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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (June 3–June 9, 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 decisions three decisions in cases for which it heard arguments:

- **Bankruptcy:** In an 8-0 decision (Justice Alito was recused from the case), the Court held that an insurer who is financially responsible for a debtor's bankruptcy claims is a "party in interest" with statutory standing under 11 U.S.C. § 1109(b) to object to a Chapter 11 reorganization plan (*Truck Ins. Exch. v. Kaiser Gypsum Co.*).
- **Indian Law:** Under the Indian Self-Determination and Education Assistance Act, when a tribe enters into a self-determination contract to assume responsibility for operating healthcare programs that the Indian Health Service (IHS) previously administered, IHS must pay the tribe whatever amount IHS would have spent to administer those programs *plus* "contract support costs"—i.e., additional overhead and administrative expenses the tribe incurs to comply with the contract. In consolidated cases, the Court decided 5-4 that contract support costs include expenses that a tribe incurs to collect and spend funds from

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third-party payers (such as Medicaid, Medicare, and private insurers) as required by the terms of the contract (*Becerra v. San Carlos Apache Tribe*; *Becerra v. N. Arapaho Tribe*).

- **Tax:** In a 9-0 decision, the Court held that the Internal Revenue Service's assessment for estate tax purposes of the fair market value of a closely held corporation properly identified as an asset the corporation's life insurance policy on a deceased shareholder because policy proceeds were used to redeem the decedent's shares (*Connelly v. United States*).

The Court also granted certiorari to consider a case next term:

- **Criminal Law & Procedure:** The Court agreed to hear a case from the Second Circuit to determine whether a crime that requires bodily injury or death, but that may be committed through one's failure to take an action, can qualify as a "crime of violence" under 18 U.S.C. § 924(c)(3)(A), which requires "the use, attempted use, or threatened use of physical force" as an element of the offense (*Delligatti v. United States*).

Decisions of the U.S. Courts of Appeals

- **Administrative Law:** The Ninth Circuit affirmed summary judgment for the Federal Crop Insurance Corporation (FCIC) in an action brought by a California business challenging the FCIC's interpretation of a federal crop insurance policy under which the business was covered. The FCIC's interpretation, which determined that a general partnership's act of selling farm products and using the goodwill and business name of a partner farmer constituted "farming activity," resulted in the business having its insurance claim under the policy denied. Employing *Auer* deference in reviewing the FCIC's interpretation, the Ninth Circuit concluded the policy term in dispute was genuinely ambiguous, that the FCIC's conclusion had a reasonable basis, and that it was entitled to controlling weight (*M&T Farms v. Fed. Crop Ins. Corp.*).
- **Civil Rights:** The Eleventh Circuit reversed a district court's denial of injunctive relief to a plaintiff who alleged that an entrepreneurship funding competition eligible only to businesses owned by black women violated 42 U.S.C. § 1981, which prohibits race discrimination in the making or enforcing of contracts. The trial court ruled that the competition was a contract and that it did not meet the requirements of a judge-made exception to Section 1981 for programs that serve to remediate past racial discrimination. The trial court denied preliminary injunctive relief, however, because it concluded the claim was unlikely to succeed on the merits due to potential First Amendment issues. The Eleventh Circuit reversed, finding the competition "unlikely to enjoy First Amendment protection." It also concluded the district court had erroneously held that Section 1981 does not authorize injunctive relief and remanded with instructions to enter a preliminary injunction (*Am. All. for Equal Rights v. Fearless Fund Mgmt., LLC*).
- **Communications:** The Ninth Circuit clarified the scope of what is known as Section 230 immunity in affirming a district court's dismissal of non-contract claims against Meta Platforms, Inc., (Meta) but vacating the dismissal of the plaintiffs' contract-related claims, thus allowing those claims to proceed. The court agreed that the plaintiffs' claims under California's Unfair Competition Law and for unjust enrichment and negligence were barred by Section 230(c)(1) of the Communications Act, because those claims arise from Meta's status as a "publisher or speaker" of third-party advertisements and Meta did not "materially contribute" to them. However, Meta's status as a "publisher or speaker" was unrelated to, and therefore did not bar, the plaintiffs' claims for breach of contract and breach of the covenant of good faith and fair dealing (*Calise v. Meta Platforms, Inc.*).

