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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (May 20–May 27, 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.

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Decisions of the Supreme Court

Last week, the Supreme Court issued four decisions in cases for which it heard arguments:

- **Arbitration:** The Court unanimously held that, under the Federal Arbitration Act, when parties enter into two contracts—with one contract containing a provision that delegates to an arbitrator the authority to decide all disputes, including the threshold questions of arbitrability, and the other contract containing, either explicitly or implicitly, a clause providing that all contract disputes, including those over arbitrability, will be resolved by the courts—a court, rather than an arbitrator, must decide which contract provision governs (*Coinbase v. Suski*).
- **Criminal Law & Procedure:** In consolidated cases, the Court resolved a circuit split over the interplay between the Armed Career Criminal Act (ACCA) and the Controlled Substances Act (CSA). The ACCA increases the mandatory minimum sentence for federal criminal defendants convicted for the illegal possession of a firearm who have

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certain prior convictions, including state drug convictions defined with reference to the CSA. In a 6-3 decision, the Court held that, in order for a state drug conviction to trigger the mandatory minimum under the ACCA, sentencing courts must look to the CSA's controlled substances list that was in effect at the time of the defendant's prior state drug conviction, not the list in effect at the time of the defendant's conviction for the federal firearm offense (*Brown v. United States; Jackson v. United States*).

- **Election Law:** In a 6-3 decision, the Court reversed a three-judge district court ruling that held that the legislature's design of South Carolina's first congressional district under the state's congressional redistricting plan established an unconstitutional racial gerrymander. Supreme Court jurisprudence recognizes that, while redistricting maps may be held unconstitutional when a party demonstrates that race played a predominant role in motivating the legislature's design (racial gerrymander), race and partisan preference are correlated, and a finding that a redistricting map was based on partisan preferences (political gerrymander) is nonjusticiable. The majority held that a party challenging a map must disentangle race from politics to establish motivation, and courts must start with a presumption that the legislature acted in good faith in devising a redistricting plan. The Court held that the three-judge district court impermissibly inferred that the legislature acted in bad faith based on the racial effects of a political gerrymander in an area where race and partisan preference were closely correlated (*Alexander v. South Carolina State Conf. of the NAACP*).

Decisions of the U.S. Courts of Appeals

- **Civil Procedure:** The Eleventh Circuit dismissed a petition for lack of jurisdiction, holding that the statutory deadline for a petitioner to seek review of a denial of survivor's benefits under the Black Lung Benefits Act was jurisdictional in nature and therefore not subject to equitable tolling (*Sloan v. Drummond Co., Inc.*).
- **Civil Procedure:** The Ninth Circuit affirmed the lower court's issuance of a stay order in a suit brought under the civil remedy provision of the Trafficking Victims Protection Reauthorization Act (TVPRA), holding that the criteria for the issuance of a stay under 18 U.S.C. § 1595(b)(1) was satisfied. Section 1595(b)(1) requires a civil suit under the TVPRA to be "stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim." The panel understood Section 1591(b)(1) to require a stay when (1) there was a pending criminal action; (2) the criminal action arose from the same occurrence as the civil action; and (3) the civil plaintiffs were victims of an occurrence that was the same in the civil and criminal cases. The panel declined to read Section 1591(b)(1) to also require that the civil defendant be a named defendant in the related criminal action (*Doe v. Fitzgerald*).
- **Criminal Law & Procedure:** The Fifth Circuit joined the Third and Eleventh Circuits in holding that Section 404(c) of the First Step Act is not jurisdictional and is instead a mandatory claims-processing rule. Section 404 of the First Step Act gives federal courts discretion to reduce the sentence of a defendant convicted of certain offenses. Section 404(c) prohibits successive requests for a sentencing reduction. The court observed that a statute is jurisdictional only when Congress clearly states that it is and that, in the absence of any statutory language regarding jurisdiction, there is a presumption that the statute is a claims-processing rule. Here, the court found that the text of Section 404(c) does not address jurisdiction at all and thus Section 404(c) is a claims-processing rule (*United States v. Naranjo*).

