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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (April 22–April 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 two cases:

- **Civil Rights:** The Court agreed to hear a case from the Fourth Circuit on whether, under the Civil Rights Attorney's Fees Awards Act of 1976, obtaining preliminary injunction may confer "prevailing party" status for attorney's fees purposes even if the party does not secure a final judgment (*Lackey v. Stinnie*).
- **Firearms:** The Court agreed to hear a case from the Fifth Circuit on whether a Bureau of Alcohol, Tobacco, Firearms and Explosives rule, which requires serial numbers on certain disassembled parts of firearms for tracing purposes, is a valid exercise of the agency's regulatory authority over firearms under the Gun Control Act. Last year, the Court stayed a district court's vacatur of the so-called "ghost gun" rule in its entirety, allowing the rule to go into effect pending the disposition of the case (*Garland v. Vanderstok*).

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Decisions of the U.S. Courts of Appeals

- **Criminal Law & Procedure:** The Second Circuit interpreted the meaning of 18 U.S.C. § 3624(e), which governs the supervised release of a former federal prisoner, as it applies to a person released from federal custody and transferred to state authorities for pre-trial detention in state proceedings. The panel held that the term of supervised release under Section 3624(e) begins after the person's imprisonment by federal and state authorities ends, not upon release from federal custody (*United States v. Freeman*).
- **Criminal Law & Procedure:** The Second Circuit joined other circuits in recognizing that aiding and abetting an offense that is a "crime of violence" under 18 U.S.C. § 924(c) is itself a "crime of violence." Thus, a person convicted of aiding or abetting a crime of violence may face enhanced penalties if a firearm or other destructive device was used in the furtherance of the offense (*Medunjanin v. United States*).
- **Communications:** A Ninth Circuit panel agreed with a lower court's decision not to preliminarily enjoin a California rule to support the state's universal service fund, under which telecommunications carriers would be assessed surcharges based on their number of active accounts in the state. The panel decided that the plaintiff carriers were unlikely to succeed on the merits in their preemption challenge to the state rule. The panel construed 47 U.S.C. § 254(f), which preempts state policies that are "inconsistent" with federal rules to advance universal service, to render unenforceable only those state policies that burden compliance with federal requirements. The panel acknowledged that the state's account-based carrier assessment differed from the approach used to support the federal universal service fund, which assesses carriers' obligations based on revenue. The panel decided that this difference did not trigger preemption because the state rule did not discriminate between providers or interfere with federal universal service efforts (*Assurance Wireless USA, L.P. v. Reynolds*).
- **Environmental Law:** Applying a deferential standard of review, a divided Ninth Circuit upheld a lower court's preliminary injunction that narrowed the time period during which Montana could authorize wolf trapping and snaring, based on concerns that such activities could result in the unlawful take of grizzly bears in violation of Section 9 of the Endangered Species Act. The panel remanded the case, however, and directed the lower court to modify the scope of the injunction consistent with the majority's holding that the injunction was overbroad both as to geographic scope and in its application to the trapping and snaring of wolves by the state for research (*Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*).
- **Firearms:** Affirming the lower court's denial of a preliminary injunction request, the Fifth Circuit panel agreed with the lower court that the plaintiffs were unlikely to succeed in their Second Amendment challenge to provisions in the Bipartisan Safer Communities Act of 2022 that expanded firearms background checks for 18- to 20-year-olds. The panel emphasized statements made by the Supreme Court in *District of Columbia v. Heller* and *N.Y. State Rifle & Pistol Ass'n v. Bruen* that such laws were presumptively constitutional. Given these statements, the panel found it unnecessary to apply *Bruen*'s general framework for assessing the constitutionality of a challenged firearms restriction, which the panel characterized as not applying to those certain commonplace firearms regulations that the Court separately described as presumptively permissible (*McRorey v. Garland*).
- **Health:** On remand from the Supreme Court, a divided Seventh Circuit reaffirmed its earlier decision to allow a hospital to move forward in its suit under 42 U.S.C. § 1983 to compel Illinois, in its administration of the state's Medicaid program, to enforce a

provision of the Medicaid Act (42 U.S.C. § 1396u-2(f)) directing Medicaid-managed care organizations to make timely payments to health care providers. The majority decided that the provision, which Congress enacted as an exercise of its Spending Clause power, included necessary rights-creating language to be enforceable through a Section 1983 suit. The Supreme Court had vacated the Seventh Circuit's earlier decision and had remanded it for reconsideration in light of the Supreme Court's intervening decision in *Health & Hospital Corporation of Marion County v. Talevski*, which considered a similar issue. On remand, the majority of the Seventh Circuit panel described its conclusion as consistent with the reasoning of *Talevski* (*Saint Anthony Hosp. v. Whitehorn*).

