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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (July 24, 2023–July 30, 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

Last week, the Supreme Court did not issue any opinions or agree to hear any new cases. It did take action in one case.

- **Energy:** The Supreme Court issued an unsigned order vacating stays issued by the Fourth Circuit preventing construction of the Mountain Valley Pipeline. The Fourth Circuit blocked construction of the pipeline in the Jefferson National Forest pending its adjudication of petitions for review filed by environmental groups. The pipeline company filed an emergency application asking the Supreme Court to vacate the Fourth Circuit orders because of Section 324 of the Fiscal Responsibility Act of 2023, which addresses judicial review of matters related to the Mountain Valley Pipeline. While the Court dismissed the stay orders and allowed construction to continue, the environmental groups' petitions for review remain before the Fourth Circuit (*Mountain Valley Pipeline, LLC v. Wilderness Soc.*).

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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:** A divided Ninth Circuit ruled that when a debtor files a Chapter 13 petition and then converts a case to Chapter 7, any pre-conversion increases in the equity of a debtor's asset belongs to the bankruptcy estate and not the debtor. In this case, the debtors' house increased in value between the filing of the Chapter 13 petition and the conversion to Chapter 7. The circuit panel majority found support in two Bankruptcy Code provisions. First, the majority looked to 11 U.S.C. § 348(f)(1)(A), which provides that the property of the estate in the converted case includes property of the estate under the debtor's control on the date of conversion. The majority also looked to 11 U.S.C. § 541(a), which includes in the estate the "[p]roceeds, product, offspring, rents, or profits of or from" estate property (*Castleman, Sr. v. Burman (In re Castleman, Sr.)*).
- **Civil Procedure:** The Ninth Circuit held that geographic limitations on federal courts' authority to compel testimony apply even when a court permits a witness to testify by videoconference. Under Federal Rule of Civil Procedure 45(c), a subpoena may only command a witness to attend a trial, hearing, or deposition within 100 miles of where the person resides, is employed, or regularly transacts business in person, or, under certain circumstances, within the state where the person undertakes those activities. While Rule 43(a) allows a court to permit testimony via remote transmission, the Ninth Circuit held that courts may not compel a witness to provide remote testimony from a location beyond Rule 45(c)'s geographic reach (*Kirkland v. U.S. Bankr. Ct., L.A.*).
- **Civil Rights:** Resolving a circuit split and overruling its prior contrary precedent, a divided Ninth Circuit, sitting en banc, held that 42 U.S.C. § 1981 does not by itself authorize plaintiffs to sue state actors. Among other things, § 1981 prohibits discrimination in making and enforcing contracts. The court explained that, although § 1981 establishes substantive rights that a state actor may violate, it does not contain a remedy for such violations. Instead, a plaintiff seeking to enforce rights under § 1981 against a state actor must bring a claim under 42 U.S.C. § 1983, which creates a civil cause of action for deprivation of rights by state actors acting under color of law (*Yoshikawa v. Seguirant*).
- **Criminal Law & Procedure:** 18 U.S.C. § 1855 makes it a crime to "willfully and without authority" set fire to land owned by the United States government. The Fourth Circuit held that specific knowledge that the land set on fire is owned by the federal government is not required for conviction. The court explained that no mental state requirement attaches to the provision's federal-ownership requirement, which the court decided is a jurisdictional element. The court held, however, that § 1855 requires the defendant to act "willfully," and an honest mistake of fact about the ownership of the land is a valid defense against willfulness (*United States v. Evans*).
- ***Criminal Law & Procedure:** A divided en banc Fifth Circuit held that engaging in multiple drug conspiracies counts as committing multiple drug crimes, qualifying the defendant for harsher sentences under the United States Sentencing Guidelines. The majority deferred to the Sentencing Commission's official commentary to the Guidelines, which provides that a controlled substance offense for purposes of the career offender guideline includes drug conspiracies. In finding the official commentary authoritative and entitled to a high degree of deference, the Fifth Circuit joined the First, Second, Fourth,

Seventh, and Tenth Circuits, in contrast with the Third, Sixth, Ninth, and Eleventh Circuits, which accord lesser deference to the commentary (*United States v. Vargas*).

