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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (January 22–January 28, 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 granted certiorari in one case:

- **Criminal Law & Procedure**: The Court agreed to review a case from the Oklahoma Court of Criminal Appeals denying a death-row inmate's fifth application for post-conviction relief, which alleged that prosecutorial misconduct led to his wrongful conviction for a 1997 murder of an Oklahoma City motel owner (*Glossip v. Oklahoma*).

The Supreme Court also granted one application:

- **Immigration:** The Court vacated, by a 5-4 vote, an injunction pending appeal entered by the Fifth Circuit barring federal personnel from damaging, destroying, or otherwise interfering with a concertina wire fence constructed by Texas in the Eagle Pass area of the U.S.-Mexico border (*Dep. of Homeland Sec. v. Texas*).

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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.

- **Administrative Law:** The Fifth Circuit held that 5 U.S.C. § 3346(a) of the Federal Vacancies Reform Act of 1998 (FVRA) establishes two independent time periods during which an acting officer can temporarily fill a vacancy that otherwise must be appointed by the President and confirmed by the Senate under 5 U.S.C. § 3345. The court held that Section 3346(a)(1) permits an acting officer to serve a period of 210 days following the occurrence of the vacancy, while Section 3346(a)(2) permits an acting officer to serve while a first or second nomination is pending in the Senate. The panel agreed with decisions of the Fourth and Eighth Circuits in holding that the statutory text established the independence of these time periods so that service under one subsection did not exclude someone from serving under the other. The court noted that its textual interpretation aligned with the statutory purpose of incentivizing the President to act promptly in nominating a replacement, while ensuring that public work continues while a nomination is pending (*Seago v. O'Malley*).
- **Bankruptcy:** The Fifth Circuit, in a matter of first impression, joined the Eighth and Ninth Circuits in holding that preference actions under 11 U.S.C. § 547 to void certain transfers of a debtor's property in Chapter 11 bankruptcy are property of the bankruptcy estate that may be sold. Purchasers of preference claims have standing to pursue those claims of avoidance and need not be representatives of the estate to do so. The court of appeals reasoned that allowing the sale of preference actions allows bankruptcy courts more flexibility in distributing assets, maximizes the value of the bankruptcy estate, and allows for more equitable distribution of assets (*In re South Coast Supply Co.*).
- **Civil Procedure:** The Ninth Circuit held that the tolling provision of the federal supplemental jurisdiction statute, 28 U.S.C. § 1367(d), does not toll the statute of limitations for federal-law claims filed in the same action as supplemental state-law claims when those state-law claims are voluntarily dismissed or when the federal claims are dismissed for improper joinder. The court determined that tolling is available under Section 1367(d) only when the district court affirmatively dismisses the supplemental claims and any federal law claims are voluntarily dismissed. The court reasoned that voluntary dismissal of an entire action generally does not toll a statute of limitations and there was no clear indication that Congress intended to disturb that principle (*Holt v. County of Orange*).
- **Fair Housing Act (FHA):** The Fourth Circuit held that renting to an undocumented person, without more, does not constitute harboring in violation of 8 U.S.C. § 1324(a)(1)(A)(iii) and that a mobile home park could not therefore rely on the risk of prosecution under that statute to establish a business necessity defense to a housing discrimination claim. Tenants alleged that the mobile home park's policy, which required all adult tenants to provide proof of their legal status in the United States, constituted unlawful housing discrimination under the FHA. The district court held that the park owner rebutted the tenants' FHA claim because the policy served a legitimate business interest by avoiding criminal liability for harboring undocumented immigrants. The Fourth Circuit reversed, holding that the park owner's risk of prosecution based on a correct understanding of 8 U.S.C. § 1324(a)(1)(A)(iii) was too attenuated to cross the threshold of a plausible concern. Thus, the park's policy did not serve a legitimate

business interest and was not a valid defense (*Reyes v. Waples Mobile Home Park Ltd. P'ship*).

