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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (November 20–November 26, 2023)

November 27, 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

Last week, the Supreme Court granted certiorari in three cases, two of which have been consolidated for review:

- **Criminal Law & Procedure:** The Court agreed to hear an appeal from the Seventh Circuit on whether the Fifth and Sixth Amendments to the Constitution require a jury trial and proof beyond a reasonable doubt that a defendant's prior convictions were "committed on occasions different from one another" to impose an enhanced sentence under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(1) (*Erlinger v. United States*).
- **Indian Law:** The Court agreed to hear two consolidated appeals from the Ninth and Tenth Circuits to determine whether, under the Indian Self-Determination and Education Assistance Act, the Indian Health Service (IHS) must pay contract support costs not only for IHS-funded activities, but also to support a tribe's expenditure of income collected from third parties such as private insurers, Medicare, and Medicaid (*Becerra v. San Carlos Apache Tribe*; *Becerra v. Northern Arapaho Tribe*).

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LSB11081

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.

- **Criminal Law & Procedure:** The Second Circuit held that a conviction for intentional murder based on a *Pinkerton* theory of liability—under which a defendant may be criminally liable for substantive offenses of co-conspirators in furtherance of the conspiracy—is a categorical crime of violence. The court held that such a prior conviction may support a subsequent conviction for use of a firearm while committing a crime of violence or drug trafficking crime under 18 U.S.C. § 924(c) (*Gomez v. United States*).
- **Criminal Law & Procedure:** A divided Eighth Circuit held that a categorical approach applies to determine if a prior conviction is comparable to or more severe than aggravated sexual abuse or sexual abuse for purposes of sentencing under the Sex Offender Registration and Notification Act (SORNA). The majority reasoned that a categorical approach to the tier analysis determination under 34 U.S.C. § 20911 requires only consideration of the elements of the prior offense, thereby avoiding encroachment on a defendant's Sixth Amendment rights; respecting the benefits of any plea agreement or bargain; and avoiding inefficiency, unfairness, or unreliability that may exist in the factual review of prior offenses (*United States v. Coulson*).
- **Criminal Law & Procedure:** The Third Circuit held that a conviction under 21 U.S.C. § 848(e)(1)(A) (intentional killing in furtherance of a continuing criminal enterprise) is not a "covered offense" under the First Step Act and, therefore, sentences for such convictions are not eligible for sentence reductions under the act (*United States v. Junius*; *United States v. Coach*).
- **Election Law:** A divided Eighth Circuit held that there is no private right of action for plaintiffs to sue for alleged violations of Section 2 of the Voting Rights Act (VRA). Affirming the dismissal of the plaintiffs' complaint, the majority reasoned that the text of the VRA expressly assigns enforcement power to the U.S. Attorney General under 52 U.S.C. § 10308(d), and that neither the text nor structure of the VRA could support recognition of an implied cause of action for private parties. The majority declined to decide whether private parties could rely on other laws to enforce the VRA, including 42 U.S.C. § 1983, which permits private suits against state governments to enforce rights secured by the Constitution or federal statute (*Arkansas St. Conf. NAACP v. Arkansas Bd. of Apportionment*).
- **Election Law:** The Eleventh Circuit reversed a district court order that blocked the State of Georgia from administering state-wide public commissioner elections in their current form. The commissioners each represent one of five districts and are required to live in the district they represent, but they are chosen by statewide elections and carry out statewide authorities. The plaintiffs argued that the system impermissibly diluted the power of Black voters in violation of Section 2 of the VRA, but the court held that the plaintiffs had not offered a satisfactory remedial plan necessary to bring their claim, as required by the Supreme Court's three preconditions in *Thornburg v. Gingles* for assessing at-large voting systems for vote dilution. The court characterized the public commissioners as addressing statewide issues and observed that there was no allegation that race was a motivating factor in the electoral format used to select them. The court held that the plaintiffs' proposed plan—changing Georgia's statewide electoral system

into a single-district system—was unreasonable, as it would require the court to direct Georgia to replace a chosen system of government (i.e., statewide commissioners) with a new system (*Rose v. Secretary of State for the State of Georgia*).

