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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (January 8–January 15, 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

Last week, the Supreme Court agreed to review five cases:

- **Arbitration:** The Court granted certiorari in a case from the Ninth Circuit to decide whether a district court has discretion to dismiss a suit after determining that the claims it raises are arbitrable, or whether Section 3 of the Federal Arbitration Act requires the court to stay rather than dismiss the case while arbitration is pending (*Smith v. Spizzirri*).
- **Civil Rights:** The Court agreed to hear a case from the Alabama Supreme Court on whether plaintiffs must first exhaust their state administrative remedies before bringing suit in state court under 42 U.S.C. § 1983, which creates a federal cause of action for deprivation of civil rights by state actors acting under the color of law (*Williams v. Washington*).
- **Housing:** The Court agreed to hear a case from the Ninth Circuit on whether a city ordinance prohibiting camping on public property violates the Eighth Amendment's

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prohibition on cruel and unusual punishment if enforced against homeless persons who lack access to temporary shelter (*City of Grants Pass v. Johnson*).

- **Immigration:** The Court granted certiorari in a case from the Ninth Circuit to consider whether the alleged burden that a visa denial has upon the constitutional right to marriage possessed by the applicant's U.S. citizen-spouse justifies an exception to the usual rule prohibiting judicial review of visa decisions (*Dep't of State v. Muñoz*).
- **Labor & Employment:** In a case from the Sixth Circuit, the Court is asked the appropriate test for deciding whether to grant requests for preliminary injunctive relief under Section 10(j) of the National Labor Relations Act. Section 10(j) permits a district court to grant a National Labor Relation Board request for preliminary injunctive relief pending the Board's adjudication of an unfair labor practice complaint if the court finds the relief "just and proper" (*Starbucks Corp. v. McKinney*).

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 Seventh Circuit upheld a defendant's conviction under 18 U.S.C. § 1014, which prohibits individuals from making "false statements" to influence a financial institution with respect to a loan, when the defendant's statements were true but misleading. When the Federal Deposit Insurance Corporation (FDIC) sought to collect the debt owed by the defendant to a defunct lending institution, the defendant contested the total amount the FDIC stated that he *owed* and repeatedly declared that he had "*borrowed* $110,000." Although it was technically true that the defendant borrowed $110,000 from the lender on one occasion, he failed to mention that he owed the lending institution over twice that amount because of additional loans he had taken. Applying circuit precedent, the circuit panel held, in upholding the conviction, that Section 1014's prohibition on false statements includes misleading representations. The panel acknowledged a split with the Sixth Circuit, which has held that Section 1014 does not criminalize misleading statements (*United States v. Thompson*).

- ***Criminal Law & Procedure:** A divided Ninth Circuit affirmed a district court's *sua sponte* dismissal, pursuant to the Supreme Court's decision in *Heck v. Humphrey*, of a state prisoner's suit under 42 U.S.C. § 1983 against prison officials for alleged due process violations arising in a disciplinary hearing. Under *Heck*, a district court must dismiss a state prisoner's suit seeking damages under Section 1983 if a judgment in the prisoner's favor would necessarily imply the invalidity of the prisoner's conviction or sentence, unless the prisoner had successfully challenged the sentence already in habeas proceedings. Here, the prisoner sought expungement of his disciplinary convictions as well as damages for the sanctions imposed by the prison official other than the revocation of earned-time credit; he sought no relief for this last sanction. Disagreeing with the Second Circuit's decision in a similar case, the Ninth Circuit majority held that the prisoner's claim was barred by *Heck* despite his decision not to directly challenge the imposition of one of the disciplinary sanctions. The majority reasoned that the prisoner's request for expungement of his disciplinary convictions would necessarily invalidate all the underlying sanctions, including the earned-time credit sanction that lengthened his sentence, and therefore the case fell under *Heck's* scope. Because the prisoner had not brought a successful habeas challenge first, the court held that it must dismiss the suit on its own (*Hebrard v. Nofziger*).

