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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (October 10, 2023–October 15, 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 granted certiorari in four cases:

- **Administrative Law:** In a case from the First Circuit, the Court agreed to consider whether it should overrule the administrative law doctrine known as *Chevron* deference, established by the Court in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* The Court had granted certiorari on the same question in another case, *Loper Bright Enterprises v. Raimondo*, but Justice Ketanji Brown Jackson is recused from that case. The Court indicated the two cases will be argued in tandem this term (*Relentless, Inc. v. Dep't of Commerce*).
- **Banking:** The Court agreed to review a case from the Second Circuit that raises the question whether the National Bank Act of 1864 (NBA) preempts state escrow interest laws as they apply to federally chartered banks (*Cantero v. Bank of America, N.A.*).
- **Bankruptcy:** The Court agreed to hear a case from the Fourth Circuit concerning the circumstances under which a debtor's insurer is considered a "party in interest" with

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statutory standing under 11 U.S.C. § 1109(b) to object to a Chapter 11 reorganization plan (*Truck Ins. Exch. v. Kaiser Gypsum Co.*).

- **Criminal Law & Procedure:** The Court agreed to hear a case from the Fifth Circuit on the scope of the Court's 2019 ruling in *Nieves v. Bartlett*. In *Nieves*, the Court held that a First Amendment retaliatory arrest claim will not succeed if there was probable cause to make the arrest, unless the claim is supported by objective evidence that police did not arrest similarly situated persons who were not engaged in protected speech. The Court is asked whether this exception can be satisfied only through specific evidence of non-arrests. The Court is also asked whether the *Nieves* probable cause rule applies only when arresting officers make split-second arrest decisions (*Gonzalez v. Trevino*).

The Court also took action on two emergency applications last week:

- **Indian Law:** Chief Justice John Roberts, acting in his Circuit Justice capacity, issued an administrative stay in a case from the D.C. Circuit, stopping a compact between the Seminole Tribe of Florida and the State of Florida from taking effect while the Supreme Court considers whether to grant plaintiff's emergency application for relief. As discussed in an earlier *Congressional Court Watcher*, the D.C. Circuit held that the Secretary of the Interior did not violate the Indian Gaming Regulatory Act, a law that regulates gaming on Indian lands, or other federal laws in allowing the compact to become effective. At issue was the compact's provision for online sports betting, enabling people to gamble outside Indian lands (*W. Flagler Assocs., Ltd. v. Haaland*).
- **Speech:** Justice Samuel Alito also extended an administrative stay, discussed in an earlier *Congressional Court Watcher*, that gives the Court more time to consider an emergency application in a closely watched case about social media platforms (*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.

- **Civil Procedure:** The Ninth Circuit held that a federal statute governing court filing fees for indigent prisoners, 28 U.S.C. § 1915, does not authorize courts to collect filing fees from a prisoner who is ineligible to proceed *in forma pauperis* (i.e., without the prepayment of court filing fees), even if the prisoner is initially permitted to proceed *in forma pauperis* before the ineligibility determination. Section 1915(b) establishes an automatic payment plan for filing fees accrued by prisoners bringing a civil action or appeal *in forma pauperis*. The Ninth Circuit concluded that the court may not collect fees and must refund any fees collected under that plan if an individual is barred from proceeding *in forma pauperis* under Section 1915(g) (*Meyers v. Birdsong*).
- ***Civil Rights:** The Eleventh Circuit reaffirmed an earlier decision holding that Title I of the Americans with Disabilities Act does not permit a former employee to sue for discrimination based on post-employment distribution of fringe benefits. The plaintiff sued her former employer under Title I for terminating the health insurance subsidy she had received when she retired for qualifying disability reasons, but the court concluded that a Title I plaintiff must hold or seek a position with the defendant at the time of the allegedly discriminatory act. This decision reaffirmed the Eleventh Circuit's alignment with the Sixth, Seventh, and Ninth Circuits in a circuit split on the issue with the Second and Third Circuits (*Stanley v. City of Sanford*).

- **Consumer Protection:** A divided Third Circuit affirmed a district court's determination that a collection agency violated the Fair Debt Collection Practices Act by sending misleading and deceptive collection notices to a class of consumers, but the majority disagreed with the lower court's standing analysis and class certification decision. The majority concluded that the lower court erred in finding that the named plaintiff had suffered a cognizable harm under the "informational injury" doctrine, because circuit precedent made the doctrine applicable only when a plaintiff is denied information to which she is legally entitled, which had not happened here. The majority nonetheless held that the named plaintiff had standing because she claimed to have suffered financial harm as a result of reliance on the collection letters. The court of appeals vacated the lower court's order certifying the proposed class and awarding damages, and remanded so the district court could consider the extent to which unnamed class members had also suffered a harm traditionally recognized as providing a basis for standing (*Huber v. Simon's Agency, Inc.*).
- ***Criminal Law & Procedure:** A divided, en banc Eleventh Circuit held that a former civil servant is not an "officer or employee of the United States" under 18 U.S.C. § 1114 and § 1521, splitting with the Fifth Circuit. Section 1521 makes it a crime to file a retaliatory false lien against the property of an "individual described in" Section 1114, which criminalizes the killing of "any officer or employee of the United States" "engaged in" or "on account of" their performance of official duties. The defendant in the case had been convicted of filing false liens against the property of former civil servants in retaliation for a tax dispute. Focusing on the statutory text, context, and structure, the court rejected the government's argument that Sections 1114 and 1521 cover former federal officers and employees so long as the defendant retaliated against the victims "on account of" their prior performance of official actions (*United States v. Pate*).
- **Election Law:** The Tenth Circuit held that provisions of a Wyoming campaign finance law were unconstitutional as applied to the plaintiff advocacy group. The state law generally requires that organizations spending over $1,000 on an electioneering communication advocating for a political candidate's victory or defeat must disclose contributions and expenditures "related to" the electioneering communication, and must disclose donors' names for such contributions over $100. Applying an exacting scrutiny standard, the court concluded that the disclosure regime violated the plaintiff advocacy group's First Amendment rights because the rules were not narrowly tailored to the government's interest in requiring the disclosures. The court also concluded that the disclosure requirement was unconstitutionally vague as applied to the group, because the group did not have an earmarking or other mechanism permitting donors to set aside contributions for specific purposes, and it was therefore unclear how to determine whether a contribution "related to" a particular advertisement (*Wyoming Gun Owners v. Gray*).
- **Environmental Law:** The Second Circuit affirmed the dismissal of New York's challenge to its annual commercial quota allotment under a federal fishery management plan designed to conserve and manage summer flounder off the eastern seaboard. The Magnuson-Stevens Act (MSA) requires fishery management plans to consider 10 national standards that prioritize different objectives. Since 1992, the National Marine Fisheries Service (NMFS) has incorporated annual commercial quotas for 11 states participating in the fishery management plan for the summer flounder fishery, setting limits on how much summer flounder a particular state's fishermen can catch. The court rejected New York's challenge to the 2020 adjustment of the annual quota allotment, after deciding that the

