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Legal Sidebar

# Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (July 17, 2023–July 23, 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 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 any orders granting petitions for certiorari this 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.

- **Administrative Law:** The D.C. Circuit held that there was no cause of action in a case where plaintiffs were denied compensation from a fund administered by the U.S. State Department. The fund was established to compensate non-French nationals deported from France to concentration camps during the Holocaust. The plaintiffs sought judicial review under the Administrative Procedure Act (APA), but the court held that because

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administration of the fund is committed to agency discretion by law, the APA provides no cause of action (*Schieber v. United States*).

- **Bankruptcy:** The Fifth Circuit reaffirmed its earlier decisions that standing to appeal an order of a bankruptcy court exists for "persons aggrieved," a more exacting standard than traditional standing requirements in cases involving Article III courts. (Bankruptcy courts are not Article III courts.) The circuit court also rejected arguments that the prudential standing rule was effectively abrogated by the Supreme Court's 2014 decision in *Lexmark International, Inc. v. Static Control Components, Inc.*, which questioned the appropriateness of prudential standing doctrines while ruling on parties' ability to bring suit under the Latham Act, a trademark registration statute. The Fifth Circuit observed that *Lexmark* did not address application of prudential standing in the bankruptcy context, which the circuit court found distinguishable (*NexPoint Advisors, L.P. v. Wilmer Cutler Pickering Hale and Dorr, L.L.P. (Matter of Highland Cap. Mgmt, Inc.*).
- **Civil Procedure:** The Second Circuit held that a district court misapplied the *Rooker-Feldman* doctrine, which interprets 28 U.S.C. § 1257 to bar jurisdiction for "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." The plaintiff brought suit in federal court against state officials and entities while a state court appeal over the plaintiff's parental rights was pending, and the district court dismissed the complaint for lack of subject matter jurisdiction. The Second Circuit reversed and joined several sister circuits in holding that the *Rooker-Feldman* doctrine does not apply to state court proceedings with a pending appeal (*Hunter v. McMahon*).
- **Civil Rights:** The Fifth Circuit joined several other circuits in holding that an impairment need not be "permanent or long-term" to qualify as a disability under the Americans with Disabilities Act (ADA) after the passage of the ADA Amendments Act of 2008 (ADAAA). Acknowledging that Congress passed the ADAAA to make it easier for plaintiffs to establish a disability, the court observed that ADAAA directly abrogated prior case law requiring permanence (*Mueck v. La Grange Acquisitions, L.P.*).
- **Criminal Law and Procedure:** The First Circuit held, as the first federal appellate court to directly confront the question, that it had jurisdiction under 28 U.S.C. § 1291 to consider the government's appeal from a distinct court's order granting compassionate release. Rejecting the defendant's argument, the First Circuit explained that statutory limits on government appeals of initial sentencing decisions do not apply to sentence modifications (*United States v. Rivera-Rodríguez*).
- **Criminal Law & Procedure:** The Third Circuit ruled that the Agriculture Improvement Act of 2018 (colloquially known as the 2018 Farm Bill), which excludes hemp from the Controlled Substances Act's (CSA's) definition of marijuana, did not create a new element that the government must affirmatively prove when prosecuting marijuana-related offenses. Looking to 21 U.S.C. § 885(a)(1), which addresses how an exemption affects burdens of proof in CSA enforcement proceedings, the court held that a criminal defendant must present evidence that the hemp exception applies before the government must disprove its relevance (*United States v. Rivera*).
- **Environmental Law:** The D.C. Circuit vacated an injunction ordering the Department of the Interior to auction off a minimum yearly amount of timber harvested on federal land in California and Oregon. The court held that a 2017 presidential proclamation restricting logging on part of the land did not violate the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act (O & C Act) which mandated the auction. The court

explained that the proclamation was issued under statutory authority compatible with the O & C Act because it provides for classification as "timberlands," thereby subjecting it to the auction. The court found that the presidential proclamation reclassified a portion of the land as non-timberland; therefore, timber on it is excused from the auction (*American Forest Resource Council v. United States*).

