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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Mar. 6, 2023–Mar. 12, 2023)

March 14, 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 agreed to take up one case:

- **Maritime Law:** The Court agreed to hear a case from the Third Circuit regarding the enforceability of choice-of-law clauses in maritime contracts. On the sole issue for which the Court granted review, the petitioner insurance company asks the Court to reverse the Third Circuit's holding that a choice-of-law clause in a maritime contract—in this case, an insurance contract—may be invalidated if its enforcement is contrary to the public policy of a state whose law is "displaced" (i.e., not applied) by the clause. The petitioner argues that the Third Circuit's approach is inconsistent with other circuits that have considered the enforceability of such choice-of-law clauses (*Great Lakes Ins. SE v. Raiders Retreat Realty Co., LLC*).

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LSB10936

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.

- **Administrative Law:** The Eighth Circuit held that the acting commissioner of the Social Security Agency was properly serving under the Federal Vacancies Reform Act of 1998, codified at 5 U.S.C. §§ 3345-3349d, when she ratified the appointment of an administrative law judge who denied benefits to the plaintiff-appellee. 5 U.S.C. § 3346(a) generally allows a qualified acting officer to serve (1) for up to 210 days after the office becomes vacant or (2) while either a first or second nomination for the office is pending in the Senate. The court held that the text of this provision allowed an acting commissioner to resume serving in that office once the President had nominated a permanent commissioner to the Senate, notwithstanding that she had previously completed a term of 210 days in the office. The court also held that an order-of-succession memo by the previous President was valid to "direct" the acting commissioner to serve under 5 U.S.C. § 3345(a) (*Dahle v. Kijakazi*).
- ***Criminal Law & Procedure:** The Fourth Circuit held that 28 U.S.C. § 2244(b)(1), which requires dismissal of "[a] claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application," does not apply to federal prisoners. Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), a person imprisoned pursuant to the judgment of a state court may apply for post-conviction relief under 28 U.S.C. § 2254, while a person imprisoned pursuant to the judgment of a federal court may apply under § 2255. Joining the Sixth and Ninth Circuits, and rejecting the reasoning from six other circuits, the Fourth Circuit held that the requirement in § 2255(h) for a federal appellate court to certify a second or successive application "as provided in section 2244" incorporates only the filing requirements set forth in § 2244(b)(3), but not the criteria for dismissal in § 2244. The Fourth Circuit held that § 2244(b)(1), by its plain text, applies only to state claims under § 2254, and such a reading was consistent with the policy purposes of AEDPA (*In re Graham*).
- ***Criminal Law & Procedure:** Adding to a circuit split, the Seventh Circuit held that a prior conviction for a Hobbs Act robbery qualifies as a predicate "violent felony" for purposes of enhanced sentencing under the Armed Career Criminal Act (ACCA). The court reasoned that a Hobbs Act robbery is a "violent felony" within the meaning of the ACCA because this crime entails the use of force against persons or property. The court observed that its holding is broadly consistent with interpretations adopted by the Fifth, Ninth, and Tenth Circuits and acknowledged that the Fourth and Sixth Circuits have taken a different approach (*United States v. Hatley*).
- **Election Law:** The Ninth Circuit affirmed a district court's denial of a motion seeking a preliminary injunction against a San Francisco campaign finance ordinance. San Francisco's secondary-contributor disclaimer requirement generally compels certain political committees that run advertisements to disclose the names and donations of their top three contributors and, if any of the top three contributors is a committee, the top two major donors to those committees. A political committee that runs ads challenged the ordinance, arguing that the secondary-contributor requirement violated the First Amendment. The Ninth Circuit held that the district court was within its discretion to conclude that the plaintiffs did not show a likelihood of success on the merits because the district court, correctly applying exacting scrutiny in its review of the compelled disclosure requirements, determined that the ordinance was substantially related to the

"sufficiently important governmental interest" in informing voters of the source of funding for election-related communications; did not create an excessive burden on plaintiffs' First Amendment rights; and was narrowly tailored to the government's interest (*NO on E v. Chiu*).

