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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (June 24–June 30, 2024), Part 2

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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.

This week's *Congressional Court Watcher* is divided into two parts because of the number of notable decisions issued over the past week. This Legal Sidebar (Part 2) addresses decisions of the U.S. courts of appeals from June 24 through June 30, 2024. A companion Legal Sidebar (Part 1) discusses Supreme Court activity from that period.

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.

- **Bankruptcy:** The Fourth Circuit held that a probation-before-judgment disposition in state court constitutes a "conviction" resulting in restitution "included in a sentence" under 11 U.S.C. § 1328(a)(3) of the Bankruptcy Code, and a debtor's restitution debt is therefore excluded from discharge. Once a debtor in a Chapter 13 bankruptcy completes their bankruptcy plan payments, all debts provided for in the plan are discharged, unless

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the debts fall under an exception such as a debt "for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime." The court observed that, while the Code does not define "conviction" or "sentence," the Supreme Court's reasoning in *Dickerson v. New Banner Inst., Inc.* and the Code's legislative history suggest the terms should be interpreted broadly. The circuit panel affirmed the courts below, holding that the exception includes any determination of guilt in a trial or plea followed by a sentence of probation, even without the formal entry of a conviction and sentence (*Feyijinmi v. Md. Cent. Collection Unit*).

- **Civil Rights:** The Sixth Circuit affirmed the district court's dismissal, on sovereign immunity grounds, of a state employee's discrimination and retaliation claims brought under the Americans with Disabilities Act (ADA). The court applied Supreme Court precedent in holding that sovereign immunity protects a state from ADA employment discrimination claims. The court also decided, as an issue of first impression, that states are entitled to immunity from ADA retaliation claims. Joining every circuit to have addressed the issue, the court held that, if Congress did not validly abrogate immunity for employment discrimination claims, it also did not abrogate immunity for employment-related retaliation claims (*Stanley v. Western Michigan University*).
- ***Civil Rights:** A divided Ninth Circuit panel held that 42 U.S.C. § 1981 prohibits discrimination in hiring against United States citizens on the basis of their citizenship. The majority therefore reversed a district court's dismissal of an employment discrimination action alleging that an employer discriminated against a naturalized citizen by preferring to hire noncitizen H-1B visa holders. The majority reasoned that the text of the statute requires that all persons within the jurisdiction of the United States "have the same right" to make contracts as "white citizens," and, reading "the same" literally, an employer preferring some subset of noncitizens would impermissibly give those noncitizens a greater right to make contracts than citizens. The majority acknowledged that in so holding it disagreed with the Fifth Circuit (*Rajaram v. Meta Platforms, Inc.*).
- **Consumer Protection:** The Fourth Circuit held that notices issued by the Compliance Office of the Consumer Product Safety Commission do not constitute final agency action under the Administrative Procedure Act and thus are not subject to judicial review. The court held that the notices are not final because they only convey preliminary findings and warnings from agency staff and, under the agency's current rules, only the Commission itself may make final determinations (*Jake's Fireworks Inc. v. U.S. Consumer Product Safety Comm'n*).
- ***Criminal Law & Procedure:** The Third Circuit held that, where a person properly exhausts all challenges to the legality of a condition of supervised release, a district court may consider legality as a grounds for modification in a motion pursuant to 18 U.S.C. § 3583(e)(2). The court acknowledged that the Second, Fifth, Sixth, and Ninth Circuits have found that illegality does not provide a proper ground for such a motion, while the Fourth and Seventh Circuits have permitted challenges based on legality under certain circumstances. The court concluded that sentencing judges who impose conditions of supervised release must be permitted to amend those conditions, balancing needs for finality and flexibility (*United States v. D'Ambrosio*).
- **Criminal Law & Procedure:** The Ninth Circuit rejected a defendant's Commerce Clause challenge to a federal kidnapping conviction. The court held that the application of the federal kidnapping statute to an intrastate kidnapping is constitutional when the defendant uses a cellphone—an instrumentality of interstate commerce—in furtherance of the offense. The court reasoned that, according to the Supreme Court's decision in

United States v. Lopez, Congress may regulate and protect instrumentalities of interstate commerce, even in intrastate activities (*United States v. Stackhouse*).

