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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (March 11–March 17, 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 issued three opinions:

- **Criminal Law & Procedure:** In a 6-3 decision, the Supreme Court held that a federal defendant is ineligible to receive a sentence below the statutory mandatory minimum for certain drug offenses if the defendant meets any of three criminal history criteria found in the First Step Act's "safety valve" provision (18 U.S.C. § 3553(f)(1)). Several federal appeals courts had been split on whether defendants were ineligible if they satisfied any one of the listed criteria or, instead, if they were ineligible if they satisfied all three (*Pulsifer v. United States*).
- **Speech:** In a unanimous opinion, the Supreme Court set forth a two-part test for assessing when a public official who blocks someone from commenting on the official's social media page is engaged in state action, potentially giving rise to civil liability under 42 U.S.C. § 1983 for violating the commenter's free speech rights under the First Amendment. Under that test, the official is engaged in state action when using social

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media only if he or she (1) possessed actual authority to speak on the state's behalf regarding the matter at issue and (2) purported to exercise that authority when making the relevant social media posts. The Court remanded the case to the Sixth Circuit to apply the newly announced test (*Linkde v. Freed*). In a per curiam decision issued the same day, the Court likewise remanded a related Ninth Circuit case for further consideration and for application of the test set forth in *Linkde* (*O'Connor-Ratcliff v. Garnier*).

Decisions of the U.S. Courts of Appeals

Topic headings marked with an asterisk (*) indicate cases where 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 Seventh Circuit held that 11 U.S.C. § 546(e), a provision in the Bankruptcy Code that shields certain transactions made "in connection with a securities contract" from being set aside through the exercise of a trustee's "avoiding powers," covers transactions involving privately held stock, as well as publicly traded securities. The court also held that a trustee's authority under 11 U.S.C. § 544(a) to exercise the "rights and powers" afforded under state law to a creditor is limited by Section 546(e), which impliedly preempts state-law claims to recover the value of securities transactions that Section 546(e) shields from avoidance (*Petr v. BMO Harris Bank N.A.*).
- **Environmental Law:** The Tenth Circuit affirmed the dismissal of challenges to a revision of the U.S. Forest Service's Land Management Plan for the Rio Grande National Forest and a U.S. Fish and Wildlife ("FWS") 2021 Biological Opinion on which the Forest Service relied. In 2020, the Forest Service revised the Plan and submitted it to FWS for review, as required by the Endangered Species Act (16 U.S.C. § 1536(a)(2)). In the 2021 Biological Opinion, FWS determined that the Plan for the Rio Grande National Forest, which allowed logging in certain areas of the National Forest in response to a spruce beetle epidemic, would likely not jeopardize the continued existence of the Canada lynx. The court rejected several challenges to the 2021 Biological Opinion under the Endangered Species Act and the Administrative Procedure Act (APA), holding that FWS did not act arbitrarily or capriciously, and that the Forest Service's reliance on the Opinion was therefore also not arbitrary (*Defenders of Wildlife v. U.S. Forest Serv.*).
- **Health:** The Fifth Circuit held that Title X of the Public Health Service Act (42 U.S.C. §§ 300 et seq.), a federal program that provides grants to provide family planning services, including providing services to adolescents, does not preempt a Texas law that requires parental consent for an adolescent to obtain contraceptives. Affirming the lower court, the Fifth Circuit held that neither the text nor legislative history of Title X showed that the Texas statute conflicted with Title X's purposes and objectives, and that neither showed that Congress clearly and manifestly intended for Title X to have preemptive effect in this context. The Fifth Circuit vacated the lower court's ruling that part of a regulation implementing Title X, 42 C.F.R. § 59.10(b), which prohibits Title X projects from requiring parental consent or notification for services provided to minors, was unlawful, holding that the lower court did not have authority to vacate the regulation under the APA because the plaintiff had not challenged the regulations under the APA or otherwise (*Deanda v. Becerra*).
- **Health:** The Eighth Circuit held that federal law does not preempt an Arkansas law, Ark. Code § 23-92-604(c), which prohibits drug manufacturers from limiting the ability of Section 340B covered entities (42 U.S.C. § 256b(a)(1)) to contract with third party pharmacies. Under the 340B Program, drug manufacturers who receive reimbursements

from Medicare or Medicaid must offer certain outpatient drugs at a discount to qualifying providers, known as covered entities. Observing that states, rather than the federal government, have traditionally regulated pharmacies, and that Congress did not address the role of contract pharmacies in Section 340B, the court rejected a claim that Section 340B preempts the Arkansas law (field preemption). The court also rejected the argument that a provision of the Food, Drugs, and Cosmetic Act (21 U.S.C. § 355-1) imposes distribution regulations that make compliance with the Arkansas law impossible, and held that FDCA does not preempt the Arkansas law (conflict preemption) (*Pharm. Research and Mfrs. of Am. v. McClain*).