- **Firearms:** The First Circuit held that the Mexican government's lawsuit against several U.S. gun manufacturers and a gun distributor, alleging that they deliberately facilitate gun trafficking in Mexico by designing and marketing military-style weapons that appeal to drug cartels, plausibly alleged claims that are statutorily exempt from the Protection of Lawful Commerce in Arms Act (PLCAA). The PLCAA generally shields U.S. gun manufacturers from civil lawsuits for the criminal misuse of their products, but this immunity does not apply if the defendant knowingly violated a federal or state statute in the sale or marketing of its products, and the violation was a proximate cause of the harm for which relief is sought. The First Circuit held that Mexico's complaint plausibly alleges that the defendants aided and abetted the trafficking of firearms into Mexico in knowing violation of state and federal laws, and that this trafficking proximately caused significant costs to the Mexican government in responding to violent drug cartels armed with defendants' firearms. The court of appeals reversed the district court's conclusion that the PLCAA barred Mexico's tort claims and remanded for further proceedings (*Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.)*.
- **First Amendment (Speech):** The Fourth Circuit held that a county ordinance requiring gun dealers to distribute literature relating to firearms and suicide prevention did not violate the First Amendment. The court determined that distribution of the literature was a compelled disclosure connected to a commercial transaction, and therefore it is subject to the test set forth in *Zauderer v. Office of Disciplinary Counsel*. The court held that, under *Zauderer*, the county could compel distribution because the literature was factual and uncontroversial—it did not claim firearms cause suicide—and because the literature reasonably related to suicide prevention without unduly burdening gun dealers (*Maryland Shall Issue, Inc. v. Anne Arundel Cty.*).
- **Immigration:** The First Circuit granted a petition to review the denial of an application for asylum because the petitioner had suffered persecution on account of his family status. The court acknowledged that the petitioner's persecution by cattle thieves seeking repayment of a family debt was not motivated by animus toward petitioner's family or any other protected group. Citing 8 U.S.C. §§ 1158(b)(1)(A) and 1101(a)(42)(A), however, the court concluded that animus toward a particular group is not required for an applicant to be eligible for asylum. An applicant need only show persecution "on account of" a protected status, such as family membership (*Pineda-Maldonado v. Garland*).
- **Immigration:** The Ninth Circuit affirmed a conviction for illegal reentry in violation of 8 U.S.C. § 1326, holding that an individual who surreptitiously crosses the border and who never lawfully applies for admission can still be inadmissible under 8 U.S.C. § 1182(a)(7), which bars entry to one who lacks a valid entry document "at the time of application for admission." The court explained that 8 U.S.C. § 1225(b)(1)(A)(iii) allows the government to treat an individual crossing the border illegally, such as the defendant in the case, as the functional equivalent of "an applicant for admission coming or attempting to come into the United States at a port-of-entry" for the purposes of determining their admissibility (*United States v. Gambino-Ruiz*).
- **Immigration:** The Eleventh Circuit held that a petitioner lacked standing to challenge a since-repealed statute regarding derivative citizenship based on an allegedly unconstitutional sex classification. Prior to the Child Citizenship Act of 2000, 8 U.S.C. § 1432 conferred citizenship to certain children of later-naturalized mothers who were born out of the United States, born out of wedlock, and for whom paternity was not

established by legitimation. The court held that the petitioner, the out-of-wedlock child of a naturalized father, lacked standing to challenge the sex classification in the statute because he would not have become a citizen under a sex-neutral version of the statute. The court determined that a sex-neutral version would require that the paternity or maternity of the other parent of a child not be established, and the petitioner's maternity was established (*Lodge v. U.S. Att'y Gen.*).

- **Labor & Employment:** The Eleventh Circuit held that a nanny whose weekly work consisted of one 23-hour shift followed by four 14-hour overnight shifts, and who left her employer's house at the end of each shift, did not "reside[] in [the] household" and therefore was not exempt from the Fair Labor Standards Act's overtime provisions under 29 U.S.C. § 213(b)(21). Relying on the ordinary meaning of "resides," the court explained that an employee who is on call at all times while at her employer's household and who maintains a separate residence where she goes when not on shift does not reside at the employer's household—even if she spends part of her time at that household asleep (*Blanco v. Samuel*).
- **Labor & Employment:** The Federal Circuit held that the standard for determining if an individual is an employee under the Fair Labor Standards Act (FLSA) is the same for federal and non-federal employees alike, and is governed by the definitional provisions of the FLSA as traditionally interpreted by the courts, sometimes referred to as the "economic realities" or "economic reality" test. The Federal Circuit held that the U.S. Court of Federal Claims erred when it held that the FLSA does not cover a person asserting coverage as a federal employee unless a congressional authorization outside the FLSA creates an employment relationship with the federal government (*Lambro v. United States*).
- **Telecommunications:** The Fourth Circuit held that 47 U.S.C. § 227(b)(1)(C), part of the Telephone Consumer Protection Act of 1991 (TCPA), prohibits sending unsolicited advertisements to traditional stand-alone fax machines but not to online cloud-based fax services that have no capacity to print or otherwise transcribe text or images onto paper and that do not receive electronic signals over regular telephone lines. Where putative class members sought statutory damages under the TCPA for an unsolicited advertisement sent to a "telephone facsimile machine," the court concluded that class membership was limited to those with traditional stand-alone fax machines. Given that those individuals could not be readily ascertained, the court of appeals affirmed the district court's denial of class certification (*Career Counseling, Inc. v. AmeriFactors Fin. Group*).
- **Torts:** A divided Sixth Circuit held that two city police officers were not immune from civil liability for injuries resulting from a high-speed chase because their participation in the joint federal task force that executed the chase did not qualify them as federal employees under the Federal Tort Claims Act and Westfall Act. The court, adopting the Supreme Court's standard from *Logue v. United States*, determined that the federal government did not "control the detailed physical performance" of the officers' task force duties. As a result, the officers were not "acting on behalf of a federal agency in an official capacity" and therefore were not federal employees for the purposes of 28 U.S.C. § 2671 and not immune from civil liability under 28 U.S.C. § 2679 (*Laible v. Lanter*).

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