- **Firearms:** The Eleventh Circuit affirmed a district court's decision upholding a Florida law that prohibits individuals under the age of 21 from buying firearms. The court, relying on the Supreme Court's 2022 decision in *New York State Rifle & Pistol Assoc., Inc. v. Bruen*, applied the two analytical steps articulated in *Bruen*: considering first the plain text of the Second Amendment as informed by historical tradition, and then looking for a historical analogue of the challenged law. The court reasoned that Reconstruction-era historical sources were the most relevant to the inquiry because those sources reflect the public understanding of the right to keep and bear arms when the Second Amendment's protections were made applicable to the state governments through ratification of the Fourteenth Amendment. Surveying the historical record and finding that several states before and after the Fourteenth Amendment's ratification passed prohibitions making it unlawful to sell handguns and other deadly weapons to 18-to-20-year-olds, the court determined that the Florida law did not violate the Second Amendment (*Nat'l. Rifle Assoc. v. Bondi*).
- **First Amendment (Speech):** The Seventh Circuit reversed and vacated in part a district court decision that had enjoined a county government's regulation, known as a variance procedure, that authorized a zoning board to approve billboards on a case-by-case basis that do not meet certain structural restrictions relating to height, size, and digital content. The district court held that the variance procedure operated as an unconstitutional prior restraint on speech in violation of the First Amendment by affording too much discretion to the local government. While the Seventh Circuit acknowledged that the variance procedure operated as a prior restraint on speech, the court held that it was a constitutionally sound restriction because it was a content-neutral regulation with a low risk of censorship and did not give too much discretion to the local officials. (*GEFT Outdoor, LLC v. Monroe Cty.*).
- **First Amendment (Speech):** The Ninth Circuit held that the Federal Bureau of Investigation (FBI) could lawfully prevent Twitter from publicly disclosing certain facts about government requests for information about its users. Twitter sought the FBI's permission to release a "Transparency Report" disclosing aggregate data about requests it received in 2013 through National Security Letters and Foreign Intelligence Surveillance Act orders. The FBI denied this permission to the extent Twitter sought to disclose more detailed information about the requests than allowed under the USA FREEDOM Act of 2015. The court held that the FBI's content-based restriction on speech survived strict scrutiny because the government has a compelling interest in protecting national security, and the required redactions to the Transparency Report were narrowly tailored to protect that interest. The court also concluded that the statutory restrictions on disclosure did not trigger the specific procedural safeguards that the Supreme Court developed in the context of prior restraints on speech that resemble censorship (*Twitter, Inc. v. Garland*).
- **Indian Law:** The Tenth Circuit held that the Northern Arapaho Tribe has a statutory right to government reimbursement for certain healthcare costs. Pursuant to the Indian Self-Determination and Education Assistance Act, the tribe had entered into a contract with the Indian Health Service (IHS) to operate a federal healthcare program that IHS would have operated otherwise. The tribe and IHS disputed whether certain overhead and administrative expenses were among the "contract support costs" that the statute required IHS to cover. Finding the statute ambiguous, the court applied the interpretive principle

- that federal statutes should be liberally construed in favor of Indian tribes (*Northern Arapaho Tribe v. Becerra*).
- **Tax:** The Federal Circuit vacated a Court of Federal Claims judgment that had awarded a third-party tax refund, holding that the individual was not a "taxpayer," as required by 26 U.S.C. § 6511, to bring a claim for a refund under 28 U.S.C § 1346(a)(1). The Court of Federal Claims, finding an exception to the general proposition that a party seeking a refund must be the one against whom the tax liability was assessed, distinguished between third parties who overpaid taxes and those who argued that the taxes paid were not actually due. The Federal Circuit rejected this interpretation, reasoning that the term "taxpayer" in § 6511 is construed narrowly. Accordingly, the Federal Circuit held that the trial court had lacked jurisdiction to hear the claim under § 1346(a)(1) and vacated the judgment. However, the court remanded the case to consider the plaintiff's claim that he had paid the taxes under duress (*Roman v. United States*).
- **Veterans:** The Federal Circuit disagreed with the Court of Appeals for Veterans Claims's (CAVC's) interpretation of 38 U.S.C. § 1110 and vacated a CAVC decision affirming the Department of Veteran Affairs denial of benefits to a veteran whose knee surgery had to be canceled due to his service-connected leukemia. Section 1110 states that the United States will pay a veteran "[f]or disability resulting from personal injury suffered or disease contracted in line of duty[.]" The Court rejected the government's argument that the "resulting from" causation requirement in § 1110 is limited solely to situations where the service-connected disease or injury affirmatively brings about a disability or directly aggravates a preexisting disability, instead holding that the language may encompass situations where the service-connected disease or injury impedes treatment of a disability (*Spicer v. McDonough*).

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