Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (May 13–May 19, 2024)

May 20, 2024

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 three cases for which it heard arguments:

- **Arbitration:** A unanimous Court ruled that when a district court determines that claims raised in a suit are arbitrable, Section 3 of the Federal Arbitration Act mandates that the district court stay the case while arbitration is pending, leaving the court with no discretion to dismiss the suit (*Smith v. Spizzirri*).
- **Consumer Protection:** In a 7-2 decision, the Supreme Court upheld the statute that authorizes the funding mechanism for the Consumer Financial Protection Bureau (CFPB) as consistent with the Appropriations Clause of the Constitution. Under 12 U.S.C. § 5497, the CFPB communicates its funding needs to the Federal Reserve, and the Federal Reserve transfers the requested funding to the CFPB so long as the amount does not exceed a statutory cap. The majority held that the Appropriations Clause requires only that Congress authorize an expenditure from a specified source for a designated purpose, and that Section 5497 meets that test (*CFPB v. Cmty. Fin. Servs. Ass'n of Am., Ltd.*).

Congressional Research Service
https://crsreports.congress.gov
LSB11167

- **Labor & Employment:** In a 9-0 ruling, the Court held that 5 U.S.C. § 7703(b)(1)(A)'s 60-day filing deadline for a federal employee to seek review of a final decision of the Merit Systems Protection Board by the U.S. Court of Appeals for the Federal Circuit is not jurisdictional, and that the filing deadline is subject to exceptions such as equitable tolling (*Harrow v. Dep't of Def.*).

The Court also took action on an emergency application:

- **Election Law:** Over the dissent of three Justices, the Court granted an emergency application to stay a district court's order pending appeal to the Court. The order had blocked Louisiana from relying on a new congressional redistricting map that establishes two majority-Black congressional districts for the 2024 election after a finding from the lower court that the map violated the Fourteenth Amendment's Equal Protection Clause because it established an impermissible racial gerrymander. The challenged map was drawn after an earlier proposed map—which had established a majority-Black district—had been found to impermissibly dilute the votes of Black Louisianans in violation of the Voting Rights Act. The stay of the lower court order will remain in place pending further action by the Court, likely meaning that the new congressional redistricting map establishing two majority-Black congressional districts will be in effect for the 2024 elections (*Robinson v. Callais*).

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 nonuniform application of the law among the circuits.

- **Criminal Law & Procedure:** The Second Circuit joined other circuits in holding that the crime of robbery under the Hobbs Act, 18 U.S.C. § 1951, does not contain a specific intent element that is present in common law definitions of robbery. As a result, the government need not prove that a defendant has the specific intent to steal and permanently deprive the owner of property, only that the taking of the property was done knowingly and voluntarily. The circuit panel also held that the Supreme Court's 2022 decision in *United States v. Taylor* did not abrogate circuit precedent recognizing a substantive Hobbs Act robbery offense as a categorical crime of violence subject to a sentencing enhancement under 18 U.S.C. § 924(c) if done while possessing a firearm (*United States v. Barrett*).
- **Civil Procedure:** The Fifth Circuit joined at least two other circuits in recognizing that a hospital is not acting under the direction of the federal government when it uses an online patient portal with tracking pixels that share private health information with third-party websites. The defendant hospital invoked the federal officer removal statute, 28 U.S.C. § 1442(a)(1), and removed a state class action to federal court. Under the statute and Fifth Circuit precedent, a defendant can remove a case to federal court when, among other things, the defendant acted pursuant to a federal officer's directions. The Fifth Circuit concluded that the defendant was not acting pursuant to a federal officer's directions when it created the online portal because it was merely complying with federal law and was not helping the federal government carry out any tasks. Because the federal officer removal statute did not apply, the Fifth Circuit held that a state court was the proper forum to hear the dispute (*Martin v. LCMC Health Holdings, Inc.*).
- **Criminal Law & Procedure:** The D.C. Circuit affirmed a former high-ranking executive agency official's conviction under 18 U.S.C. § 1519 for obstruction of justice. The

conviction was based on the official's repeated falsification of information on annual financial disclosure forms used to detect potential conflicts of interests. Section 1519 proscribes persons from knowingly falsifying information "with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency." The circuit panel rejected the defendant's argument that Section 1519 applies only to formal, adversarial, or adjudicative proceedings. Instead, the panel held that the plain text of Section 1519 and legislative context of its enactment made clear the statute covered less formal inquiries, including the agency's review of the defendant's financial disclosure forms (*United States v. Saffarinia*).

