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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Feb. 13, 2023–Feb. 20, 2023)

February 21, 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 did not issue any new opinions or agree to hear any new cases. It did cancel oral arguments, scheduled for this month, in a case challenging the executive branch's "Title 42" policy, which allows immigration authorities to summarily expel certain aliens arriving from Canada or Mexico (regardless of their country of origin) to prevent the transmission of the Coronavirus Disease 2019 (COVID-19).

In November 2022, a D.C. federal district court ruled the Title 42 policy unlawful and directed the Biden Administration to end the policy. When the D.C. Circuit rejected several states' request to intervene in the case to defend the policy's lawfulness, those states asked the Supreme Court to stay the district court order and review the case. On December 19, 2022, Chief Justice Roberts issued an administrative stay to give the Court time to consider the emergency application.

On December 27, 2022, by a 5-4 vote, the Court granted certiorari to consider whether the states may intervene, and the Court stayed implementation of the district court order pending the Court's judgment. The Court indicated that it is not reviewing the merits of the district court's underlying decision on the

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LSB10921

Title 42 policy's lawfulness, but only the question whether the states may intervene. In removing the case from the February 2023 oral argument calendar, the Court offered no indication as to whether oral argument would be rescheduled (*Arizona v. Mayorkas*).

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.

- **Agriculture:** In a divided opinion, the Eighth Circuit vacated a judgment of the U.S. Department of Agriculture (USDA) that disqualified Euclid Market Inc. from the Supplemental Nutrition Assistance Program (SNAP) for unlawfully trafficking SNAP benefits. Euclid Market sought judicial review of the USDA's decision under 7 U.S.C. § 2023, and a federal district court held that the store did not meet its burden of showing the USDA's action was invalid. On appeal, the Eighth Circuit agreed with the district court that § 2023 places the burden on the plaintiff to challenge a disqualification from SNAP; however, the court ruled that the district court erred in imposing an absolute rule under § 2023 that a store must provide transaction-specific evidence to refute each alleged instance of SNAP benefit trafficking (*Euclid Market Inc. v. United States*).
- **Arbitration:** A divided Ninth Circuit held that the Federal Arbitration Act (FAA) preempts a California law that prohibits employers from requiring employees to consent to arbitrate specified claims as a condition of employment. The court reasoned that the FAA's purpose is to further Congress's policy of encouraging arbitration and placing arbitration agreements on "equal footing" with all other contracts, and that the California law impeded that purpose by discriminating against the formation of arbitration agreements (*Chamber of Commerce v. Bonta*).
- **Administrative Law:** The D.C. Circuit rejected challenges to the Federal Energy Regulatory Commission (FERC) granting Broadview Solar's application to become a qualifying facility under the Public Utility Regulatory Policies Act of 1978 (PURPA). Qualifying facilities receive special rate and regulatory treatment because they are smaller facilities that use renewable resources or alternative technology for energy generation. Under 16 U.S.C. § 796(17)(A)(ii), qualifying facilities that are not otherwise eligible solar, wind, waste, or geothermal facilities are limited to those with energy production capacities "not greater than 80 megawatts." FERC interpreted § 796(17)(A)(ii) not to bar Broadview Solar's designation because the facility in question could only send out 80 MW of alternating current power, although it could generate 160 MW of direct current power. The court ruled that FERC's interpretation of the statute was entitled to *Chevron* deference and was neither arbitrary nor capricious (*Solar Energy Indus. Ass'n v. FERC*).
- ***Civil Rights:** The Fourth Circuit deepened a circuit split in ruling that a plaintiff met constitutional standing requirements to sue a hotel under the Americans with Disabilities Act (ADA) and its regulations for failing to provide information and reservations for accessible rooms on its internet booking platforms. The court reasoned that the plaintiff had standing, whether or not she intended to visit the hotel, because she alleged that the hotel denied her the information required by ADA hotel regulations to facilitate meaningful choices for travel. Including this opinion, at least six circuits have now issued precedential decisions in similar cases in the last three years, with the First, Fourth, and Eleventh Circuits concluding that constitutional standing requirements were satisfied, and the Second, Fifth, and Tenth Circuits holding that they were not (*Laufer v. Naranda Hotels, LLC*).

- **Civil Rights:** Reversing a district court, the D.C. Circuit held that a blind FBI employee could bring a lawsuit to enforce a provision of the Rehabilitation Act of 1973 that requires federal agencies to use technology accessible to people with disabilities. The court held that Section 794d of the Rehabilitation Act—also known as Section 508 of the Rehabilitation Act—extends a private right of action to federal employees and members of the public with disabilities who file administrative complaints with an agency requesting accessible technology and who seek only injunctive and declaratory relief. The court observed that Section 508, through a cross-reference to another section of the Rehabilitation Act, incorporates the rights and remedies of Title VI of the Civil Rights Act of 1964. As Title VI includes a private right of action, the court reasoned, so does Section 508 (*Orozco v. Garland*).

