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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (May 6–May 12, 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 opinions in two cases for which it heard arguments:

- **Criminal Law & Procedure:** In a 6-3 decision, the Court held that in civil forfeiture cases involving personal property, the Due Process Clause does not require a preliminary hearing to determine whether the seized property should be held pending the ultimate civil forfeiture hearing, only that the civil forfeiture hearing be held in a timely manner (*Culley v. Marshall*).
- **Intellectual Property:** The Court decided in a 6-3 ruling that the Copyright Act's three-year statute of limitations does not impose a time limit on the recovery of damages stemming from copyright infringements occurring more than three years before a lawsuit was filed so long as the claim itself is timely. Notably, the Court assumed—but did not decide—that the "discovery rule" used by the lower court (which holds that a claim

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accrues not when an infringement occurred but when the plaintiff discovered or reasonably should have discovered it) applied (*Warner Chappell Music, Inc. v. Nealy*).

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.

- **Civil Rights:** The Second Circuit affirmed the dismissal of a plaintiff's suit against a state government entity under Title II of the Americans with Disabilities Act and, in so doing, held that emotional distress damages are unavailable under Title II. The court reasoned that because Title II expressly incorporates remedies afforded under the Rehabilitation Act of 1973, and the Supreme Court had held that the Rehabilitation Act does not allow for emotional distress damages, such damages were also unavailable under Title II (*Doherty v. State Univ. of New York*).
- **Communications:** A divided Second Circuit affirmed a lower court's dismissal of a suit brought by a recipient of an unsolicited text message from the fast-food chain Subway under the Telephone Consumer Protection Act (TCPA), agreeing with the lower court that the text message did not fall under the scope of the statute. The TCPA generally prohibits calls to persons using an "automatic dialing system" or "artificial or prerecorded voice" without their prior consent. The panel first held that the text message was not an "artificial and prerecorded voice." After reviewing the TCPA's definition of "automatic telephone dialing system," the panel concluded that Subway's method of contacting the plaintiff was not covered. The majority held that the TCPA's "automatic telephone dialing system" definition only covers systems that generate and dial random or sequential telephone numbers. The majority held this definition does not cover autodialing systems like Subway's that rely on a preexisting list that was not automatically or randomly generated but instead was drawn from other sources, such as customers voluntarily sharing their phone numbers (*Soliman v. Subway Franchisee Advert. Fund Tr., Ltd.*).
- **Criminal Law & Procedure:** The D.C. Circuit affirmed the conviction of Stephen Bannon for contempt of Congress under 2 U.S.C. § 192, on account of "willfully" failing to respond to a congressional subpoena. The House Select Committee to Investigate the January 6th Attack on the United States Capitol had subpoenaed Bannon, a former advisor to President Donald Trump, to testify and produce documents related to the events surrounding the 2020 presidential election certification, which occurred while Bannon was a private citizen. The panel rejected Bannon's argument that Section 192 did not apply to his conduct because he chose not to respond to the subpoena on the advice of his counsel. Citing circuit precedent, the panel held that Section 192 requires only that a person deliberately and intentionally violate the subpoena, which had occurred here. The panel also rejected Bannon's argument that he had reasonably relied on communications from the counsel of former President Trump (who had left office at the time the directive was allegedly given) and on legal opinions from the Department of Justice (DOJ). The panel agreed with the district court that none of the communications or DOJ opinions purported to authorize Bannon to refuse to produce documents or testify in response to the subpoena (*United States v. Bannon*).
- **Criminal Law & Procedure:** The Seventh Circuit held that a continuing criminal enterprise (CCE) conviction under 21 U.S.C. § 848(a) is not a "covered offense" for purposes of the First Step Act and thus the defendant was not eligible for a sentencing reduction under the Act. Section 404 of the Act gives federal courts discretion to reduce

the sentence of a defendant convicted of a "covered offense." In *Terry v. United States*, the Supreme Court clarified that a "covered offense" is one for which the Fair Sentencing Act modified the specific statutory penalties for that offense. Applying *Terry*, the Seventh Circuit agreed with the Fourth and Eighth Circuits that the Fair Sentencing Act did not modify the statutory penalties for CCE convictions. The panel reasoned that although the Fair Sentencing Act had altered the penalties of underlying drug-distribution offenses that would give rise to a CCE conviction, the Act had not modified the statutory penalties for CCE convictions themselves. Accordingly, the panel ruled that the defendant did not qualify for a Section 404 sentencing reduction (*United States v. Colon*).