- **Criminal Law & Procedure:** The Fourth Circuit affirmed a conviction under 18 U.S.C. § 922(g)(1) but vacated and remanded for sentencing based on an erroneous application of the Armed Career Criminal Act (ACCA). The Fourth Circuit rejected the defendant's argument that Section 922(g)(1), which prohibits possession of a firearm by anyone convicted of a crime punishable by imprisonment for a term exceeding one year, was facially unconstitutional. The Fourth Circuit agreed with the defendant, however, that the trial court was wrong to impose a 15-year sentence that the ACCA requires for a defendant with "three previous convictions . . . for a violent felony or a serious drug offense" because one of the defendant's predicate convictions relied upon by the court could have been committed with a mental state of recklessness. The Supreme Court ruled in 2021 that a crime committed with a mental state of recklessness may not count as a "violent felony" under the ACCA (*United States v. Canada*).
- **Education:** Attempting to clarify what it called "muddled law," the Third Circuit held that courts must resolve claims brought by K–12 students under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act using the standards that pertain to most civil suits and not the modified standards that apply to Individuals with Disabilities Education Act (IDEA) claims. IDEA claims receive modified *de novo* review on the administrative record. The Third Circuit held that Section 504 and ADA claims, however, must be considered *de novo* through the ordinary summary judgment or trial process, even where, as federal law sometimes requires, the plaintiffs must first exhaust these claims through the IDEA's administrative process (*Le Pape v. Lower Merion Sch. Dist.*).
- **Firearms:** The Seventh Circuit affirmed a defendant's conviction under 18 U.S.C. § 922(a)(6) for knowingly making false statements in connection with the purchase of firearms from licensed dealers. The panel rejected the defendant's argument that Section 922(a)(6) should be reviewed under the framework announced by the Supreme Court in *New York State Rifle & Pistol Association, Inc. v. Bruen* to determine whether a firearm restriction is consistent with the Second Amendment. The panel held that Section 922(a)(6) restricted false statements, not firearms, and therefore did not implicate the Second Amendment or require analysis of Section 922(a)(6) under the *Bruen* framework (*United States v. Scheidt*).
- **Health:** In an amended opinion, the Ninth Circuit panel upheld a district court's ruling that a plaintiff student-athlete was likely to succeed on a constitutional challenge to an Idaho law related to transgender athletes, but the panel narrowed the scope of the lower court's preliminary injunction that had blocked enforcement of the law. The panel had originally upheld the lower court's preliminary injunction during the pendency of the plaintiff's legal challenge. (The earlier opinion is discussed in a *prior Congressional Court Watcher* edition.) The amended opinion affirmed the injunction to the extent it blocked enforcement of the state law against the plaintiff. The panel remanded the case to the lower court to reconsider the scope of any additional injunctive relief blocking enforcement of the law against individuals other than the plaintiff in light of the Supreme Court's recent order in *Labrador v. Poe*, which narrowed the scope of a preliminary injunction in a case challenging the constitutionality of an Idaho law barring health care professionals from providing certain medical treatments to transgender minors (*Hecox v. Little*).
- **Intellectual Property:** Reversing the lower court, a divided D.C. Circuit panel held that copyright rules promulgated under the Digital Millennium Copyright Act (DMCA) by the Register of Copyrights within the Library of Congress are reviewable under the Administrative Procedure Act (APA). The APA generally waives the federal

government's sovereign immunity for certain actions taken by a federal "agency," but the waiver does not apply to "the Congress." The panel majority found it unnecessary to decide whether the Library is an "agency" for APA purposes because Congress had specified that copyright regulations issued under Title 17 of the U.S. Code are reviewable under the APA, and the DMCA authorized the Register and Librarian of Congress to promulgate regulations under that Title. The majority held that because regulations issued under the DMCA are subject to the APA like other copyright rules, the APA waived sovereign immunity for actions taken by the Library and Librarian related to the promulgation of those rules (*Med. Imaging & Technology Alliance v. Library of Congress*).

- **Procurement:** Reversing the lower court, a divided Federal Circuit held that it has subject matter jurisdiction under the Tucker Act over a claim by a prospective subcontractor of commercial items to a government contractor. The prospective subcontractor alleged the government did not comply with statutory requirements related to market research on the availability of commercial products to meet the government's procurement needs before soliciting a task order under an existing contract for the acquisition of government-specific software, and this failure resulted in the prospective subcontractor being ineligible for consideration of the task order. A key question for the court was whether the prospective subcontractor's suit was precluded by the Federal Acquisition Streamlining Act of 1994 (FASA), which generally forecloses Tucker Act claims brought "in connection with the issuance or proposed issuance of a task or delivery order." The Federal Circuit determined that the prospective contractor did not challenge the government's "issuance or proposed issuance" of a task order, but instead challenged the government's failure to comply with its statutory responsibilities to conduct market research on available commercial items. The majority rejected the government's argument that FASA broadly precludes suits relating to any work performed under an actual or proposed task order, holding instead that FASA bars only those suits directly relating to the actual or proposed issuance of a task order or challenging a government action that would cause the task order's issuance to be improper (*Percipient.ai, Inc. v. United States*).

- **Securities:** The Fifth Circuit vacated a final rule issued by the Securities and Exchange Commission (SEC) that imposed new disclosure requirements on advisers to private funds (i.e., funds that are not directly accessible to retail investors). In promulgating the rule, the SEC relied on Sections 206(f) and 211(h) of the Investment Advisers Act (IAA), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 206(f) is the IAA's anti-fraud provision and empowers the SEC to issue regulations that are reasonably designed to prevent fraudulent practices by advisers. Section 211(h) allows the SEC to adopt regulations regarding investment adviser sales practices, conflicts of interest, and compensation that the agency deems contrary to the protection of "investors," in addition to rules that facilitate clear disclosures to "investors." The Fifth Circuit held that neither provision authorized the SEC's private funds rule. The court held that Section 206(f) did not authorize the SEC's rule because the agency failed to show a rational connection between the rule and the prevention of fraudulent conduct. The court also rejected the SEC's reliance on Section 211(h), reasoning that the "investors" referenced in that provision are limited to retail investors, rather than the sophisticated institutions that invest in private funds (*Nat'l Ass'n of Priv. Fund Managers v. SEC*).
- **Veterans:** The Federal Circuit affirmed a ruling by the U.S. Court of Appeals for Veterans Claims that, under the Veterans Appeals Improvement and Modernization Act of 2017, also known as the Appeals Modernization Act (AMA), a member of the Board of Veterans' Appeals who conducts a hearing need not be the one to ultimately issue the resulting decision. Although the pre-AMA statutory scheme required the Board member who conducted a hearing to participate in the final determination of the claim, the AMA removed that requirement. Noting that the claimant had expressly elected to pursue his appeal under the AMA's procedures, the Federal Circuit held that the removal of the requirement permitted a Board member other than the one who conducted the hearing to issue a decision. The court also declined to hear the claimant's argument that he was denied fair process because the claimant did not raise the argument in the lower court (*Frantzis v. McDonough*).

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