- ***Criminal Law & Procedure:** The Fifth Circuit held that the federal carjacking statute, 18 U.S.C. § 2119, does not require that a defendant intend to kill or cause serious injury in furtherance of taking a vehicle. The court held that the statute has a broader application, i.e., where a defendant has an unconditional intent to kill or harm a driver, even if that harm is not necessary to complete a carjacking. The court cited the Supreme Court's decision in *Holloway v. United States*, which interpreted § 2119 as criminalizing conduct that went beyond the objective of a carjacking. The court declined to follow the approach of the Third Circuit, which held that a defendant needed to employ the use of force with the intent to take a car to form the requisite intent under § 2119. The Fifth Circuit reasoned that this narrower interpretation would be inconsistent with *Holloway* (*United States v. Jones*).
- **Criminal Law & Procedure:** A divided Seventh Circuit joined several other circuits in holding that convictions for multiple violations of 18 U.S.C. § 924(c)—which imposes additional prison time for possessing a firearm in furtherance of a crime of violence or drug trafficking crime—require the government to prove that the defendant decided to possess a firearm during each underlying crime. The court held that a single, continuing choice to possess a firearm during the commission of two simultaneous crimes is insufficient to support multiple § 924(c) convictions (*United States v. Evans*).
- **Environmental Law:** Under the Clean Air Act (CAA), the Environmental Protection Agency (EPA) and state, local, or tribal authorities issue Prevention of Significant Deterioration (PSD) permits for newly constructed, air-polluting facilities. According to EPA policy, an existing facility is considered "new" if EPA concludes it had been previously shut down but then reactivated. The reactivated facility must then obtain a PSD permit before operations may resume. The Third Circuit held that EPA's policy exceeded its statutory authority under the CAA. The court explained that the CAA unambiguously limits issuance of PSD permits to newly constructed or modified facilities. Accordingly, the court vacated an EPA letter requiring a reactivated facility without modification to obtain a PSD permit (*Port Hamilton Ref. and Transp. v. EPA*).
- ***Immigration:** A divided Fourth Circuit panel held that an alien whose asylum status was terminated following criminal convictions was ineligible to apply for adjustment of status to lawful permanent resident under 8 U.S.C. § 1159(b). The court interpreted § 1159(b), which permits aliens granted asylum to seek adjustment of status, as requiring the alien to have a cognizable "status" to "adjust." The panel interpreted "status" as referring to an alien's current or present condition. The court rejected the petitioner's argument that prior status was sufficient for purposes of § 1159(b) because it does not contain a "non-termination" requirement. The panel disagreed with a Fifth Circuit decision that held an alien need not maintain their asylum status to apply for adjustment of status (*Cela v. Garland*).
- **Immigration:** The Ninth Circuit held that the appointment and removal process for immigration judges and members of the Board of Immigration Appeals (BIA) comports with Article II of the Constitution. The court held that Congress has validly charged the Attorney General with the appointment of these officials because they are inferior officers under the Constitution's Appointments Clause. The court further held that the Attorney General may dismiss immigration judges and BIA members at will, which complies with constitutional requirements because they remain accountable to the Attorney General and, by extension, the President (*Amador Duenas v. Garland*).

- ***Immigration:** The Eleventh Circuit held that a district court lacked subject-matter jurisdiction to hear a complaint about the revocation of approval for a visa petition. The court applied 8 U.S.C. § 1252's bar on judicial review of certain discretionary immigration decisions to the decision to revoke approval of a visa petition under 8 U.S.C. § 1155. The court added to the majority position in a circuit split by holding that a revocation of a visa petition is one such discretionary decision (*Bouarfa v. Sec'y, Dep't of Homeland Sec.*).
- **Intellectual Property:** The Ninth Circuit held, in a case of first impression for that circuit, that a company operating an online marketplace for products bearing user-submitted artwork did not meet the Supreme Court's test for contributory liability for Lanham Act trademark infringement where the company had only general knowledge of infringement on its platform. Adopting a rule in line with the Second, Fourth, and Tenth Circuits, the court held that the defendant must know or have reason to know of specific infringers or instances of infringement to be contributorily liable (*Y.Y.G.M. V. Redbubble*).
- **Labor & Employment:** The Eighth Circuit held that, in deciding whether an employee's bad-faith actions impeded the Secretary of Labor's ability to decide the employee's administrative complaint until after expiration of the statutory deadline for doing so, the district court cannot consider the employee's actions after the deadline. 49 U.S.C. § 31105 prohibits employers from retaliating against employees for reporting commercial motor-safety violations and permits employees alleging retaliation to file an administrative complaint with the Secretary. Under § 31105(c), the complaining employee can bring the case to a federal district court if the Secretary has not made a final administrative decision within 210 days, provided that the delay in the Secretary's decision is not "due to the bad faith of the employee." In this case, the Eighth Circuit held that the record did not establish that the employee's pre-deadline bad-faith conduct alone caused the delay in deciding his administrative complaint, and remanded to the district court for further inquiry on that issue (*Wilson v. CTW Transp. Serv., Inc.*).
- ***Labor & Employment:** The Civil Service Reform Act of 1978 allows federal employees to appeal to the Merit Systems Protection Board (MSPB) for review of any of five "particularly serious" adverse employment actions, including a removal. Splitting from the Eighth Circuit, the Ninth Circuit held that when a federal employee seeking MSPB review for removal adds discrimination claims for actions that are not expressly listed as adverse employment actions, the employee must separately file those claims with their agency's Equal Employment Opportunity office, even when the removal is factually related to the discrimination claims. The court reasoned, in part, that Congress intended to limit the MSPB's jurisdiction to only the five adverse employment actions listed in 5 U.S.C. § 7512 (*Crowe v. Wormuth*).
- **Securities:** The Private Securities Litigation Reform Act of 1995 prohibits civil claims under the Racketeer Influenced and Corrupt Organizations Act (RICO) for "fraud in the purchase or sale of securities." A divided Second Circuit, aligning with other circuits, held that this prohibition "bars claims only when the alleged fraud is in the actual purchase or sale of securities, not when securities are incidental to the fraud" (*D'Addario v. D'Addario*).
- **Tax:** The Third Circuit affirmed a ruling of the United States Tax Court allowing a manufacturer of generic drugs to deduct as ordinary and necessary business expenses the legal fees incurred in defending itself against patent infringement lawsuits brought under the Hatch-Waxman Act, which provides for streamlined patent litigation and Food and Drug Administration (FDA) approval for generic drugs. The Third Circuit rejected the

- Commissioner of Internal Revenue's argument that such fees should instead be treated as capital expenditures reflecting the cost of acquiring FDA approval to market generic drugs (*Mylan Inc. v. Comm'r of Internal Revenue*).
- **Telecommunications:** In a class action suit under the Telephone Consumer Protection Act of 1991 (TCPA), the Eleventh Circuit held that receiving an unwanted, automated telemarketing text message was a concrete injury satisfying standing requirements under Article III of the Constitution. The court explained that Congress identified a harm in unwanted telemarketing texts when it enacted the TCPA and that harm shares a close relationship with the common-law claim of intrusion upon seclusion (*Drazen v. Pinto*).

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