



Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (September 25, 2023–October 1, 2023)

October 2, 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

The Supreme Court’s next term begins October 2, 2023. Last week, the Supreme Court agreed to review 12 new cases in the October 2023 term:

- **Arbitration:** The Court agreed to consider an appeal from the Second Circuit, in which it is asked to resolve a circuit split over the scope of the [exemption](#) from the [Federal Arbitration Act \(FAA\)](#) for transportation workers engaged in foreign or interstate commerce. The Court is asked whether the exemption generally applies to workers actively engaged in interstate transportation, or whether they must also be employed by a company in the transportation industry (*Bissonnette v. LePage Bakeries Park St., LLC*).
- **Bankruptcy:** The Court agreed to hear a case from the Tenth Circuit regarding the implications of the Court’s 2022 decision in *Siegel v. Fitzgerald*. In that case, the Court held that the [Bankruptcy Judgeship Act of 2017](#) violated the uniformity requirement of the Constitution’s Bankruptcy Clause by enabling higher disbursement fees to be imposed on certain debtors in Trustee districts than for equivalent debtors in Bankruptcy

Congressional Research Service

<https://crsreports.congress.gov>

LSB11053

Administrator districts. (These districts derive from federal law, which establishes dual bankruptcy administration programs.) The Court is asked to consider whether the appropriate remedy is to require the prospective application of uniform fees, or whether those who earlier paid higher fees should also be reimbursed (*Off. of the United States Trustee v. John Q. Hammons Fall 2006, LLC*).

- **Civil Procedure:** The Court granted certiorari in a case from the Eighth Circuit, in which it is asked to resolve a circuit split as to how [28 U.S.C. § 2401](#), which sets a statute of limitations for civil actions against the United States, applies to challenges brought against agency action under the Administrative Procedure Act. The Court is asked whether the statute of limitations is triggered when the agency issues the violative rule, or instead begins when a plaintiff later suffers a legal wrong or is otherwise aggrieved by the agency action (*Corner Post, Inc. v. Bd. of Governors of the Fed. Reserve Sys.*).
- **Criminal Law & Procedure:** The Court agreed to hear an appeal from the Arizona state courts in which it is asked to clarify when and whether the Confrontation Clause permits an expert witness for the prosecution to give testimony that relies on findings of a nontestifying forensic analyst (*Smith v. Arizona*).
- **Criminal Law & Procedure:** The Court granted certiorari in a case from the Second Circuit to consider whether a federal district court may enter a criminal forfeiture order outside the time limitations found in [Federal Rule of Criminal Procedure 32.2](#), a question that has divided lower courts (*McIntosh v. United States*).
- **Intellectual Property:** The Court agreed to review an Eleventh Circuit case to consider the interplay between the [Copyright Act's three-year statute of limitations](#) for civil actions and the discovery accrual rule employed by lower courts, which counsels that a statute of limitation begins once plaintiffs could have reasonably discovered their injury. The Court is asked whether a copyright plaintiff can recover damages alleged to have occurred more than three years before suing (*Warner Chappell Music, Inc. v. Sherman Nealy*).
- **Property:** The Court agreed to review a case from the California state courts over whether a building permit exaction is exempt from the [unconstitutional conditions doctrine](#) if authorized by legislation (*Sheetz v. Cnty. of El Dorado*).
- **Property:** The Court granted certiorari in a case from the Fifth Circuit in which it is asked whether federal courts may entertain claims for just compensation against a state under the Takings Clause directly, or whether such claims are available only if legislatively authorized (*Devillier v. Texas*).
- **Securities:** The Court agreed to hear an appeal from the Second Circuit where it is asked whether the failure to make a disclosure required under [Item 303 of Securities and Exchange Commission Regulation S-K](#)—which directs companies to disclose trends or uncertainties likely to materially impact their financial position—can support a private claim brought under [regulations implementing Section 10\(b\) of the Securities Exchange Act of 1934](#). Those implementing regulations bar companies from making untrue statements or omitting material facts “necessary” to make their affirmative statements “not misleading” (*Macquarie Infrastructure Corp. v. Moab Partners, L.P.*).
- **Speech:** The Court agreed to review cases from the Fifth and Eleventh Circuits on Texas and Florida laws that restrict some social media platforms' ability to moderate user content. The Court granted certiorari on two questions identified in the U.S. Solicitor General's [amicus brief](#): (1) whether the state laws' content-moderation restrictions comply with the First Amendment; and (2) whether the laws' requirement that regulated platforms explain particular content-moderation decisions to affected users complies with the First Amendment (*Moody v. NetChoice, LLC; NetChoice, LLC v. Paxton*).

- **Transportation:** The Supreme Court agreed to review a Ninth Circuit case in which the Court is asked whether a plaintiff's challenge to his inclusion in the Terrorist Screening Database and placement on the No Fly List was rendered moot after he was removed from the List and the government averred that he would not be placed back on the List based on currently available information (*Fed. Bureau of Investigation v. Fikre*).

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.