- **Employee Benefits:** Assuming the viability of a claim for a violation of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), 29 U.S.C. §§ 1132(a)(3), 1185a(a)(3)(A)(ii), the Tenth Circuit held that to state a claim, a plaintiff must allege (1) that the relevant health plan is subject to the MHPAEA; (2) a specific treatment limitation on mental health or substance-use disorder benefits covered by the plan; (3) medical or surgical care covered by the plan that is analogous to the mental health or substance-use disorder care for which the plaintiff seeks benefits; and (4) a disparity between the treatment limitation on mental health or substance-use disorder benefits as compared to the limitations the defendants apply to the medical or surgical analog (*E.W. v. Health Net Life Ins. Co.*).
- **Environmental Law:** The Fifth Circuit vacated the Environmental Protection Agency's (EPA's) denial of a group of small refineries' requested exemptions from the Renewable Fuel Standard (RFS) requirements of the Clean Air Act (CAA). The CAA allows small refineries to request an exemption from the RFS's annual obligations "for the reason of disproportionate economic hardship." The Fifth Circuit held that the EPA erred in reading the statute to treat RFS compliance costs as the sole factor to be considered when assessing "disproportionate economic hardship." The court held that the CAA's text contemplates granting exemptions based on a combination of RFS compliance costs and other economic factors The court also ruled that the EPA impermissibly applied a new adjudicative methodology to the petitioners' exemption request after the petitioners had submitted their request in reliance on past agency practice (*Calumet Shreveport Refin., L.L.C. v. EPA*).
- **Environmental Law:** The Ninth Circuit affirmed a district court's finding that a riverbed excavation project violated the Clean Water Act (CWA) by adding riverbed materials to the water that were not previously suspended in the water. The appellee claimed that its river dredge mining activities—which involved sucking water, sediment, and minerals from a river and discharging some of that material back into the river—did not require a National Pollutant Discharge Elimination System (NPDES) permit because the activities did not add pollutants to the river. The court disagreed, finding that the process added material to the water that was otherwise deposited in the riverbed and therefore came under the CWA's scope. Deferring to the EPA's and the U.S. Army Corps of Engineers' interpretation of the statute and implementing regulations, the court further held that the processed material at issue was a pollutant, not dredged or fill material, thus requiring acquisition of an NPDES permit before the discharge (*Idaho Conservation League v. Poe*).
- **Firearms:** A divided Fourth Circuit held that Maryland's handgun-licensure law, which requires prospective owners to first acquire a qualification license that may take up to 30 days to be approved, violated the Second Amendment under the Supreme Court's *Bruen* test. The majority decided that Maryland failed to identify a "historical analogue" for the requirement. The majority reasoned that the law had the effect of prohibiting all people from acquiring handguns until they had proved they were not dangerous, which imposed a different burden than historical analogues identifying categories of dangerous individuals to be disarmed (*Maryland Shall Issue, Inc. v. Moore*).
- **Intellectual Property:** The Federal Circuit held that the Patent Trial and Appeal Board's failure to issue a final written decision in a post-grant review of a patent within the one-

year deadline under 35 U.S.C. § 326(a)(11) and 37 C.F.R. § 42.200(c) did not divest the Board of jurisdiction over the proceeding. The court reasoned that, in the absence of any contrary indication in the statute or legislative history, the Board retained authority to issue a final written decision notwithstanding a missed statutory deadline (*Purdue Pharma L.P. v. Collegium Pharma., Inc.*).

- **Torts:** The Second Circuit held that the Federal Aviation Act (FAAct) did not preempt state law tort claims arising from a fatal military helicopter crash because the FAAct exempted military aircraft from its standards. The court nevertheless remanded the case to the district court, explaining that a fact-intensive inquiry was required to determine if the claims were barred by the military contractor defense (*Jones v. Goodrich Pump & Engine Control Sys., Inc.*).

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