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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (September 11, 2023–September 17, 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's next term is scheduled to begin October 2, 2023. The Court did not issue any opinions or grant certiorari in any cases last week. On September 14, 2023, Justice Samuel Alito, acting in his Circuit Justice capacity, issued an administrative stay giving the Supreme Court time to consider an emergency application by the federal government in a case from the Fifth Circuit. The federal government asks the Court to stay a preliminary injunction that, as modified by the Fifth Circuit, prevents a number of persons in the White House, the Surgeon General's Office, the Centers for Disease Control and Prevention, and the Federal Bureau of Investigation from acting to affect social media platforms' content-moderation decisions. The administrative stay is set to end on September 22, 2023 (*Murthy v. Missouri*).

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.

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- **Civil Procedure:** A divided Ninth Circuit panel held that under Federal Rule of Civil Procedure 54(d)(1), a district court has discretion to award costs to a prevailing party in a suit brought under the Americans with Disabilities Act (ADA). Rule 54(d)(1) permits a court to award costs to a prevailing party except when a "federal statute … provides otherwise." The court held that earlier circuit caselaw—which recognized that the ADA's fee- and cost-shifting provision limited the awarding of costs to instances where a plaintiff's action was frivolous, unreasonable, or without foundation—was effectively overruled by a Supreme Court decision recognizing that fee- and cost-shifting laws do not normally displace the background presumption that costs may be awarded to prevailing parties (*Garcia v. Gateway Hotel, L.C.*).
- **Congress:** In a proceeding to resolve a Member's objections to a warrant authorizing the search of messages on his cell phone, the D.C. Circuit held that "informal factfinding"—factfinding outside the context of an investigation authorized by a chamber of Congress—does not fall categorically within or outside the scope of the Speech or Debate Clause. Citing *Gravel v. United States*, the court remanded the case to the district court for a communication-by-communication assessment of whether each message exchanged with individuals in the executive branch or outside the federal government was an "integral part" of the processes by which Members participate in chamber or committee proceedings. Separately, the court held that communications with other Members about whether to certify a presidential election or how to assess information relevant to legislation about federal election procedures are legislative acts protected by the Speech or Debate Clause (*In re: Sealed Case*).
- **Consumer Protection:** The D.C. Circuit vacated a Consumer Product Safety Commission rule setting safety standards for operating cords on custom-made window coverings. The court held that, among other errors, the Commission selected an arbitrary effective date for the rule. The court acknowledged that, under 15 U.S.C. § 2058(g)(1), consumer product safety standards have a presumptive 180-day effective date "unless the Commission finds, for good cause shown, that a later effective date is in the public interest." The court held, however, that the directive in 15 U.S.C. § 2058(f)(3)(A)—to find "that the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury"—requires that the Commission make a separate reasonable-necessity finding about the effective date, even when imposing the presumptive 180-day date (*Window Covering Mfrs. Ass'n v. Consumer Prod. Safety Comm'n*).
- **Firearms:** The Tenth Circuit rejected a Second Amendment challenge to a provision in the Gun Control Act, 18 U.S.C. § 922(g)(1), banning the possession of firearms by felons. The court said that the outcome was controlled by earlier circuit precedent, which it determined had not been limited or abrogated by the Supreme Court's decision in *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, which endorsed a new framework for evaluating firearm laws' validity under the Second Amendment (*Vincent v. Garland*).
- **Immigration:** Joining the Ninth Circuit, a divided Second Circuit held that the determination of whether an alien is removable due to a state conviction for a crime involving moral turpitude for which "a sentence of one year or longer may be imposed," 8 U.S.C. § 1227(a)(2)(A)(i), depends on the state law as it stood at the time of the conviction. Although a state legislature had passed a law reducing the maximum penalty for the petitioner's conviction and the reduction had retroactive effect under state law, the court held that the reduced penalty had no effect on the petitioner's removability under 8 U.S.C. § 1227(a)(2)(A)(i) (*Peguero Vasquez v. Garland*).