- **Arbitration:** The Ninth Circuit held that a receiver appointed by a district court to claw back profits received in a Ponzi scheme was bound by the arbitration agreements signed by a receivership company instrumental in that scheme. This panel held this result is because the receiver is tasked with acting on behalf of the receivership entity, not any creditors it may have defrauded. The panel reversed the lower court order denying a motion to compel arbitration and remanded for further proceedings over the arbitrability of the dispute (*Winkler v. McCloskey*).
- **Education:** The Eighth Circuit held that a plaintiff was likely to succeed in its challenge to a school's disciplinary policy as [unconstitutionally vague, where the policy required students to "respect" one another's gender identity but failed to define or limit the meaning of the term "respect."](#) The court observed that a lesser standard of scrutiny applies to speech restrictions in the public-school context than other environments, and it assumed for the sake of analysis that a school could direct students' use of names and pronouns where students had adequate notice of prohibited conduct. The court remanded the case to the district court, which had earlier denied plaintiff's motion to preliminarily enjoin the school district from enforcing the policy, with directions to grant the injunction (*Parents Defending Educ. v. Linn Mar Cmty. Sch. Dist.*).
- **Education:** Sitting en banc, a divided Ninth Circuit reversed a district court's dismissal of a suit brought under [Title IX of the Education Amendments of 1972](#) against the University of Arizona, involving an alleged off-campus assault by a student-athlete against another student. The majority held that the off-campus location was not dispositive in deciding whether the school exercised sufficient control over the setting to be held liable under Title IX for deliberate indifference. A key consideration, the court held, was whether the school exercised disciplinary authority over the alleged harasser. Here, the court found the plaintiff presented enough evidence for a factfinder to determine that the university had sufficient control over the context in which the alleged assault occurred, including through the school's approval of the student-athlete's off-campus housing and the university's code of conduct (*Brown v. Arizona*).
- **Environmental Law:** The Second Circuit affirmed a district court's decision to remand to state court a civil suit brought by Connecticut against a multinational oil and gas company. Connecticut brought suit under a state law proscribing unfair and deceptive trade practices, alleging that the company engaged in a long-standing campaign to deceive Connecticut consumers of fossil fuels' negative climatological effects. The circuit court held that none of the statutes invoked by the defendant company—the [federal-question statute](#), the [federal-officer removal statute](#), and the [Outer Continental Shelf Lands Act](#)—provided federal subject-matter jurisdiction (*State by Tong v. Exxon Mobil Corp.*).

- ***Firearms:** The First Circuit vacated a criminal defendant’s conviction under [18 U.S.C. § 924\(c\)\(1\)\(B\)\(ii\)](#) for possessing a machine gun in furtherance of a drug trafficking crime and remanding the case for retrial on that count, after concluding jury instructions improperly conveyed that the defendant need not have known the firearm was a machine gun. Splitting from other circuits, the court ruled that the government must prove the defendant had knowledge that the firearm had the characteristics of a machine gun as a necessary element of the offense (*United States v. Pérez-Greaux*).
 - ***Health:** A divided Sixth Circuit panel reversed preliminary injunctions issued against Tennessee and Kentucky laws that restricted the use of surgeries, hormone therapy, and puberty blockers as treatment for gender dysphoria in minors. On the merits, the majority held that the plaintiffs were unlikely to succeed in their arguments that the law violated parents’ constitutional due process rights to control their children’s medical care. The court also held that plaintiffs were unlikely to show that the law violated constitutional equal protection principles. The panel expressed disagreement with other circuits that have applied heightened constitutional scrutiny to transgender-based classifications (*L.W. v. Skrmetti; Doe 1 v. Thornbury*).
 - **Health:** The Ninth Circuit stayed a district court’s preliminary injunction that had halted Idaho from enforcing a law making it a crime for a health care provider to perform an abortion except in a narrow set of circumstances, including to save the life of the mother. The lower court had issued the injunction after deciding the United States was likely to succeed in its claim that aspects of the law were preempted by the [Emergency Medical Treatment and Labor Act \(EMTALA\)](#), which generally requires Medicare-participating hospitals with emergency departments (1) to provide appropriate medical screening to an individual requesting examination or treatment to determine whether an emergency medical condition exists; and (2) if such a condition exists, to provide necessary treatment to stabilize the individual before any transfer to another medical facility can take place. EMTALA provides that it preempts state laws that directly conflict with its requirements. The circuit panel halted implementation of the district court’s injunction after concluding that EMTALA does not require abortions and that even if it did, this requirement would not directly conflict with the state law given its life-of-the-mother exception. The circuit panel also ruled that other factors supported staying the injunction (*United States v. Idaho*).
 - **Labor & Employment:** The Fifth Circuit held that there is no right to a jury trial in a suit brought by affected employees under the [Worker Adjustment and Retraining Notification Act \(WARN Act\)](#), seeking to recover damages based on their employer’s alleged failure to follow the WARN Act’s requirement that it give employees 60-days’ notice before a plant closing or mass layoff (*Fleming v. Bayou Steel BD Holdings II L.L.C.*).
 - **Securities:** In considering the standard used under [18 U.S.C. § 1514A](#) to assess whether a whistleblower had a “reasonable belief” that his employer violated specified securities laws, the Eleventh Circuit held that a whistleblower need not show belief that a specific law listed in § 1514A was violated, but must instead put forth sufficient information to show that a reasonable person in the same position would believe the conduct was generally prohibited under relevant securities laws (*Ronnie v. Office Depot, LLC*).
-

Author Information

Michael John Garcia
Deputy Assistant Director/ALD

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.