- ***Civil Rights:** The Fifth Circuit added to a circuit split over the elements required to prove the constitutional tort of malicious prosecution. The court held that the Supreme Court's 2022 decision in *Thompson v. Clark*, which recognized the constitutional tort, did not resolve the circuit split as to whether a plaintiff must make a showing of malice. The Fifth Circuit panel held that *Thompson* overruled an en banc decision of the Fifth Circuit and reinstated an earlier Fifth Circuit decision that made malice a necessary component of a malicious prosecution claim (*Armstrong v. Ashley*).

- ***Criminal Law & Procedure:** The Ninth Circuit added to a circuit split in holding that the Supreme Court's decision in *Heck v. Humphrey* does not preclude a 42 U.S.C. § 1983 claim by a plaintiff who pleaded no contest to, but was ultimately not convicted of, a crime. *Heck* held that § 1983 does not permit claims that would necessarily require a plaintiff to prove the unlawfulness of a conviction. The Ninth Circuit held that *Heck* did not bar a plaintiff's § 1983 claims when the plaintiff pleaded no contest but completed the conditions of an agreement with prosecutors before the court entered an order finding him guilty of the charge to which he pleaded. According to the Ninth Circuit, *Heck* requires an actual judgment of conviction, not its functional equivalent. The court declined to follow the Third Circuit's decision in *Gilles v. Davis*, which, according to the Ninth Circuit, appeared to apply *Heck* to non-final criminal charges. (*Duarte v. City of Stockton*).

- **Criminal Law & Procedure:** The Eleventh Circuit rejected a physician's challenges to his conviction of unlawfully dispensing controlled substances in violation of 21 U.S.C. § 841. The statute makes it unlawful for a physician to knowingly and intentionally dispense a controlled substance (1) outside of "the usual course of professional practice" or (2) for no "legitimate medical purpose." First, the court clarified that only one of these two elements must be satisfied to sustain a Section 841 conviction, not both. Second, the court agreed with the physician that the jury instructions erroneously applied an objective standard to the first element, but held that the error was harmless because there was sufficient evidence that the first element would be met under a subjective, knowing standard. Third, the court concluded that "legitimate medical purpose" and "in the usual course of professional practice" are not unconstitutionally vague as applied to physicians because these phrases are reasonably understandable by a physician and their application necessarily entails case-by-case analyses (*United States v. Heaton*).

- **Immigration:** The Seventh Circuit held that it lacked jurisdiction to hear a lawsuit under the Administrative Procedure Act (APA) challenging a denial by U.S. Citizenship and Immigration Services (USCIS) of a Ukrainian national's application to adjust his status to lawful permanent resident. The court reasoned that 8 U.S.C. § 1252, a statute governing judicial review of immigration decisions, limits the court's jurisdiction to review the petitioner's adjustment-of-status application, and that this immigration-specific jurisdictional limitation prevailed over the APA's general grant of judicial review. The court cited the Supreme Court's 2022 decision in

Patel v. Garland to support the conclusion that, in light of § 1252, judicial review is unavailable (*Britkovyy v. Mayorkas*).

- **Labor & Employment:** The Federal Circuit, sitting en banc, dismissed claims by current and former federal employees with the U.S. Federal Bureau of Prisons seeking hazardous duty and environmental differential pay under 5 U.S.C. §§ 5545(d) and 5343(c)(4) for having worked in close proximity to individuals infected with, and objects and areas contaminated by, COVID-19 without sufficient protective gear. The court held that the employees' workplace exposures to the virus fell outside of categories delineated in Office of Personnel Management regulations for hazardous duty and environmental differential pay in circumstances involving contagious diseases, which only provide such pay in the context of certain laboratory and jungle work (*Adams v. United States*).
- **Property:** The Federal Circuit held that a trail use and railbanking intervention pursuant to the National Trails System Act (Trails Act) constituted a government taking under the Fifth Amendment. A railroad company sought to abandon a railway corridor and, under the Trails Act, a state parks department intervened to assume responsibility for the corridor and manage it as a recreational trail, while leaving the tracts intact for potential future use. The Surface Transportation Board issued a Notice of Interim Trail Use. The Federal Circuit, however, determined that trail use and railbanking with no realistic future use of the land for rail purposes are not within the terms of the easement under which the owner of the property granted the railroad company permission to operate the railway corridor (*Behrens v. United States*).
- **Territories:** The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) created the Financial Oversight and Management Board of Puerto Rico (Oversight Board) and gave it certain authority over "covered territorial instrumentalities" of Puerto Rico, including the University of Puerto Rico (UPR). In 2019 and 2020, the Oversight Board determined that the UPR pension plan would be insolvent by 2031 and promulgated certified recommendations for ways to avoid this outcome. Responding to the Oversight Board's recommendations, the UPR approved a plan to close its defined benefit program to non-vested participants and new employees after December 31, 2021. An association of retired and active UPR professors and nine individual members sued to stop this change. The First Circuit affirmed the district court's dismissal of the case for lack of jurisdiction because section 106 of PROMESA explicitly excludes the Oversight Board's certification determinations from federal district court jurisdiction (*Asociacion Puertorriquena de Profesores Univ. v. University of Puerto Rico*).

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