- **Criminal Law & Procedure:** The Tenth Circuit affirmed the district court's revocation of a defendant's supervised release after his term of supervised release had expired, notwithstanding the defendant's argument that the delay in the revocation proceedings was not "reasonably necessary to the adjudication" as required by 18 U.S.C. § 3583(i). The panel attributed the delay to the state prosecution of the defendant for murder, which the panel said should proceed first for comity reasons and which may be relevant to the revocation determination. The court joined every other circuit that has considered whether the pendency of a state prosecution justifies a delay in revocation proceedings, holding that, at least when the state prosecution is for a serious charge, the delay is reasonably necessary under Section 3583(i) (*United States v. Tyree-Peppers*).
- **Election Law:** An Eleventh Circuit panel held that the public disclosure provision of the National Voter Registration Act requires a state to disclose lists of individuals who were either removed from the voter rolls because of a disqualifying felony or denied from registering to vote because of a disqualifying felony. The panel explained that records related to felony disqualification are records related to the implementation of "programs and activities" that promote the "accuracy and currency" of its voter lists under the Act and so are subject to disclosure. In a further, divided ruling, the majority of the panel held that the public disclosure provision does not require electronic production or regulate the fees a state may charge if it chooses to offer electronic production. The majority reasoned that the Act requires only availability for "public inspection" and certain "photocopying," and determined that "public inspection" does not require electronic disclosure (*Greater Birmingham Ministries v. Sec'y of State of Ala.*).
- **Environmental Law:** A divided D.C. Circuit upheld a final rule issued in 2003 by the Department of the Interior Bureau of Land Management (BLM) that withdrew a proposed rule that would have limited the maximum size of "mill sites" for mining claims on federal lands. Several conservation groups sued, claiming the rule violated the National Environmental Policy Act (NEPA) and the Administrative Procedure Act (APA). The court first concluded that BLM's interpretation of Section 42 of the Mining Law of 1872, as amended, set out in the Final Rule was not unreasonable because the Mining Law does not contain a limit on the number of mill sites a claimant may locate, and the grammar, statutory history, and context of the statutory provision strengthen the force of BLM's interpretation. The panel also concluded that NEPA's requirement to prepare an environmental impact statement for "major Federal actions significantly affecting the quality of the human environment" did not apply to this rule because the withdrawal of the proposed rule merely maintains BLM's long-standing practice regarding mill sites and the rule does not create any new environmental impacts. The panel also concluded that the final rule did not violate the APA because it was a logical outgrowth of the proposed rule, and therefore an additional cycle of notice and comment was not necessary (*Earthworks v. Dep't of the Interior*).
- **Environmental Law:** The D.C. Circuit held in consolidated appeals that the Environmental Protection Agency (EPA) did not violate federal notice-and-comment rulemaking requirements in a series of agency actions applying and enforcing regulations that govern the disposal of coal combustion residuals. The plaintiffs alleged that the EPA violated the Administrative Procedure Act and the Resource Conservation and Recovery Act by announcing in informal documents and actions what amounted to a new legislative rule that would require notice-and-comment rulemaking. The court held that the agency actions taken together did not create or amend a regulation or requirement, but

instead were implementing an existing 2015 rule and then applying it on a case-specific basis. Therefore, the court held that the actions did not amount to a reviewable legislative rule and that it lacked jurisdiction over the petitions (*Electric Energy, Inc. v. EPA*).

