennessee. In September 2021, President Biden issued [Executive Order 14042](#), relying in part on authority granted by the [Federal Property and Administrative Services \(Property\) Act](#), to require that all federal executive agencies include in new and renewed contracts a clause specifying that the contractor and all subcontractors comply with COVID-19 safety guidance issued by the Safer Federal Workforce Task Force. The Task Force then issued guidance requiring covered contractors to ensure employees are fully vaccinated and wear masks at work, subject to certain exemptions. Several plaintiff states filed lawsuits challenging the vaccination and masking policy as exceeding the executive's authority over procurement matters under the Property Act. The Sixth Circuit affirmed the district court's decision to preliminarily enjoin the federal government from enforcing the guidance, but limited the scope of the injunction to contracts in which plaintiff States are a party; non-party federal contractors in the plaintiff States are not subject to the injunction (*Kentucky v. Biden*).

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