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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (February 26–March 3, 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 granted certiorari in one case last week:

- **Separation of Powers:** The Court granted certiorari in a case from the D.C. Circuit to address the question of whether and to what extent a former President is immune from criminal prosecution for conduct that is alleged to involve official acts committed while he was in office. The question is raised in connection with former President Donald Trump's prosecution in federal court for various actions he allegedly took while in office to challenge the results of the 2020 presidential election. As described in this edition of the *Congressional Court Watcher*, the D.C. Circuit held that the former President's prosecution was not barred by executive immunity. The Court directed the D.C. Circuit to continue to withhold issuing the mandate for its decision until the Court issues its decision (*Trump v. United States*).

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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.

- **Civil Procedure:** The Fifth Circuit held that the "local controversy" exception to the Class Action Fairness Act (CAFA) did not apply to an oil-and-gas class royalties dispute and ordered the district court to reinstate this case on its docket instead of remanding to a Texas state court. CAFA gives federal courts jurisdiction over many class actions involving multistate parties, subject to certain exceptions, including for local controversies where the "principal injuries . . . were incurred in the State in which the action was originally filed." The Fifth Circuit held that this exception did not apply to the case on appeal, which involved claims of economic injury by a class of Texas and non-Texas residents. The court reasoned that the plaintiffs sustained their economic injuries in their states of residence, meaning some class members "incurred" their injuries outside Texas. The court rejected the plaintiffs' argument that the exception's reference to "principal injuries" requires only that *most* of the class members sustained their injuries in the state where the action was filed, instead holding that *all* plaintiffs' "principal injuries" must have occurred in the state where the action was filed for the exception to apply. As some plaintiffs' principal injuries took place outside of Texas, the court accordingly held that CAFA's exception did not apply (*Cheapside Minerals, Ltd. v. Devon Energy Prod.*).
- ***Environmental Law:** A divided D.C. Circuit panel partially vacated a 2015 Environmental Protection Agency (EPA) rule directing most states to revise their state implementation plans (SIPs) under the Clean Air Act (CAA) so that pollutants emitted during periods when a facility starts up, shuts down, or malfunctions (SSM periods) would not be exempted from state emission requirements. To begin, the circuit court held that the EPA could call for SIP revisions if it concluded that the SIPs were substantially inadequate under the CAA without having to first determine whether the SIPs had adverse effects. The panel majority ruled, however, that the EPA did not show that the CAA required states to apply uniform standards for SSM and non-SSM emissions. The majority vacated portions of the EPA rule directing revision of SIPs containing either automatic or discretionary exemptions for SSM emissions or that provided an affirmative defense under state law to a facility that failed to adhere to state emission standards because of SSM emissions. The court upheld the rule's direction that states not limit state courts' discretion to impose civil monetary penalties on entities found to violate SIP requirements. Splitting with the Fifth Circuit, the court held that this liability limitation conflicted with the CAA (*Env't Comm. of Fl. Elec. Power Coordinating Grp. v. EPA*).
- ***Environmental Law:** The Tenth Circuit granted a motion to transfer to the D.C. Circuit petitions challenging an EPA rule disapproving 21 SIPs under the CAA. Acknowledging a split with the Fourth, Fifth, and Sixth Circuits, the court held that EPA's rule is a "nationally applicable" final action, rather than a "locally or regionally applicable" final action, and therefore the CAA's judicial review provision permits review of the rule only in the D.C. Circuit. Although the petitions sought review only of EPA's disapproval of two states' plans, the court ruled that the nature of the agency's action, rather than the scope of the petitioners' challenges, was the appropriate basis for determining the appropriate venue (*Oklahoma v. EPA*).
- ***Food & Drug:** The Tenth Circuit denied two e-cigarette liquid manufacturers' petitions for review of the Food and Drug Administration's (FDA's) rejection of their applications

to market flavored e-cigarette liquids. Joining several other circuits but breaking with the Fifth Circuit, the court rejected arguments that various statements by FDA about the application process were misleading and held that FDA did not act arbitrarily and capriciously in rejecting the e-cigarette liquid applications. Again joining with several other circuits but breaking with the Fifth and Eleventh Circuits, the court further held that any error made in overlooking the manufacturers' marketing plans was harmless (*Elec. Clouds, Inc. v. FDA*).