- **Environmental Law:** The Fourth Circuit concluded that persons or entities who arrange for the disposal of hazardous substances may be liable under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) even if they had no knowledge that the disposed-of waste is hazardous. The court addressed the question whether the text of CERCLA—which imposes "arranger liability" based on a showing that a defendant "arranged for disposal . . . of hazardous substances"—requires an arranger to have both the intent to dispose of a substance and the specific intent to dispose of a hazardous substance, a question not previously decided by a federal appellate court. The court concluded that CERCLA does not require the arranger to intend to dispose of a hazardous substance. The court reasoned that Congress could have explicitly included a knowledge requirement as it did elsewhere in CERCLA, but did not do so (*68th St. Site Work Grp. v. Alban Tractor Co*).
- **Environmental Law:** In a citizen suit brought pursuant to the Endangered Species Act, the Ninth Circuit upheld a district court's entry of a permanent injunction halting certain timber projects. The court held that the Act's 60-day notice requirement for citizen suits is a claims-processing rule rather than a jurisdictional rule, abandoning long-standing circuit precedent due to recent Supreme Court case law addressing that distinction in other contexts. The Ninth Circuit further upheld the district court's determination that the timber projects would result in a "take" of the listed species by harming the species' breeding. The court held that the habitat being modified need not be "essential" for the species' survival to conclude that its modification would injure and therefore result in a "take" of the species (*Cascadia Wildlands v. Scott Timber Co.*).
- **Food & Drug:** A divided Ninth Circuit held that the federal Food, Drug, and Cosmetic Act (FD&C Act) does not preempt private enforcement of California's state law analog, the Sherman Law, which incorporates all federal food labeling standards. Federal and state law prohibit nutrient content claims, or claims characterizing the level of a nutrient in a food, on baby food containers. Plaintiffs filed a class action alleging in part that a baby food product's label violated the California law. The district court held that the plaintiffs' state law claim was impliedly preempted because the Sherman Law is derived from the FD&C Act, and the FD&C Act grants the federal government exclusive enforcement authority in all but limited circumstances. The Ninth Circuit reversed, holding that the FD&C Act does not limit the manner in which an analog state statute is enforced. It distinguished the Supreme Court's opinion in *Buckman v. Plaintiff's Legal Community*, which held that state causes of action are impliedly preempted if they rest entirely on violations of the FD&C Act and do not involve any violation of duties owed under state law, on the basis that the Sherman Law imposes state food labeling requirements (*Davidson v. Sprout Foods, Inc.*).
- **Immigration:** The D.C. Circuit held, in four consolidated appeals, that the district courts lacked authority to order the Department of State to continue processing applications for diversity visas and issuing the visas after the statutory deadlines had passed. Section 1153(c) of Title 8 established the diversity visa program, which allots immigrant visas—through a lottery system—to aliens from countries with low levels of immigration to the United States. Under 8 U.S.C. § 1151(a)(3) and (e), there is a cap of 55,000 diversity visas per fiscal year. The Department of State administers the program by randomly selecting applicants from qualified countries to become eligible to receive immigrant visas, provided they meet a list of requirements and the statutory annual cap of 55,000 is

not exceeded. In 2020 and 2021, during the height of the COVID-19 pandemic, the Department of State delayed the processing of these visas. The district courts determined that the delay was unlawful and ordered the Department to issue the visas to the lottery winners. The D.C. Circuit held that this remedy conflicts with the clear and constitutionally valid statute that caps the annual issuance of diversity visas at 55,000 (*Goodluck v. Biden*).