- **Criminal Law & Procedure:** The Tenth Circuit affirmed the defendant's conviction for murder but reversed his conviction for kidnapping under 18 U.S.C. § 1201. The court reasoned that the federal kidnapping statute requires a defendant to hold a victim for an appreciable period beyond what is necessary to commit another offense (here, murder). The Tenth Circuit also resolved an issue of first impression for the circuit: where a federally recognized tribe has not authorized capital punishment for murders committed on its lands, which statute of limitations applies—the general five-year statute of limitations for a noncapital offense (pursuant to 18 U.S.C. § 3282) or the unlimited statute of limitations for an offense that is punishable by death (pursuant to 18 U.S.C. § 3281)? The court held that the murder was capital in nature and thus the latter statute of limitations applied (*United States v. Murphy*).
- **Education:** A divided Eighth Circuit affirmed the dismissal of a suit alleging that an individualized education program established for a disabled student did not comport with the Individuals with Disabilities Education Act (IDEA) and other statutes. Before reaching the merits (and finding that the school had complied with IDEA), the majority decided that the case had not been rendered moot after the student had aged out of the maximum qualifying age for a free appropriate public education under the IDEA. Joining other circuits, the majority held that compensatory education is a valid restorative remedy for a substantive IDEA violation and that this remedy remains available after a student ages out of IDEA eligibility (*Kass v. W. Dubuque Cmty. Sch. Dist.*).
- **Employee Benefits:** The Ninth Circuit reversed the lower court's dismissal of a suit brought under the Employee Retirement Income Security Act (ERISA) by pension plan participants regarding information provided about their pension benefits. Among other things, the panel held that an ERISA provision requiring a plan administrator to furnish a plan participant with pension benefit statements upon request (29 U.S.C. § 1025(a)(1)(B)(ii)) provided a basis for the plaintiffs' claim that the statements they received contained substantially inaccurate benefit amounts (*Bafford v. Admin. Comm. of Northrop Grumman Pension Plan*).
- **Firearms:** The Ninth Circuit rejected a legal challenge to a California law allowing state authorities to share information with accredited research institutions about firearm and ammunition purchasers and persons holding concealed carry permits. The panel held that dissemination of such information did not violate registered gun owners' right to informational privacy under the Fourteenth Amendment because the largely biographical information shared was not intimately personal. The panel also held that the information-sharing law was not preempted by the Privacy Act and did not implicate the plaintiffs' right to acquire or possess firearms under the Second Amendment (*Doe v. Bonta*).
- **Firearms:** A divided Ninth Circuit panel held that 18 U.S.C. § 922(g)(1), which makes it an offense for a person to possess a firearm if previously convicted of an offense punishable by more than a year's imprisonment, violated the Second Amendment when

applied to a nonviolent offender. Although the Ninth Circuit had earlier upheld the constitutionality of Section 922(g)(1), the panel majority decided that ruling was no longer controlling following the Supreme Court's 2022 decision in *New York State Rifle & Pistol Association v. Bruen*. Under *Bruen*, a court considering a Second Amendment challenge to a firearms restriction first asks whether the plain text of the Second Amendment covers the person, item, or conduct subject to the restriction. If the Second Amendment applies, the court considers whether the restriction "is consistent with this Nation's historical tradition of firearm regulation." Applying this framework, the panel majority held that the Second Amendment applies to all U.S. citizens, regardless of criminal history. Because the majority found that there was not an analogue to Section 922(g)(1)'s permanent restriction on firearm possession by nonviolent felons at the time of the Second Amendment's ratification, the majority ruled that Section 922(g)(1) was unconstitutional as applied to those persons (*United States v. Duarte*).