- **Immigration:** Joining the Third Circuit, the Second Circuit held that the Board of Immigration Appeals' (BIA's) interpretation of the term "conviction" under 8 U.S.C. § 1101(a)(48)(A) was entitled to deference. The BIA determined that a "conviction" under the statute requires a formal judgment of guilt that follows a state proceeding that is a substantively constitutional criminal proceeding in nature with "minimum constitutional protections," such as proof beyond a reasonable doubt and the right to confront one's accusers. Applying the framework established by the Supreme Court in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, the court determined that the meaning of "conviction" under Section 1101(a)(48)(A) is ambiguous, and that BIA's interpretation of Section 1101(a)(48)(A) is reasonable and entitled to deference (*Wong v. Garland*).
- **Immigration:** The Fourth Circuit affirmed dismissal of a habeas petition challenging an alien's detention under 8 U.S.C. § 1231, which authorizes detention of an alien ordered removed. The petitioner was placed in removal proceedings after his prior removal order was reinstated for unlawfully reentering the United States. He applied for withholding of removal based on his fear of torture if removed. The petitioner had been detained since 2019 pending his withholding-only proceeding—he claimed his continued detention was unlawful. In *Zadvydas v. Davis*, the Supreme Court held that an alien's detention under Section 1231 is authorized only for "a period reasonably necessary" to effectuate removal and "a period reasonably necessary" is presumptively six months. The Court further held, after the six-month period, if the alien establishes that there is no likelihood of removal in the reasonably foreseeable future, the government must either rebut this showing or release the alien. The Fourth Circuit held that, although petitioner's detention had exceeded that six-month period, his continued detention was lawful because there was a significant likelihood of removal in the reasonably foreseeable future, given that withholding-only proceedings have a defined end point. (*Castaneda v. Perry*).
- **Immigration:** A Sixth Circuit panel remanded a case to the BIA for further consideration of the petitioner's claims for relief and protection, and criticized circuit precedent on the burden an alien must satisfy to obtain withholding of removal under 8 U.S.C. § 1231(b)(3). Under Section 1231(b)(3), an eligible alien may not be removed to a country where his or her "life or freedom would be threatened . . . because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." Aligning with the Ninth Circuit, a prior Sixth Circuit panel held that to qualify for withholding of removal, aliens must show that their protected status is "at least one reason" for their persecution. This circuit panel argued that this prior interpretation departed from Supreme Court precedent and the weight of caselaw, which the panel described as recognizing a higher burden where aliens must show that their protected status is the "but-for" reason for persecution. The panel suggested that the en banc Sixth Circuit or the Supreme Court clarify the appropriate standard in a future case (*Vasquez-Rivera v. Garland*).

- **Labor & Employment:** The Sixth Circuit, in consolidated appeals, held that the Fair Labor Standards Act (FLSA) requires employees to be reimbursed for the actual cost of providing their vehicles for work to comply with the minimum wage requirements. The FLSA (29 U.S.C. § 206(a)(1)(C)) requires employers to pay their employees not less than $7.25 per hour. A related regulation, 29 C.F.R. § 531.35, provides that employers violate the statute if they require employees to provide their own tools and the cost of those tools "cuts into the minimum" wage required under the Act. The lower courts held that drivers should be reimbursed either by using a mileage rate published by the Internal Revenue Service or by using a "reasonable approximation" of their actual costs. The Sixth Circuit rejected both methods of approximation, holding that the statute entitles minimum wage employees to reimbursement of the actual cost of providing their vehicle on behalf of an employer, even where those costs may be difficult to determine (*Parker v. Battle Creek Pizza, Inc.*).
- **Property:** A divided Second Circuit held that the alleged pretext or motive behind a taking does not affect its validity under the Fifth Amendment's Takings Clause so long as the property is taken for a public purpose. The plaintiffs alleged that their property was taken by the town for a public park to thwart commercial development of the land. The majority held that, so long as the taking is for a legitimate public purpose rather than a private benefit, courts do not inquire into the motivation for the taking (*Brinkmann v. Town of Southold*).
- ***Torts:** A divided Fourth Circuit, joining eight other circuits but splitting with the Eighth Circuit, held that regulations implementing the provision of the Federal Tort Claims Act authorizing agencies to settle certain claims against the United States, 28 U.S.C. § 2672, do not enlarge or modify the jurisdictional requirement of administrative exhaustion for claims under the Act. Rather, the court held that 28 U.S.C. § 2675 establishes the three exclusive jurisdictional requirements for administrative exhaustion for claims under the Act: that a plaintiff present their claim to a federal agency, state the sum sought for the claim, and wait until the agency denies the claim or does not dispose of the claim within six months (*Estate of Van Emburgh v. United States*).

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