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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (January 1–January 7, 2024)

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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 acted on three emergency applications last week:

- **Election Law:** The Supreme Court agreed to review the Colorado Supreme Court's decision that former President Donald Trump is constitutionally disqualified from holding future office under Section 3 of the Fourteenth Amendment. The Colorado court held that Mr. Trump had "engage[d] in an insurrection" that disqualified him under Section 3 from holding any future U.S. office when he engaged in actions the state court found were intended to prevent Congress from certifying Joe Biden as the winner of the 2020 presidential election. The state court initially directed the former President to be excluded from the state's 2024 presidential primary ballot. After the Supreme Court agreed to review the case, the Colorado Secretary of State announced that Mr. Trump would be listed on the primary ballot but reportedly said the Court's decision may determine whether votes cast for him are ultimately counted. In reviewing the state court's decision, the Supreme Court may consider, among other things, whether Section 3 is judicially

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enforceable without implementing legislation from Congress; whether a judicial determination of the former President's eligibility for office is precluded by the political question doctrine; whether Section 3 applies to the Office of the President; and the types of activities that constitute an "insurrection" under Section 3. The Court has scheduled oral arguments for February 8, 2024 (*Trump v. Anderson*).

- **Health:** The Supreme Court agreed to consider two consolidated cases on whether the Emergency Medical Treatment and Labor Act (EMTALA) preempts aspects of an Idaho law that makes it a crime for a health care provider to perform an abortion except in a narrow set of circumstances. EMTALA generally requires Medicare-participating hospitals with emergency departments to provide (1) appropriate medical screening to an individual requesting examination or treatment to determine whether an emergency medical condition exists; and, if such a condition exists, (2) necessary treatment to stabilize the individual before any transfer to another medical facility can take place. Following the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, the Department of Health and Human Services (HHS) issued guidance providing that, under EMTALA, a physician "must" perform an abortion on a patient if the abortion constitutes the stabilizing treatment necessary to resolve an emergency medical condition. The Court is asked whether EMTALA requires covered entities to perform abortions in circumstances criminalized under the Idaho law. The Court's order granting certiorari allows the Idaho law to be enforced pending a final ruling, staying a district court's preliminary injunction that blocked enforcement against EMTALA-covered entities who perform abortions in cases of medical emergency. The Court announced that arguments will be held later this term (*Idaho v. United States*; *Moyle v. United States*).

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:** The Sixth Circuit held that a U.S. Trustee's motion to dismiss a bankruptcy petition is not a "civil action" under the Equal Access to Justice Act (EAJA) and affirmed the denial of an EAJA request. A U.S. Trustee, believing that an individual filing for bankruptcy was abusing the system, intervened on behalf of the United States in the otherwise uncontested bankruptcy proceeding by filing a motion to dismiss the bankruptcy petition. Upon reviewing additional evidence, the U.S. Trustee withdrew the motion and the bankruptcy court subsequently discharged the petitioner's debt. After prevailing over the U.S. Trustee's motion to dismiss, the petitioner filed a request to recover costs and fees under EAJA. EAJA authorizes a court to award fees and costs to the winning party that the party incurred in any "civil action brought by or against the United States." The circuit court held that (1) a motion to dismiss a bankruptcy petition is not a "civil action"; and (2) even if the court found a motion to dismiss a bankruptcy petition to be "a civil action," Congress did not unambiguously waive sovereign immunity to allow for bankruptcy petitioners to recover fees under EAJA for successfully defending against such a motion (*Teter v. Baumgart*).
- **Criminal Law & Procedure:** The D.C. Circuit affirmed a defendant's convictions under 18 U.S.C. § 1752(a)(2) and 40 U.S.C. § 5104(e)(2)(D) for disorderly or disruptive conduct in connection with his unauthorized presence in the U.S. Capitol on January 6, 2021. The circuit court held that prohibited conduct under the statutes is context-specific

but covers acts that endanger public safety, create a public disturbance, or interfere with usual proceedings. Although the trial evidence showed the defendant had not engaged in violent or destructive behavior while in the Capitol, the circuit court affirmed the defendant's convictions after concluding the jury could have reasonably found that his unauthorized presence as part of an unruly mob contributed to the disruption of Congress's electoral certification and jeopardized public safety (*United States v. Alford*).