- **Immigration:** The Tenth Circuit upheld the Board of Immigration Appeals' (BIA's) interpretation of 8 U.S.C. § 1229b(b)(1)(D) concerning when an alien may be granted cancellation of removal because removal would create an "exceptional and extremely unusual hardship to the alien's ... [U.S. citizen] child." Federal immigration law defines a *child* as "an unmarried person under twenty-one years of age," meaning that a potentially qualifying relative may age out of that designation. Applying the *Chevron* doctrine, the circuit court determined that Section 1229b(b)(1)(D) was ambiguous as to when the age of the qualifying relative is to be determined, and the panel deferred to the BIA's determination that the age of the qualifying "child" should be fixed at a date no later than when the immigration judge closes the administrative record (*Rangel-Fuentes v. Garland*).
- **Indian Law:** A divided Federal Circuit panel issued a mixed ruling on appeal from a lower court's dismissal of claims brought by the Ute Indian Tribe of the Uintah and Ouray Indian Reservation (Tribe) against the United States concerning water rights and infrastructure. The majority held that neither the *Winters* doctrine—which holds that the federal government's reservation of lands for tribal use implicitly reserves rights for tribes to use needed water from various sources—nor an 1899 law appropriating funds for water-related infrastructure on the Tribe's reservation imposed a trust obligation on the United States to construct new infrastructure or to affirmatively secure new water for the Tribe. The court decided, however, that a 1906 statute did establish trust duties with respect to some existing irrigation systems on the Tribe's reservation, and that the lower court improperly dismissed certain breach of trust claims flowing from that statute (*Ute Indian Tribe of the Uintah & Ouray Indian Rsrv. v. United States*).
- **Sovereign Immunity:** The D.C. Circuit affirmed a lower court's quashing of a writ of execution, which sought to obtain assets of the Afghan government held by the International Monetary Fund (IMF) and World Bank, based on immunities conferred to those two entities by the International Organizations Immunities Act (IOIA) and incorporated provisions of the Foreign Sovereign Immunities Act (FSIA). Relying on the Terrorism Risk Insurance Act of 2002 (TRIA), the plaintiffs sought to enforce default judgments against the Taliban for terrorist-related activities by obtaining assets of the Afghan government and Afghan central bank that were held by the IMF and World Bank. The panel ruled that, while TRIA broadened the circumstances for abrogating the immunity from *execution* afforded to certain terrorist parties' blocked assets, TRIA makes no provision as to *jurisdictional* immunity. Accordingly, the panel held that, because the IMF and World Bank are immune from federal jurisdiction under FSIA as incorporated by IOIA, federal courts have no jurisdiction over the plaintiffs' suit seeking to direct those entities to release a third party's assets to enforce a judgment against it (*Doe v. Taliban*).
- **Transportation:** The Ninth Circuit denied a petitioner's challenge to the Federal Aviation Administration's (FAA's) revocation of his pilot certification based on the

petitioner's air transport of marijuana within Alaska, where marijuana is legal. The FAA revoked the petitioner's pilot certificate under 49 U.S.C. § 44710(b)(2), which provides that the FAA Administrator "shall" revoke the certificate of a pilot who uses an aircraft to carry out a controlled substances offense punishable by imprisonment of more than a year. Federal law makes the transport of marijuana or other controlled substances a felony. The circuit panel held that Section 44701(b)(2) established a mandatory duty of the FAA Administrator to revoke the certificate of a person described by the statute, did not require a pilot to actually have been convicted of a covered offense for revocation to occur, and only required the pilot to knowingly engage in the proscribed activity, regardless of whether he knew it was punishable under the law. The panel also rejected the petitioner's argument that Congress could not authorize the FAA to regulate purely intrastate activities like marijuana delivery within Alaska, observing that airspace is a channel of commerce that falls within Congress's power to regulate interstate commerce (*Fejes v. FAA*).

Author Information

Michael John Garcia
Deputy Assistant Director/ALD

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