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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (February 12–February 19, 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 did not issue any opinions or agree to hear any new cases last week. On February 16, 2024, Justice Samuel Alito issued an administrative stay to give the Court time to consider an emergency application to halt the Boy Scouts' bankruptcy plan. The plan establishes a trust settlement for victims of sexual abuse by Scout leaders and would preclude related claims against nonbankrupt, affiliated entities who contributed to the trust settlement (*Lujan Claimants v. Boy Scouts of Am.*). This term in *Harrington v. Purdue Pharma, L.P.*, the Court is considering a similar issue involving a bankruptcy settlement by Purdue Pharma related to its introduction of the opioid OxyContin into the pharmaceutical market.

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.

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- **Arbitration:** The Ninth Circuit held that parties to an arbitration agreement clearly and unmistakably delegated the question of arbitrability to an arbitrator by a provision broadly incorporating the commercial arbitration rules produced by JAMS. While not specifically referenced by the underlying arbitration agreement, JAMS Rule 11(b) requires the question of arbitrability to be determined by the arbitrator (*Patrick v. Running Warehouse, LLC*).
- **Banking:** The Fourth Circuit held that a plaintiff could bring suit under the Electronic Fund Transfer Act (EFTA) against a bank that dispersed pandemic unemployment assistance through prepaid debit cards. The plaintiff alleged he was entitled to damages because the bank's conduct and procedures for the use of his card violated the EFTA. The court held that the plaintiff's suit could proceed because, under EFTA-implementing regulations, the prepaid debit card was a covered "government benefit account," which is defined as "an account established by a government agency for distributing government benefits to a consumer electronically . . . ." (*Mohamed v. Bank of Am. N.A.*).
- ***Civil Procedure:** A divided Third Circuit held that a plaintiff did not satisfy constitutional standing requirements to bring claims against a debt-collection company under the Fair Debt Collection Practices Act for unauthorized third-party communications. The decision involved application of *TransUnion LLC v. Ramirez*, where the Supreme Court held that when a federal statute provides a plaintiff with a cause of action based on a violation of federal law, a plaintiff establishes standing by identifying a "concrete harm" that has a close relationship to a traditionally recognized basis for a tort brought in American courts. Here, the panel majority observed that the circuits disagree on this standard's application. Some favor an element-based approach, in which a plaintiff's alleged harm must not lack any element essential for liability under the comparator tort, while other circuits consider whether the harm alleged by the plaintiff is the same kind of harm caused by the comparator tort. The panel majority endorsed the latter approach and found that the plaintiff failed to show that the harm caused by the defendant sharing her personal information with a mailing vendor had a close relationship to a traditionally recognized harm (*Barclift v. Keystone Credit Services, LLC*).
- **Civil Rights:** In affirming a lower court judgment for the defendant in an employment discrimination suit brought under the Americans with Disabilities Act (ADA), a divided Eleventh Circuit held that a viable claim requires that a plaintiff's disability be a "but-for" cause of the alleged discriminatory action. The majority agreed with other circuits that amendments made to the ADA in 2008—which provide that employers may not discriminate against workers "on the basis of disability," where the provision formerly barred discrimination "because of" disability—did not alter long-standing judicial recognition of the ADA imposing a "but-for" causation standard (*Akridge v. Alfa Ins. Co.*).
- **Energy:** On remand from the Supreme Court, the D.C. Circuit confirmed a prior holding that district courts are stripped of jurisdiction to review a Federal Energy Regulatory Commission order once the record in a petition challenging that order is filed in a court of appeals. In doing so, the court examined the text of the Natural Gas Act (15 U.S.C. § 717r(b)), which states "upon the filing of the record with" the court of appeals, that court's jurisdiction over the challenged order "shall be exclusive." The Supreme Court had vacated and remanded the D.C. Circuit's previous judgment for further consideration in light of its intervening opinion in *Axon Enterprise, Inc. v. Federal Trade Commission*. The D.C. Circuit held that *Axon* did not alter its previous judgment because unlike *Axon*, the present case involved explicit statutory jurisdiction stripping (*Bohon v. FERC*).