- **Employee Benefits:** The Ninth Circuit held that under the Employee Retirement Income Security Act of 1974 (ERISA), health care providers may bring derivative suits for nonpayment of benefits against insurers on behalf of their patients when there is a valid assignment of rights to the provider. Although health care providers cannot directly sue an insurer under ERISA because the statute only empowers "participants, beneficiaries, or fiduciaries" to file such a claim, the court held that ERISA does not forbid a patient from assigning to their provider the right to file a claim on the patient's behalf (*S. Coast Specialty Surgery Ctr., Inc. v. Blue Cross of California*).
- **Energy:** The Fifth Circuit held that the Department of Energy (DOE) acted arbitrarily and capriciously when it issued a 2022 rule (Repeal Rule) under the Energy Policy and Conservation Act of 1975 (EPCA) that rescinded 2020 rules that exempted certain dishwashers and washing machines from existing energy and water use restrictions. The Fifth Circuit held that DOE did not adequately consider the potential negative consequences of repealing the 2020 rules, including the possibility that reducing access to better cleaning but less energy-efficient appliances would cause consumers to increase overall energy and water use by resorting to handwashing or running multiple cycles of more energy-efficient but lower-performing dishwashers and washing machines. The court also held the DOE did not appropriately consider the Repeal Rule's impact on the availability of desired appliance "performance characteristics," as required by EPCA. The court held that under Supreme Court precedent, the DOE could not rescind the 2020 rules solely because it believed they were unlawful; the agency also needed to consider alternatives that would comport with EPCA besides the complete rescision of the rules. The court remanded the rule back to the agency for further consideration (*Louisiana v. U.S. Dep't of Energy*).
- **Environmental Law:** A divided Fourth Circuit stayed the application of the Environmental Protection Agency's (EPA's) final rule that found that West Virginia's State Implementation Plan to meet EPA's air quality standards for emissions of ozone-forming gases was inconsistent with Clean Air Act requirements. In staying the action pending appeal at the Fourth Circuit, the panel concluded that (1) West Virginia would be irreparably harmed by having to expend significant resources to comply with the final rule; (2) the stay would not substantially injure the EPA because previously approved EPA standards would remain in place pending the result of the appeal; (3) although the public has an interest in reduced ozone emissions, the public also has a competing interest in efficient energy production and the stay will be short in duration; and (4) both parties provided plausible grounds in support of their positions on the merits (*West Virginia v. EPA*).
- ***Environmental Law:** The Eleventh Circuit held that the D.C. Circuit was the appropriate venue for a small refinery's challenge to the EPA's denial of its requested exemption from the Renewable Fuel Standard (RFS) requirements of the Clean Air Act (CAA). The CAA's judicial review provision, 42 U.S.C. § 7607(b)(1), makes the D.C. Circuit the appropriate venue for challenges to (1) "nationally applicable" final actions by the EPA under the CAA and (2) "locally or regionally applicable" final actions "based on a determination of nationwide scope or effect" when the EPA publishes notice of that determination. The Eleventh Circuit held that the denial of the refinery's requested exemption was part of a nationally applicable final action by the EPA, resulting from the EPA's reinterpretation of the governing statute and new analytical approach to assessing eligibility for exemption based on disproportionate economic hardship from compliance with the RFS. Even if the denial of the exemption request was a "locally or regionally applicable" final action, the court held that the D.C. Circuit was the appropriate venue

because the EPA published its findings that the exemption denial was based on a determination of nationwide effect. The panel observed that four other circuits agreed that the D.C. Circuit was the appropriate venue in similar cases, with only the Fifth Circuit deciding otherwise (*Hunt Ref. Co. v. EPA*).