- ***Immigration:** A divided Seventh Circuit issued the latest ruling in a growing circuit split over when an alien subject to a reinstated removal order may seek judicial review of a later administrative denial of that alien's eligibility to pursue withholding of removal. Under 8 U.S.C. § 1252(b)(1), a "final" order of removal may be appealed to a U.S. circuit court within 30 days of the date of the order. Joining the Fifth, Sixth, Ninth, and Tenth Circuits, but disagreeing with the Second and Fourth Circuits, a majority of the Seventh Circuit panel held that the 30-day clock is tied to the later relief proceedings, not the earlier reinstatement of removal order (*F.J.A.P. v. Garland*).
- **Indian Law:** The Ninth Circuit affirmed the district court's determination that the Suquamish Tribal Court had subject-matter jurisdiction over the Tribe's breach-of-contract lawsuit for insurance claims related to COVID-19 pandemic business closures. Although the Tribe and its businesses brought the insurance claims in connection with tribal properties on tribal land, the insurance companies were neither part of the Tribe nor physically present on the Tribe's reservation. The court observed, however, that the relevant insurance program was tailored for and exclusively offered to tribes, and the claims related directly to tribal lands. In *Montana v. United States*, the Supreme Court recognized two exceptions to the general restrictions on tribes' inherent sovereign authority over nonmembers on reservation lands; the first of those exceptions affirmed tribal jurisdiction over the activities of nonmembers who enter into consensual relationships with a tribe or its members. The Ninth Circuit concluded that the insurance companies had formed such consensual relationships in this case, enabling the tribal court to assert jurisdiction over the claims (*Lexington Ins. Co. v. Smith*).
- **Labor & Employment:** The D.C. Circuit denied a corporation's petition for review of a National Labor Relations Board (NLRB) decision, which found that the corporation violated the National Labor Relations Act in its dealings with an incumbent union representing employees of a hospital the corporation acquired. The NLRB's decision relied on the "successor bar" rule, an established NLRB precedent providing that an incumbent union is entitled to an irrebuttable presumption of majority status for a reasonable period of time following a successor employer's voluntary recognition of the union. The court rejected arguments that (1) NLRB precedent underlying the successor bar rule constituted an unjustified departure from the board's prior precedent, (2) the bar is contrary to statute, and (3) the bar is contrary to Supreme Court precedent (*Hosp. Menonita de Guayama, Inc. v. NLRB*).
- **Labor & Employment:** The Eighth Circuit held that an employee claiming discrimination by her employer in violation of 30 U.S.C. § 815(c)(1) for having exercised a covered statutory right must demonstrate that the discrimination was "because of" having exercised the statutory right. A mine employee who was a designated miners' representative had exercised her right under 30 U.S.C. § 813(f) to a "walkaround" with Mine Safety and Health Administration inspectors during an inspection. That provision directs that miners' representatives who are employed by the mine operator "shall suffer no loss of pay during the period of his participation in the inspection." The employee was paid a lower rate for the walkaround time than she would have received as a mobile

equipment operator (MEO) because the company determined she was unavailable for an MEO job during that time. The court concluded that the lower pay had to be "because of" exercising the statutory right and that the company's decision was based on unavailability for the MEO job, rather than the reason the employee was unavailable. Accordingly, the court held that while the mine operator violated Section 813(f), there was not sufficient evidence that it violated Section 815(c)(1) (*Continental Cement Co. v. Sec'y of Labor*).

- **Speech:** The Ninth Circuit affirmed a district court's denial of a preliminary injunction to two Oregon state Senators who were disqualified from appearing on the 2024 ballot after they engaged in a legislative walkout in protest of the Senate's alleged failure to comply with certain Oregon laws. The Oregon Secretary of State determined the Senators were ineligible for the 2024 ballot pursuant to an Oregon constitutional amendment that disqualifies any state legislator who accrued 10 or more unexcused absences. The Senators sought a preliminary injunction under 42 U.S.C. § 1983, asserting a First Amendment retaliation claim. Relying on the Supreme Court's reasoning in *Nevada Commission on Ethics v. Carrigan* that legislators do not have a right to use their official powers for expressive purposes, the Ninth Circuit concluded that the Senators could not show a likelihood of succeeding on the merits because their walkout was exercising the power of the legislator's office and therefore not protected activity under the First Amendment (*Linthicum v. Wagner*).
- **Veterans:** The Federal Circuit affirmed a decision of the U.S. Court of Appeals for Veterans Claims holding that the Board of Veterans' Appeals (Board) had jurisdiction to review adverse eligibility determinations under the Department of Veterans Affairs (VA) Program of Comprehensive Assistance for Family Caregivers (Program). The court rejected an argument that such decisions are a "medical determination" under a provision in the Program's implementing statute, 38 U.S.C. § 1720G(c)(1), and therefore outside the Board's appellate jurisdiction as defined by VA regulation. The court instead held that 38 U.S.C. § 1720G(c)(1) exempts from Board review Program decisions relating to the need for or appropriateness of particular types of treatment but not other types of decisions (*Beaudette v. McDonough*).

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