state had not shown that the NMFS's balancing of the 10 national standards in setting the adjustment lacked a rational basis (*New York v. Raimondo*).

- **Firearms:** A divided, en banc Ninth Circuit partially stayed, pending appeal, a district court order that had halted enforcement of California's criminal prohibition on the manufacture, sale, or possession of large-capacity magazines, defined as "any ammunition feeding device with the capacity to accept more than 10 rounds." The majority's summary order concluded that the law likely did not violate the Second Amendment under the framework the Supreme Court established in *New York State Rifle & Pistol Association v. Bruen*. The court also separately requested briefing from the parties on whether the appeal and the motion were properly before the en banc panel in light of a federal statute governing en banc proceedings (*Duncan v. Bonta*).
- **Health:** The Ninth Circuit temporarily halted enforcement of an Idaho abortion law when it vacated a three-judge circuit panel decision and granted rehearing en banc. Idaho's abortion law makes 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 issued its 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. The three-judge circuit panel had 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 (*United States v. Idaho*).
- **Immigration:** In an amended decision, the Second Circuit held that the Board of Immigration Appeals (BIA) must apply certain discretionary factors when an alien seeks to reopen or remand an immigration judge's removal decision pending adjudication of his or her U visa application. The court explained that under BIA precedent, immigration judges deciding whether to continue a removal proceeding in light of a pending U visa application must consider certain factors, including whether the underlying visa petition is prima facie approvable. The court joined other circuits in concluding that those same factors apply when an alien petitioning for a U visa seeks to reopen or remand a removal decision on appeal to the BIA, even if the petitioner had not sought a continuance from the immigration judge to await adjudication of the U visa petition (*Paucar v. Garland*).
- ***Property:** In a circuit split, the Fifth Circuit declined to adopt a rule that a state's actions are not a taking for purposes of the Takings Clause when the state acts pursuant to its police power instead of its eminent domain power. The court instead held more narrowly that the Takings Clause does not require governments to provide compensation for damaged property when such damage is objectively necessary for law enforcement officers to prevent imminent harm to people. The plaintiff sued the defendant city for compensation after law enforcement officers severely damaged her home in responding to an armed fugitive who was holding a child hostage inside. The court concluded that history, tradition, and historical precedent established a necessity exception to the Takings Clause and required dismissal of the plaintiff's claim for compensation (*Baker v. City of McKinney*).

- **Separation of Powers:** The Fifth Circuit affirmed the dismissal of plaintiffs' claims in a case on remand from the Supreme Court. In *Collins v. Yellen*, the Supreme Court held that the Federal Housing Finance Agency's (FHFA's) enabling statute contained an unconstitutional removal restriction on the FHFA Director. The case was remanded to the Fifth Circuit, which in turn remanded the case to the district court to determine whether the unconstitutional removal restriction had in fact harmed the plaintiffs, who are private shareholders of government-sponsored home mortgage companies under the FHFA's conservatorship. On appeal, the court of appeals affirmed the dismissal of the plaintiffs' claim that the unconstitutional removal restriction caused them harm. It concluded that the plaintiffs' claim that the companies would have been returned to private control if not for the removal restriction was too speculative to survive a motion to dismiss. The appeals court also agreed with the lower court that the plaintiffs' newly raised argument that the FHFA's funding structure violates the Appropriations Clause was outside the mandate of the *Collins* remand order, and the appellate panel ruled that the lower court properly dismissed this claim as a result (*Collins v. Treasury*).
- **Tax:** In a per curiam opinion, the Fifth Circuit reversed in part and affirmed in part a district court's dismissal under the Tax Injunction Act (TIA) of property owners' federal and state law challenges to a city ordinance that authorized the collection of taxes on the owners' property. The TIA provides that federal district courts "shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." Although the city ordinance authorized the collection of taxes, the court concluded that the ordinance was a separate legal mandate several steps removed from the actual assessment, levy, and collection of taxes, and therefore the property owners could challenge the ordinance in district court, notwithstanding the TIA. The court further held, however, that the property owners' requests to restrain certain actions of the local taxing authority went beyond challenging the ordinance and were barred by the TIA for directly challenging the state's taxing power (*Harward v. City of Austin*).

Author Information

Michael John Garcia
Deputy Assistant Director/ALD

Bryan L. Adkins
Legislative Attorney

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