- ***Firearms:** Joining the D.C. Circuit, the Third Circuit concluded that the Law Enforcement Officers Safety Act of 2004 (LEOSA) provides certain retired federal and state law enforcement officers with an enforceable right to carry a concealed firearm that preempts conflicting state restrictions. Disagreeing with the Fourth Circuit, the court reasoned that LEOSA reflects Congress's clear and unambiguous intent to confer this right upon retired officers because the statute focused on the individual right-holder. The court also determined that LEOSA expressly preempts a New Jersey law to the extent that it imposes additional conditions or restrictions upon a qualified retired law enforcement officer's ability to carry a concealed firearm (*Fed. Law Enf't Officers Ass'n v. Att'y Gen. N.J.*).
- **Intellectual Property:** The Federal Circuit upheld a U.S. Patent and Trademark Office (USPTO) requirement introduced in 2019 that applications to register a trademark must include the applicant's "domicile" address (i.e., permanent residence or principal place of business). The court rejected an argument that the Administrative Procedure Act obligated USPTO to undertake notice-and-comment rulemaking to adopt this requirement, holding the requirement is merely "procedural" because it does not affect the substantive legal standards for trademark applications. The court also rejected an argument that the domicile requirement is "arbitrary and capricious," explaining that the requirement helps to enforce a rule that foreign applicants, registrants, and parties to trademark proceedings be represented by U.S.-licensed counsel (*In re Chestek PLLC*).
- **Securities:** The Eleventh Circuit determined that the appellant—who engaged in what is often called "death spiral" financing for penny-stock companies—qualified as an unregistered "dealer" under the Securities Exchange Act (15 U.S.C. § 78c(a)(5)(A)) and therefore violated the Exchange Act's registration requirement for dealers. The Exchange Act defines a "dealer" as "any person engaged in the business of buying and selling securities . . . for such person's own account," but does not include people who transact in securities "but not as part of a regular business" (i.e., traders). The court concluded that the appellant was a dealer due to his high volume of transactions and the kind of transactions he made, including acquiring large quantities of stock for immediate resale and bringing new shares to the market (*SEC v. Almagarby*).
- **Separation of Powers:** A divided Fifth Circuit held that third parties who provided feedback on draft legislation to Texas state lawmakers could invoke legislative privilege on lawmakers' behalf to block disclosure of shared documents and communications. Although legislative privilege is personal to the lawmaker, the majority relied on the Supreme Court's decision in *Gravel v. United States*, which held that the privilege may be invoked on lawmakers' behalf by legislative aides helping them perform legislative tasks. The panel majority reasoned that outside parties could similarly invoke legislative privilege for acts done for or at the direction of a lawmaker because such acts occur within the legislative process and would be immune legislative conduct if the lawmaker performed them himself (*La Union del Pueblo Entero v. Abbott*).
- **Takings:** The Federal Circuit affirmed the dismissal of a Fifth Amendment takings claim brought by a company against the federal government based on Montana's denial of its permit application to lease its land for surface coal mining. The plaintiff alleged that, in denying the permit, Montana acted either under coercion of the federal government or as a federal agent because the permit denial was under a state law implementing the Surface Mining Control and Reclamation Act (SMCRA). The SMCRA established a federal regulatory scheme over surface coal mining and reclamation operations but gave states exclusive jurisdiction over such activities upon enactment of state laws that complied with minimal federal standards. The Supreme Court previously recognized that the

SMCRA did not unduly coerce states into adopting minimum federal standards. The appellate panel held that the SMCRA framework did not coerce a particular result in individual permitting decisions made under those state laws. The panel also found no evidence that Montana acted as a federal agent because the federal government did not direct state authorities on whether to issue or deny the plaintiff's permit application (*Great N. Properties, L.P. v. United States*).

- **Torts:** The Sixth Circuit held that state parole board members were immune from money-damage suits for actions taken in the board members' official capacity, including the scheduling of parole hearings. The Supreme Court recognized that common law judicial immunity may extend to executive officials whose adjudicatory duties resemble those of judges. The court determined that the parole board members' adjudicatory functions were similar to those of judges and existing safeguards deterred members from engaging in unconstitutional conduct (*Hughes v. Duncan*).
- **Veterans:** A divided Federal Circuit panel held that the six-year statute of limitations in the Barring Act (31 U.S.C. § 3702(b)(1)), a statute that provides a mechanism for settling military-related claims, applies to claims for unpaid combat-related special compensation (CRSC) governed by 10 U.S.C. § 1413a. The court disagreed with the district court's rationale—that the Barring Act did not apply to the settlement of the CRSC claims because the CRSC statute was a "specific" statute that superseded the terms of the Barring Act—because the CRSC statute only establishes who may be eligible for payments and does not contain its own settlement mechanism that displaces the Barring Act's settlement mechanism (*Soto v. United States*).

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