- **Energy:** The Ninth Circuit denied a petition for a rehearing en banc and issued an amended opinion holding that a Berkeley, CA, municipal building ordinance that prohibited natural gas piping into new buildings—thus rendering gas appliances unusable—was preempted by the Energy Policy and Conservation Act (EPCA). EPCA states that "no State regulation concerning the energy efficiency, energy use, or water use of [certain covered consumer products] shall be effective with respect to such product," unless the regulation meets a listed exception. The divided circuit panel rejected the city's arguments that EPCA's preemption clause only covers regulations that impose standards directly on gas appliances themselves. The court held that, by effectively preventing appliances from using natural gas, the building code's prohibition against installing gas piping in newly constructed buildings conflicted with EPCA's preemption provision. The amended opinion clarified that the holding only addresses regulations relating to natural gas usage where the gas is otherwise already available at the premises (*California Rest. Ass'n v. City of Berkeley*).
- ***Food & Drug:** Recognizing a split from other circuits, a divided en banc Fifth Circuit held that the Food and Drug Administration (FDA) acted arbitrarily and capriciously when it denied electronic cigarette manufacturers' premarket tobacco applications (PMTAs) to sell flavored tobacco products. The Fifth Circuit held that (1) FDA did not provide adequate notice of how the PMTAs would be evaluated; (2) FDA failed to acknowledge and explain its change in position from earlier agency guidance when it denied the PMTAs; (3) FDA failed to consider the applicants' good-faith reliance on the agency's prior guidance; and (4) FDA relied on post hoc rationalizations in defending its denial of the PMTAs. The Fifth Circuit joins the Eleventh Circuit, which reviewed similar PMTA denials, in holding FDA's actions to be arbitrary and capricious and splits with the Second, Third, Fourth, Seventh, and Ninth Circuits, which previously upheld FDA's actions in denying other similar electronic cigarette PMTAs (*Wages & White Lion Invs., LLC v. FDA*).
- **Health:** The Fifth Circuit upheld a permanent injunction preventing HHS from enforcing EMTALA pursuant to agency guidance interpreting the act to require a covered entity to perform an abortion on a patient when the abortion constitutes stabilizing treatment necessary to resolve an emergency medical condition. The circuit court held that HHS exceeded its statutory authority because EMTALA does not authorize HHS to require physicians to perform specific medical procedures, such as an abortion. In upholding the injunction, the Fifth Circuit also concluded that the guidance should have been promulgated through notice and comment procedures, as required by 42 U.S.C. § 1395hh(a)(2) of the Medicare Act, and that EMTALA does not preempt a Texas law that prohibits abortion except in narrow circumstances. The permanent injunction blocks HHS from enforcing EMTALA in accordance with the guidance in Texas or against members of the plaintiff organizations. The Fifth Circuit issued the decisions days before the Supreme Court agreed to consider a different case, discussed above, on whether EMTALA requires covered entities to provide abortions in certain circumstances (*Texas v. Becerra*).

- **Labor & Employment:** The Second Circuit held that a New York law protecting workers at large fast-food chains from arbitrary termination or reduction in hours was not preempted by the National Labor Relations Act (NLRA) and did not violate the Dormant Commerce Clause. The court held that the law was not preempted by the NLRA's implicit bar on state interference in the collective bargaining process because the state law's substantive labor standards applied to covered employers regardless of whether their workforce was unionized. The court also held that the state law did not violate the dormant Commerce Clause because it did not facially discriminate against interstate commerce, even if all or nearly all covered entities were headquartered out of state, and any burdens imposed on interstate commerce were incidental and not clearly excessive in relation to the law's local benefits (*Rest. L. Ctr. v. City of New York*).
- **Labor & Employment:** The Sixth Circuit held that an employee of a construction services company was not an employee of a common carrier under the Federal Employers' Liability Act (FELA), even though the company and a common-carrier railroad were both subsidiaries of a parent entity. FELA provides the exclusive remedy for employees of a railroad common carrier to recover damages for injuries occurring during their employment. Although the court indicated that it might consider a parent company liable under FELA if there was evidence that the corporate structure was set up to evade application of FELA, the court rejected the worker's argument that the parent corporation and all of its subsidiaries represent a "unitary railroad system" and that the plaintiff was therefore an employee of a common carrier (*Mattingly v. R.J. Corman R.R. Grp., LLC*).
- **Public Benefits:** The Ninth Circuit joined the Eleventh Circuit in upholding a 2017 Social Security Administration regulation that abrogated the treating-physician rule that had been used by several circuits. The earlier, judicially created treating-physician rule directed administrative law judges (ALJs) adjudicating disability claims under the Social Security Act (SSA) to defer to the medical opinion of claimants' treating physicians. The 2017 regulation instead directs ALJs to accord the treating physician's opinion no deference and weigh medical opinions based on their persuasiveness. The Ninth Circuit held that the 2017 rule was a valid exercise of the Social Security Commissioner's authority under the SSA and complied with administrative rulemaking requirements (*Cross v. O'Malley*).
- ***Separation of Powers:** The Eleventh Circuit held, in reviewing a denial of Social Security disability insurance benefits, that there is no Appointments Clause violation when a decision made by an unconstitutionally appointed ALJ is vacated on the merits and remanded to the same adjudicator, who has since been properly appointed. Although the Eleventh Circuit acknowledged that a different ALJ would have to hear the claim on remand if the matter were vacated and remanded due to an Appointments Clause violation, the court held that the same ALJ is permitted to re-adjudicate the claim if the ALJ's initial decision had been vacated and remanded on the merits of the claim. The Eleventh Circuit acknowledged a split with the Fourth and Ninth Circuits, which had previously held that a different ALJ must review the claim on remand to avoid an Appointments Clause violation (*Raper v. Comm'r of Soc. Sec.*).

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