- **Environmental Law:** The D.C. Circuit held that the Environmental Protection Agency (EPA) did not violate the Clean Air Act (CAA) when, after missing the 2020, 2021, and 2022 renewable fuel standards statutory deadlines, it extended the reporting deadlines without providing the same compliance intervals (i.e., time between reporting deadlines) and compliance lead time (i.e., time from standard setting to the end of the compliance period) that the statutory scheme would normally provide. The statute requires EPA to set the standards by November 30 before the relevant compliance year, resulting in a 12-month compliance interval and 13-month lead time to achieve compliance. The court explained that EPA may issue standards after the statutory deadline after taking reasonable steps to mitigate any harm to the obligated parties for the delay. Observing that the authority to determine compliance intervals and reporting deadlines is not tied to when the standards are published, the court concluded that EPA was not required to provide the same compliance intervals and lead time the November 30 deadline normally would provide, and that the revised compliance intervals and reporting deadlines need only be reasonable (*Wynnewood Refining Company v. EPA*).
- **Fair Credit Reporting Act (FCRA):** The Second Circuit held that consumers are not foreclosed from making claims under the Fair Credit Reporting Act (FCRA) based on inaccuracies that are legal in nature. 15 U.S.C. § 1681e(b) requires credit reporting agencies to "follow reasonable procedures to assure maximum possible accuracy" of the information reported about a consumer. In a class action lawsuit, the named plaintiff's alleged inaccuracy depended on whether a reported payment the plaintiff owed was legally a debt. The court rejected a bright-line rule forbidding claims under the FCRA based on "legal" inaccuracies, explaining that "accuracy" as it is used in § 1681e(b) depends on whether the information in the credit report is objectively and readily verifiable, regardless of whether it is legal or factual in nature (*Sessa v. Trans Union, LLC*).
- **Financial Regulation:** A divided Fifth Circuit ordered a district court to enter a preliminary injunction against the Commodity Futures Trading Commission (CFTC) because the agency's rescission of a no-action letter issued to the online elections prediction site, PredictIt, was likely arbitrary and capricious under APA. The CFTC claimed that it rescinded the no-action letter because PredictIt had violated its prior representations that it would abide by certain terms contained in the letter, such as maintaining nonprofit status and allowing researchers to access generated data. Following notification of the recission, PredictIt sought a preliminary injunction claiming that the CFTC failed to explain its decision in violation of 5 U.S.C. § 706, and that the revocation constituted a withdrawal of a license without the necessary procedural steps in violation of 5 U.S.C. § 558. The Fifth Circuit agreed with the plaintiffs, finding that the district court had erred in effectively denying the preliminary injunction (*Clarke v. Commodity Futures Trading Comm'n*).
- **First Amendment (Speech):** The Eleventh Circuit rejected a public employee's First Amendment retaliation claim that she was terminated for making statements during her political campaign to replace her supervisor. Although the court recognized that the employee's statements were eligible for First Amendment protection, the court explained that employers also have an interest in effective management. Balancing the interests, the

court held that the employer's interest in the efficient administration of the office outweighed the employee's interest in making the statements, many of which were determined to be baseless and false (*Green v. Finkelstein*).

- **Intellectual Property:** The Ninth Circuit held that Instagram is not secondarily liable for copyright infringement when Instagram allows third-party sites to embed an author's Instagram content. Citing a previous case in the same circuit, the Ninth Circuit explained that when an author posts content onto Instagram, the author stores a copy of the content on Instagram's server and gives Instagram a nonexclusive sublicense to display the content on its site. When third-party sites embed Instagram content, the third-party sites do not store the copyrighted content on their servers, and only direct the web browser to retrieve Instagram's licensed display of the content. Therefore, the court determined that embedding is not a "display" under the Copyright Act, and because secondary liability requires direct copyright infringement by the third-party sites, held that Instagram is not secondarily liable (*Hunley v. Instagram*).
- **International Law:** The Second Circuit held that the Montreal Convention for the Unification of Certain Rules for International Carriage by Air, a multilateral treaty governing claims arising from the international air transportation of persons, does not confer upon U.S. courts personal jurisdiction over Convention claims. The circuit court held that, while the Convention gives U.S. courts subject-matter jurisdiction over claims arising under the treaty, domestic law and practice determine whether a U.S. court may exercise personal jurisdiction over an entity against whom a claim is brought (*Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. UPS Supply Chain Sols., Inc.*).
- **Tax:** The Third Circuit held that the filing deadline in 26 U.S.C. § 6213(a), which gives most taxpayers 90 days from the date the Internal Revenue Service mails a notice of deficiency in payment for taxes owed to file a redetermination petition with the Tax Court challenging the deficiency, is nonjurisdictional and subject to equitable tolling (*Culp v. Comm'r of Internal Rev.*).
- ***Transportation:** The Seventh Circuit, aligning itself with the Eleventh Circuit, held that the express preemption provision in the Federal Aviation Administration Authorization Act forecloses a common law negligent hiring claim against a freight broker based on a motor carrier's involvement in a fatal collision. In disagreement with the Ninth Circuit, the court further held that Congress did not intend for the exception to preemption for a state's motor vehicle safety laws to excuse laws imposing obligations on brokers from preemption. The court reasoned, in part, that brokers are listed in the express preemption provision but are not mentioned in the exception or the statutory definition of "motor vehicle" (*Ye v. GlobalTranz Enters.*).

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