- **Immigration:** The Ninth Circuit held that 8 U.S.C. § 1231(a)(5), which bars reopening a reinstated removal order, is a nonjurisdictional statute and that the Board of Immigration Appeals may exercise jurisdiction over an appeal of the denial of a motion to reopen a reinstated removal order. Relying on the Supreme Court's analysis in *Santos-Zacaria v. Garland*, the circuit court found that Section 1231(a)(5) is not jurisdictional because it does not unambiguously speak in jurisdictional terms, and that earlier Ninth Circuit cases holding otherwise are irreconcilable with the Court's decision (*Suate-Orellana v. Garland*).
- **Indian Law:** The Tenth Circuit held that federal criminal jurisdiction extends to land owned by non-Indians within the exterior boundaries of a Pueblo. Under 18 U.S.C. § 1152, federal jurisdiction exists over certain crimes committed in Indian country, which the Supreme Court has recognized includes Pueblo lands. Acknowledging that non-Indian-owned lands within Pueblo boundaries created "ambiguity" as to federal jurisdiction, the Tenth Circuit derived a two-part test from Congress's 2005 amendment to the Pueblo Lands Act: federal criminal jurisdiction exists if (1) the land is within the exterior boundaries of a grant from a prior sovereign (in this case, the King of Spain) and (2) Congress has confirmed those boundaries. Both parties agreed the first requirement had been met, and Congress confirmed the Pueblo of Santa Clara's exterior boundaries in 1858. Therefore, the court held that relevant property was indeed Indian country, subjecting the defendant to federal criminal jurisdiction (*United States v. Smith*).
- **Labor & Employment:** Reversing the lower court, a divided D.C. Circuit panel allowed a career appointee to a Senior Executive Service (SES) position to proceed with her claim that the Department of the Army violated her constitutional rights when it transferred her to a non-SES position. The majority concluded the Civil Service Reform Act of 1978 and implementing Department of the Army regulations gave rise to a property interest in the SES position protected by the Due Process Clause. The majority held the SES appointee was entitled to notice and a hearing before transfer to a non-SES position, which had not occurred here. The majority remanded so the lower court could decide in the first instance what procedures were required before the deprivation could occur (*Esparraguera v. Dep't of the Army*).
- **Labor & Employment:** The Ninth Circuit minimally amended an opinion from February 20, 2024, that denied a hospital's petition for rehearing en banc, granted the National Labor Relations Board's (Board's) cross-application for enforcement, and enforced the Board's order finding that the hospital engaged in an unfair labor practice when it stopped deducting union dues after the expiration of a collective bargaining agreement. The Board has changed its position multiple times in recent years on whether the National Labor

Relations Act (NLRA) permits an employer to unilaterally cease collecting dues after an agreement expires. In affirming the Board's changed interpretation, the Ninth Circuit explained that the NLRA is ambiguous on the issue and then upheld the Board's permissible interpretation of the statute pursuant to the *Chevron* doctrine (*Valley Hosp. Med. Ctr., Inc. v. NLRB*).

- **Religion:** The Fourth Circuit directed the lower court to dismiss a suit brought by a teacher at a Catholic school against his employer for sex discrimination under Title VII of the Civil Rights Act of 1964 after the school ended his employment based on his plans to marry his same-sex partner. The majority held that the school's termination of the plaintiff fell under the "ministerial exception," a doctrine flowing from the Religion Clauses of the First Amendment that prevents courts from interfering with religious institutions' decision to fire or discipline ministers and employees serving similar roles. Although the school had waived invocation of the exception before the district court, the majority agreed to relieve the school of the waiver after concluding that the structural underpinnings of the exception gave the court discretion to do so, and that deciding the case on nonconstitutional grounds would have potentially sweeping effects for the application of civil rights laws to religiously motivated conduct. The majority found that the characteristics of the plaintiff's employment largely mirrored those of persons found by the Supreme Court to be covered by the ministerial exception. The majority therefore held that the school's decision to terminate him based on conduct contrary to its tenets was constitutionally protected (*Billard v. Charlotte Cath. High Sch.*).
- **Religion:** A divided Tenth Circuit reversed the district court's denial of a preliminary injunction, finding the lower court had abused its discretion in failing to enjoin two of the University of Colorado's COVID-19 policies (the Policies). The Policies generally required all employees and students to receive a COVID-19 vaccine. The Policies allowed for religious exemptions only if an individual's specific religion opposed all immunizations. Further, the Policies granted secular exemptions more favorably than religious exemptions. The plaintiffs claimed that the Policies violated the First Amendment's Free Exercise and Establishment Clauses. The panel majority held that the Policies were neither neutral nor generally applicable because they discriminate on their face and in fact against certain religions due to stereotypes and religious animus. The majority further held that the Policies failed to satisfy strict scrutiny and therefore violated the Free Exercise and Establishment Clauses (*Does 1-11 v. Bd. of Regents of Univ. of Colorado*).

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