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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Jan. 17–Jan. 22, 2023)

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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 13 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 last week.

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 nonuniform application of the law among the circuits.

- **Bankruptcy:** A divided Fourth Circuit joined other circuits in holding that a shared responsibility payment required by the Affordable Care Act (ACA) qualifies as a tax measured by income entitled to priority in a bankruptcy proceeding under 11 U.S.C. § 507(a)(8). The individual mandate of the ACA, no longer in effect, required an individual who did not maintain health insurance to make the shared responsibility payment to the Internal Revenue Service. In a dispute over whether the payment qualifies as a tax or a penalty in the bankruptcy context, the court looked to the functional operation of the ACA provision and concluded that it operates as a tax,

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not a penalty, because it serves public purposes, such as raising revenue. While the majority and dissent acknowledged that the Supreme Court in *National Federation of Independent Business v. Sebelius* upheld the payment as a penalty for purposes of the Anti-Injunction Act, the majority concluded that the Supreme Court did not hold that the penalty label controls in other statutory questions. The majority further held that the shared income payment is a tax "measured by income" since the payment formula necessarily factors income into the analysis (*United States v. Alicea*).

- ***Criminal Law & Procedure:** Adding to a circuit split, the Ninth Circuit held that a district court commits plain error and violates a defendant's substantial rights when it imposes a sentence for violating supervised release that exceeds the applicable statutory maximum, regardless of whether the illegal sentence is shorter than, or equal to, a valid sentence that is to be served concurrently with the illegal sentence. The district court sentenced defendant to an illegally excessive sentence of 36 months for a supervised release violation to be served concurrently with a valid sentence of 196 months incarceration for conspiracy to commit bank fraud. The government argued that the defendant's substantial rights were not impacted because he would still have to serve a longer sentence for the conspiracy conviction. The Ninth Circuit disagreed, pointing to the potential collateral consequences of the additional excessive sentence (*United States v. Lillard*).
- ***Education:** The Fourth Circuit added to a circuit split in holding that, in a standalone complaint for attorney's fees under the Individuals with Disabilities Education Act (IDEA), the court will apply the statute of limitations from the state statute implementing the IDEA. The court explained that the IDEA does not contain an express statute of limitations for attorney's fees actions and that, when a federal statute omits a limitations period, federal courts "borrow" the statute of limitations from the most analogous state law claim. The Fourth Circuit deemed the shorter limitations period from the state IDEA analogue more appropriate, as plaintiffs in an IDEA action already have retained counsel, an administrative decision has been issued, and federal policy supports the quick resolution of IDEA matters. The court disagreed with the Ninth and Eleventh Circuits, which apply the statute of limitations from state statutes governing general civil actions, rather than looking to IDEA-implementing statutes specifically (*Sanchez v. Arlington Cnty. Sch. Bd*).
- **Environment:** A divided Ninth Circuit held that a denial of a petition to amend the federal recovery plan for an endangered or threatened species under the Endangered Species Act (ESA) is not a "final agency action" for purposes of the Administrative Procedure Act (APA). Under the APA, 5 U.S.C § 553(e), agencies shall give interested persons the right to petition to amend an agency rule. The district court granted summary judgment against the plaintiff, which had petitioned to amend the U.S. Fish and Wildlife Service's recovery plan for grizzly bears, because the recovery plan was not a "rule" under the APA. A majority of the Ninth Circuit panel, disagreeing with the district court, determined that the term "rule" under the APA is defined broadly and assumed that a recovery plan falls under its broad definition. The court affirmed the district court's ultimate decision to grant summary judgment because the denial of the petition to amend the plan was not a reviewable final agency action under 5 U.S.C. § 704 of the APA. The majority reasoned that a species recovery plan is a roadmap for the agency to follow but not an action by which rights or obligations have been determined or from which legal consequences will flow, and therefore the district court lacked jurisdiction to review (*Center for Bio. Diversity v. Haaland*).
- **Labor & Employment:** The D.C. Circuit reviewed the AFL-CIO's challenges to the National Labor Relations Board's 2019 Rule concerning elections regarding union representation. The Board promulgated the rule without following notice and comment rulemaking procedures, asserting it fell within the exception outlined in the Administrative Procedure Act (APA),

- 5 U.S.C. § 553(b)(A). With respect to jurisdiction, the D.C. Circuit held that the district court properly exercised jurisdiction over the lawsuit, as the National Labor Relations Act requires lawsuits to proceed directly to federal appellate courts only when the rule in question pertains to unfair labor practices—not representation elections. On the merits, the court determined that the APA requires agencies to follow notice and comment rulemaking unless the rules are procedural, specifically rules that relate to improving internal operations of agencies. In examining the 2019 Rule, the court held that three provisions—employers' production of voter lists, delayed certification of election results, and who may serve as election observers—were not procedural and should therefore be vacated. The court held that the remaining two provisions—pre-election litigation of certain issues and a related change to election scheduling—were procedural and therefore exempt from the APA's notice and comment requirement (*AFL-CIO v. NLRB*).
- **Spending Clause:** The Eleventh Circuit affirmed a lower court's injunction barring enforcement of the Offset Provision of the American Rescue Plan Act of 2021 (ARPA) against thirteen plaintiff states. The Offset Provision, 42 U.S.C. § 802(c)(2)(A), bars states from using certain ARPA funds to directly or indirectly offset a reduction in net tax revenue resulting from tax cuts. After the states sued alleging that the Offset Provision is an unconstitutional condition on the ARPA funds, the Treasury Department issued an implementing regulation adopting a limiting interpretation of the provision. The Sixth Circuit earlier decided that this limiting interpretation mooted challenges to the Offset Provision brought by Ohio and Kentucky, but the Eleventh Circuit disagreed with this reasoning. The Eleventh Circuit then held that the condition imposed on states by the Offset Provision violates the Spending Clause because the states cannot ascertain the condition the offset provision imposes (*West Virginia v. U.S. Dep't of the Treasury*).

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