- **Environmental Law:** The Ninth Circuit held that, under 36 C.F.R. § 220.6, the U.S. Forest Service (Forest Service) could not approve a mineral exploration project by invoking two categorical exclusions (CE) to comply with the National Environmental Policy Act (NEPA) when neither exclusion alone could cover the entire proposed project. NEPA imposes procedural requirements on federal agencies when they take on a major federal action that could impact the environment. To comply with NEPA, among other things, an agency may invoke a CE, which agencies may establish for categories of actions that typically do not have a significant impact on the environment. When an action meets the criteria for a CE, no further action under NEPA (i.e., environmental assessment or environmental impact statement) is required. The Forest Service formally approved the mineral exploration project by combining two CEs: one for the mineral operations that are less than one year and the other for the habitat rehabilitation. The Ninth Circuit held that Section 220.6 unambiguously prohibits combining CEs to approve a proposed action when a single CE cannot cover it alone. The Ninth Circuit vacated the agency's decision and remanded the case for the district court to enter summary judgment for the environmental groups (*Friends of the Inyo v. U.S. Forest Serv.*).
- **Health:** The D.C. Circuit affirmed a district court ruling that the 340B Drug Discount Program statute (340B statute) (42 U.S.C. § 256b) does not prohibit drug manufacturers from imposing conditions on offers to sell drugs at reduced prices to covered entities that contract with retail pharmacies to distribute those drugs to patients. The court observed that the 340B statute does not mention contract pharmacies or drug distribution methods, and that the Secretary of Health and Human Services lacks rulemaking authority under the statute. The court held that the drug manufacturers' conditions on offers did not violate the 340B statute because the statute is silent about delivery conditions and, based on general principles of contract law and the plain meaning of the statute, the statutory silence "preserves—rather than abrogates—" the manufacturer's right to impose "at least some" delivery conditions (*Novartis Pharm. Corp. v. Johnson*).
- **Immigration:** The Ninth Circuit held that 8 C.F.R. § 235.7, which governs the Secure Electronic Network for Travelers Rapid Inspection (SENTRI) program, provides meaningful requirements and standards to allow courts to judicially review whether Customs and Border Protection (CBP) abuses its discretion when making decisions relating to SENTRI. SENTRI is a program that allows a person to travel between the United States and Mexico and avoid a full inspection at the border. CBP revoked the plaintiff's SENTRI membership several times without explanation. When the plaintiff sued CBP, claiming that the latest revocation was an abuse of discretion in violation of the Administrative and Procedure Act (APA), the district court dismissed the case for lack of subject matter jurisdiction, stating that CBP's administration of SENTRI is committed solely to agency discretion. The Ninth Circuit, in reversing the district court's order, held that the court had jurisdiction to review the plaintiff's claims because, although CBP has broad discretion to revoke SENTRI memberships, the exercise of that discretion can be reviewed under the APA. The court further held, among other things, that 8 C.F.R. § 235.7 imposes mandatory duties on CBP to consider SENTRI ineligibility and provides the court with meaningful standards to review an APA claim. The Ninth Circuit remanded the case to district court to consider the plaintiff's claims on the merits (*Jajati v. U.S. Customs & Border Prot.*).
- **Immigration:** The Eleventh Circuit held that a petitioner's 2009 Florida conviction for lewd and lascivious battery was not an aggravated felony under the Immigration and Nationality Act, which includes "sexual abuse of a minor" under 8 U.S.C. § 1101(a)(43)(A). Section 1101(a)(43)(A) does not define "sexual abuse of a minor." The

Eleventh Circuit determined that, in the statutory rape context, the generic federal offense of "sexual abuse of a minor" requires that a perpetrator be at least one year older than the victim. Florida's offense of lewd and lascivious battery, which considered a statutory rape offense, does not require a minimum age for the perpetrator or an age differential between the perpetrator and the victim. Therefore, under the categorical approach to determine whether a state conviction constitutes an aggravated felony (which requires a court to determine whether the state offense fits within the generic federal offense), the court found that petitioner's Florida conviction of lewd and lascivious battery was not a "sexual abuse of a minor" aggravated felony because the state offense is broader than the generic federal offense (*Leger v. U.S. Att'y Gen.*).