- **Financial Regulation:** The Fifth Circuit vacated a civil penalty against a broker for violating a Commodity Futures Trading Commission (CFTC) rule that prohibits an introducing broker from "tak[ing] . . . the other side of any order" of another person if the broker learned of the order through his or her relationship with that person. Although CFTC has enforced this rule against brokers that have a direct financial interest in a futures trade, in this case, for the first time nearly four decades after the rule was promulgated, the CFTC brought a civil suit against an introducing broker who did not have a direct financial interest in the transaction because he was trading energy futures on behalf of another individual. The circuit panel vacated the judgment because it held that the CFTC did not provide the broker with fair notice that the CFTC interpreted the rule to prohibit such trades where a broker had no personal financial interest in the transaction (*Commodity Futures Trading Comm'n v. EOX Holdings, LLC*).
- **Intellectual Property:** The Ninth Circuit directed a district court to dismiss a putative class-action suit asserting California state-law implied-in-law contract, unjust enrichment, and trespass claims against Google based on how class-action members' websites were displayed on a Google mobile app. In a matter of first impression, the court ruled that plaintiffs' implied-in-law contract and unjust enrichment claims were preempted by federal copyright law. The circuit court held that commercial websites may qualify for copyright protection, even though they are not enumerated as copyrightable "works of authorship" under Section 102(a) of the Copyright Act. Because the essence of the plaintiffs' contract and unjust enrichment claims relied on (1) the alleged display or reproduction of copyrightable works and/or (2) the creation of derivative works by Google, the claims implicated the exclusive rights that would belong to plaintiffs as copyright holders and were therefore preempted by federal copyright law. With regard to the trespass claim, the circuit panel decided that plaintiffs lacked a cognizable property interest in the copies of their websites that appeared on users' screens sufficient to support a trespass to chattels (i.e., personal property) claim against Google (*Best Carpet Values, Inc. v. Google, LLC*).
- **Labor & Employment:** A divided D.C. Circuit panel granted the National Labor Relations Board's (NLRB's) request to enforce an order directing that T-Mobile dissolve a company-created group, "T-Voice," which consisted of company-selected employees and was designed to provide a vehicle for employee feedback to management. The NLRB concluded that T-Voice was a "labor organization" under the National Labor Relations Act and that T-Mobile's control over it constituted an unfair labor practice. The D.C. Circuit held that substantial evidence supported the NLRB's conclusion because there was a pattern or practice of bilateral dealing where T-Voice representatives offered proposals on behalf of the group relating to conditions of employment, and these proposals received real or apparent consideration by management (*T-Mobile USA, Inc. v. NLRB*).
- **Labor & Employment:** The Third Circuit held that former members of a state public employee union could not immediately halt their dues-paying obligations when their union membership agreement only allowed them to revoke their dues-paying commitments, regardless of future membership status, during a specified period each year. Because the plaintiffs agreed to these dues-paying obligations when they joined the union, the court distinguished the case from the Supreme Court's decision in *Janus v.*

American Federation of State, County, and Municipal Employees, Council 31, which held that the First Amendment barred the compelled payment of union dues by public employees who had not elected to become union members. Joining other circuits, the Third Circuit held that contract law, not the First Amendment, governs dues-paying claims arising from a union membership agreement voluntarily entered into by a public-sector employee (*Barlow v. Serv. Emps. Int'l Union Loc. 668*).

- **Sovereign Immunity:** A divided Eighth Circuit allowed a suit to proceed that had been brought by Missouri against the People's Republic of China for allegedly hoarding personal protective equipment (PPE) at the outset of the COVID-19 pandemic. While the majority held that several COVID-19-related claims brought by the state against China were barred by the Foreign Sovereign Immunities Act (FSIA), the panel held that the state's PPE hoarding claim could proceed under FSIA's commercial activity exception. That exception waives a foreign government's sovereign immunity for "an act outside the territory of the United States in connection with a commercial activity of the foreign state …[that] causes a direct effect in the United States." The majority held the exception applied here because (1) China engaged in commercial activity when it bought much of the world's available PPE, (2) China acted more like a "private player" in the market than a "sovereign" when purchasing and selling PPE, and (3) China's anticompetitive actions directly affected Missouri health care providers, who had to pay higher prices for PPE or otherwise deal with PPE shortages in ways that the complaint alleges made it difficult to safely treat COVID-19 patients (*Missouri v. People's Republic of China*).

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