- ***Immigration:** The Fourth Circuit affirmed the Board of Immigration Appeals' (BIA's) decision that a conviction for receipt of stolen property is a crime of moral turpitude if knowledge that the goods were stolen is an element of the offense. On that basis, the court held that the conviction rendered the petitioner ineligible for cancellation of removal under 8 U.S.C. §§ 1229b(b)(1)(C) and 1227(a)(2)(A)(i). The Fourth Circuit disagreed with a Ninth Circuit decision that held the receipt of stolen property is a crime of moral turpitude only if it requires proof of intent to permanently deprive the owner of the property. The Second, Third, Fifth, Seventh, Eighth, Tenth, and Eleventh Circuits have come to the same conclusion as the Fourth Circuit on this point. The Fourth Circuit also held that the BIA erred by declining to remand the case for a new grant of voluntary departure. The court explained that 8 C.F.R. § 1240.26(c)(3)(i) unequivocally requires an Immigration Judge to inform an alien of a bond amount and the deadline for posting the bond before granting voluntary departure, which the judge had not done here (*Cesar Solis-Flores v. Garland*).
- **Immigration:** The Ninth Circuit decided that the Supreme Court's 2020 decision in *Barton v. Barr* abrogated earlier circuit caselaw interpreting when a criminal offense rendering an alien removable would trigger the "stop-time" rule under 8 U.S.C. § 1229b(d)(1). A lawful permanent resident (LPR) who commits a removable offense may be eligible for cancellation of removal if certain criteria are met, including that the LPR had at least seven years of continuous physical presence in the United States before becoming removable. The Ninth Circuit recognized that, following *Barton*, an alien is ineligible for cancellation of removal if the underlying offense was committed within seven years of being admitted into the United States, even if the conviction came after the seven-year period (*Rudnitskyy v. Garland*).
- **Intellectual Property:** The D.C. Circuit held that a non-profit group's non-commercial distribution of technical standards copyrighted by private standard-developing organizations and later incorporated by reference into federal or state law was a fair use under 17 U.S.C. § 107. The non-profit group, which disseminates free legal materials, could thus continue making available for viewing, printing, and downloading on its website copyrighted standards that are incorporated into law (*American Soc'y for Testing and Materials v. Public. Res..Org, Inc.*).
- **Religion:** The Fifth Circuit held that the Religious Land Use and Institutionalized Persons Act (RLUIPA) does not provide for money damages in suits against officials in their individual capacities. The panel concluded that this decision was controlled by binding circuit precedent, which the panel ruled had not been abrogated by a later Supreme Court decision recognizing the availability of money damages in suits brought against officials in their individual capacities under the Religious Freedom Restoration Act (*Landor v. Louisiana Dep't of Corr. & Pub. Safety*).
- **Religion:** The Sixth Circuit held that plaintiffs are likely to succeed on their claim that a township violated RLUIPA by requiring a special land use permit for installations on a prayer trail—which included fourteen "Stations of the Cross," a mural, and a stone altar. The court held that the permit imposed a "substantial burden" on the plaintiffs' religious exercise under 42 U.S.C. § 2000cc(a)(1) because it resulted in two years of unexpected administrative delays and expense. The court further held that the permitting requirement was not narrowly tailored to advance a compelling interest, so the plaintiffs are entitled to a preliminary injunction allowing them to restore the prayer trail (*Cath. Healthcare Int'l, Inc. v. Genoa Charter Twp.*).

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- **Religion:** Sitting en banc, the Ninth Circuit held that plaintiffs are likely to succeed on their claim that a school district violated the Free Exercise Clause of the First Amendment when it revoked a religious group's status as an official student club. The school district had decided that the group violated the non-discrimination policies for official student clubs because the group required its student leaders to take a pledge stating, among other things, that "marriage is exclusively the union of one man and one woman." Based in part on findings that the school district selectively enforced its non-discrimination policies against the religious group but not against other student groups with discriminatory membership criteria, the court held that the policies were subject to strict scrutiny and did not survive that scrutiny. The court reversed the district court's denial of a preliminary injunction to reinstate the club (*Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*).
- **Speech:** The Ninth Circuit reversed a district court's denial of a preliminary injunction and held that a California law, which prohibits advertising any "firearm-related product in a manner that is designed, intended, or reasonably appears to be attractive to minors," likely violates the First Amendment. Assuming that the law regulates only commercial speech and that intermediate scrutiny applies, the court explained that states can ban truthful and lawful advertising only if the ban materially and directly advances a substantial government interest and is no more extensive than necessary. The court held that California has a substantial interest in reducing gun violence and unlawful use of firearms by minors but, without evidence that any minor had unlawfully bought or used a gun due to an advertisement, the law did not directly and materially further either goal (*Junior Sports Magazines, Inc. v. Bonta*).

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