- **Environmental Law:** A divided panel of the D.C. Circuit upheld the U.S. Environmental Protection Agency's (EPA's) renewable fuels standards for 2020, 2021, and 2022. Under the Clean Air Act's Renewable Fuel Standard program, transportation fuel sold in the United States must contain specified amounts of renewable fuels. Congress directed the EPA to set annual percentage standards to achieve statutory volume targets based on certain factors and projections. The statute requires EPA to adjust the statutory volumes in some circumstances, such as through the statute's cellulosic waiver authority and reset provision. The final rule issued by EPA establishing the 2020-2022 standards was challenged by a variety of regulated parties, including renewable fuel producers, who claimed the standards were too low, and petroleum refiners, who claimed that they were too high. In holding that the EPA complied with the law and reasonably exercised its discretion in setting the standards, the circuit panel majority upheld the total renewable fuel, cellulosic biofuel, and advanced biofuel volumes (including the EPA's application of the cellulosic waiver and reset provisions), the agency's new formula for calculating the annual percentage standards, and a supplemental standard established to address an earlier court ruling (*Sinclair Wyoming Ref. Co. LLC v. EPA*).
- **Health:** A divided panel of the Eleventh Circuit held that a health insurance provider can be liable under Title VII of the Civil Rights Act of 1964 when it denies coverage for certain types of medical care to a transgender employee because the employee is transgender. The defendant employer denied the plaintiff's vaginoplasty request, which her health care providers determined was medically necessary surgery. The panel majority affirmed that this denial was facially discriminatory and violated Title VII because the denial was a blanket refusal of coverage for gender-affirming surgery and transgender employees are the only plan participants who would seek this kind of surgery. Therefore, the court concluded the defendants were denying coverage based on transgender status (*Lange v. Hous. Cnty., Ga.*).

- **Immigration:** The Fourth Circuit held that a petitioner's conviction under D.C. law for attempted second degree child sexual abuse was "a crime of child abuse" that made him removable from the United States under 8 U.S.C. § 1227(a)(2)(E)(i). Section 1227(a)(2)(E)(i) does not define "a crime of child abuse"; employing principles of statutory interpretation, the Fourth Circuit defined it as an act or omission that either causes injury to a child or creates a sufficiently high risk that a child will be injured. The court rejected petitioner's argument that *attempted* offenses do not fall within the meaning of "a crime of child abuse." The court explained that an attempted injury upon a child meets that definition so long as the underlying offense requires a likelihood or reasonable probability of harm to a child. Given that criminal attempt under D.C. law requires an act that comes within "dangerous proximity" of completing a crime, the court held that the petitioner's attempted child sexual abuse offense sufficiently posed a reasonable probability of harm and fell within the meaning of "a crime of child abuse." Additionally, the court rejected the notion that Congress did not intend to include attempt offenses within the broad scope of Section 1227(a)(2)(E)(i) because it did not expressly refer to them in the statute, holding that context indicated that Congress did not intend its silence as exclusion (*Cruz v. Garland*).
- **Freedom of Information Act (FOIA):** A divided D.C. Circuit panel held that 2017 communications between executive branch agencies and Members of Congress and their staff regarding possible legislation to repeal the Affordable Care Act were not "intra-agency memorandums or letters" exempted from FOIA's disclosure requirements. The D.C. Circuit and some other circuits have endorsed the "consultant corollary" doctrine, under which FOIA's exemption of certain "intra-agency" communications also protects certain materials that have been supplied to an agency by external consultants and used by the agency in its deliberative processes. The circuit panel decided that the Supreme Court had narrowed the application of the doctrine so that it extends at most to documents shared with an agency by outside persons who have no independent stake in the matter being considered. The panel held that Members of Congress and their staff represented their own interests when communicating with the agencies on the potential healthcare legislation, so the FOIA exemption did not apply. The court explicitly declined to decide whether Members and their staff could ever satisfy the consultant corollary (*Am. Oversight v. U.S. Dep't of Health and Human Servs.*).
- **Public Benefits:** The Federal Circuit upheld a district court's dismissal of a suit brought by Texas residents seeking continued payment under the Pandemic Unemployment Assistance program (PUA) following Texas's June 2021 withdrawal from the program. The PUA was a temporary unemployment assistance program established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, under which the Secretary of Labor provided unemployment assistance to covered persons, through early September 2021, by way of participation agreements with states that administered the program and were reimbursed for its costs. The court held that Texas residents were not eligible for PUA benefits after Texas withdrew from the participation agreement, as the governing statute directed the Secretary to provide funds to states that agreed to administer the program, not to individuals directly (*Ireland v. United States*).

- **Veterans:** A divided Federal Circuit panel held that, in calculating a veteran's additional special monthly compensation (SMC) on account of "disability resulting from a personal injury suffered ... in line of duty ... during a period of war," the Board of Veterans' Appeals should have considered the petitioner's entitlement to multiple SMC increases on account of having multiple qualifying disabilities. The majority held that the applicable regulation, 38 C.F.R. § 3.350(f)(3), did not limit a qualifying veteran to one SMC increase, but set forth an entitlement that could apply multiple times subject only to a statutory cap (*Barry v. McDonough*).

Author Information

Michael John Garcia
Deputy Assistant Director/ALD

Alejandra Aramayo
Legislative Attorney

Disclaimer