- **Intellectual Property:** Sitting en banc, a divided Federal Circuit overturned the *Rosen-Durling* test it had previously articulated to determine whether design patents were obvious under 35 U.S.C. § 103. Under the *Rosen-Durling* test, obviousness could be shown only by (1) a primary reference that was "basically the same" as the claimed design and (2) any secondary references that were "so related" to the primary reference that certain features in one would suggest application of those features to the other. In light of U.S. Supreme Court precedent, including *KSR International Company v. Teleflex Incorporated*, the en banc majority held the *Rosen-Durling* test was overly rigid. The court held that obviousness of design patents should instead be analyzed under the same factors the Supreme Court articulated to assess utility patents in *Graham v. John Deere Co. of Kansas City* (*LKQ Corp. v. GM Glob. Tech. Operations LLC*).
- **Intellectual Property:** A divided panel of the Federal Circuit held that under 35 U.S.C. § 285, a party in patent litigation cannot recover attorney fees incurred in a parallel inter partes review (IPR) proceeding, nor can they seek to hold opposing counsel jointly and severally liable for fees. Section 285 allows a court to award attorney fees to the prevailing party in exceptional patent cases. The court reasoned that when a party voluntarily pursues a challenge to the patent's validity through IPR—a separate administrative proceeding—there is no basis to recover attorney fees incurred in the IPR proceeding. Here, the appellants voluntarily initiated and participated in IPR proceedings, instead of arguing invalidity before the district court. As to the liability of opposing counsel, although Section 285 is silent on who is liable for attorney fees, the court found that other statutes expressly identify counsel as liable. The court determined that the inclusion of "exceptional" in the statute does not mean Congress intended to extend liability for attorney fees to counsel. The court therefore held that liability for attorney fees under Section 285 does not extend to counsel (*Dragon Intell. Prop. LLC v. DISH Network LLC*).
- **Securities:** The Second Circuit affirmed a district court's dismissal of a company's claims under Section 13(d) of the Securities Exchange Act as moot. Section 13(d) requires a group that is acquiring beneficial ownership of more than 5% of an issuer's equity securities to report the members of the group to the Securities and Exchange Commission (SEC). An issuer can seek injunctive relief when there is a violation of Section 13(d). Here, after the complaint was filed, the defendants amended their submissions to the SEC by appending a copy of the complaint and stating that the allegations therein were without merit (i.e., that they did not act as a group). The Second Circuit affirmed the district court's determination that these amendments submitted to the SEC rendered the complaint moot, reasoning that the amendments satisfied the informative purpose of Section 13(d) and that the company thus failed to establish a risk of irreparable injury warranting injunctive relief (*Nano Dimension Ltd. v. Murchinson Ltd.*).

- **Trade:** The Federal Circuit affirmed the Court of International Trade and held that the Department of Commerce's (Commerce's) imposition of a countervailing duty on imported Spanish table olives was justified under 19 U.S.C. § 1677-2. Commerce has authority to impose a countervailing duty on a finished agricultural product with subsidized raw ingredients if the demand for the latter stage product is "substantially dependent," or has an important and real effect, on the demand for the prior stage product. The Federal Circuit determined that the statutory term "substantially dependent" is nonspecific and shows that Congress intended to delegate to Commerce the determination of whether a particular set of facts meets this standard under Section 1677-2. Here, Commerce determined that the meaning of "substantially dependent" did not amount to a numerical minimum and instead focused on the nature of the raw product and the market for the prior stage product to find that the demand for raw olives was "substantially dependent" on the demand for table olives. The court held that Commerce's factual findings satisfied the statutory requirements of Section 1677-2 and were supported by substantial evidence (*Asociacion de Exportadores e Industriales de Aceitunas de Mesa v. United States*).

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