- **Intellectual Property:** The Federal Circuit reversed a district court's dismissal of Amarin Pharmaceuticals' patent infringement lawsuit against Hikma Pharmaceuticals. The Food & Drug Administration (FDA) had previously approved Hikma's generic version of Aramin's brand-name drug Vascepa, but with a "skinny label" that covered only some uses of Vascepa. In particular, FDA's approval covered only using Vascepa for treating severe hypertriglyceridemia, but not reducing cardiovascular risks—a use still covered by Amarin's patents. The panel determined that Amarin plausibly alleged, at the pleading stage, that Hikma Pharmaceuticals' "skinny label" and its press releases about its Vascepa generic could have induced infringement of Amarin's patents by encouraging doctors and others to prescribe the drug for reducing for cardiovascular risks (the still-patented use) (*Amarin v. Hikma*).
- **Labor & Employment:** The Ninth Circuit joined several other circuits in holding that the Family and Medical Leave Act (FMLA) does not require an employer to present contrary medical evidence before contesting a doctor's certification of an employee's serious health condition. An employee is entitled to FMLA leave if he has a serious health condition that makes the employee unable to perform the functions of the position, including an injury that involves continuing treatment by a health care provider and a period of incapacity for three or more consecutive days. An employer may require that an FMLA request for leave be supported by a certification from a health care provider. Further, the FMLA states that an employer "may require" additional medical opinions when it has reason to doubt the validity of the certification in 29 U.S.C. § 2613(c)(1). The court held that the "may" language is permissive in providing an employer an option to require another medical opinion and does not require the employer to do so before contesting the validity of a certification (*Perez v. Barrick Goldstrike Mines, Inc.*).
- **Securities:** The Fifth Circuit partially vacated the Securities and Exchange Commission's (SEC's) 2022 recission of a rule adopted in 2020 regulating proxy advisory firms. Notice-and-awareness provisions in the rule would have required proxy advisory firms to provide notice and disclosure to a public company when the firm issued advice regarding the company to the firm's clients, and to notify clients of responsive statements by the company. In both adopting and rescinding the rule, the SEC discussed concerns that these provisions created risks for the timeliness and independence of proxy advice. The Fifth Circuit held that the SEC failed both to reasonably explain its evaluation of these risks in 2022 and to adequately justify why its evaluation of the risks changed between 2020 and 2022. The court vacated the recission of the notice-and-awareness provisions while leaving other aspects of the recission in place, and remanded to the SEC (*Nat'l Ass'n. of Mfrs. v. SEC*).
- **Spending:** The Fifth Circuit held that a funding condition in the American Rescue Plan Act (ARPA) was unconstitutional and affirmed the district court's injunction preventing the federal government from enforcing the condition. Through ARPA, Congress gave nearly $200 billion to the states to assist with economic recovery during the COVID-19 pandemic on the condition that states agree not to use the funds to "directly or indirectly offset" reductions in state net tax revenue. The court first concluded that the states have standing to challenge the offset condition because they have suffered at least two injuries:

(1) having to choose between forgoing potentially billions of dollars in federal funding or losing their ability to set state tax policy and (2) the threat of a future federal recoupment proceeding requiring repayment of improperly used funds. The court then decided that the offset condition violated the Spending Clause because the phrase "directly or indirectly offset" was ambiguous. Any change to a state's tax regime resulting in lower tax revenue, even if imposed for reasons unrelated to the funding, might lead the federal government to conclude that the state was using ARPA funds to "indirectly" offset the cut. The court also pointed to the statute's failure to identify a baseline against which to measure revenue reductions as a source of ambiguity. The Fifth Circuit joined the Eleventh Circuit in holding that, if Congress chooses to impose spending conditions on the states, it has a constitutional obligation to do so unambiguously in the statute itself, and cannot rely on federal agencies to provide the requisite clarity (*Texas v. Yellen*).

- **Tax:** The Fourth Circuit affirmed the Tax Court's interpretation of 26 U.S.C. § 45C(c)(2), which prohibits taxpayers from double-counting their expenses that simultaneously qualify for two different tax credits: (1) the "research credit," which is intended to incentivize taxpayers to increase their investment in research year over year and (2) the "orphan drug credit," which encourages pharmaceutical companies to develop "orphan drugs," or drugs treating certain rare diseases. In a taxable year, a taxpayer may have "qualified clinical testing expenses" under the "orphan drug credit" which also are "qualified research expenses" under the "research credit." The panel concluded that 26 U.S.C. § 45C(c)(2) prohibits taxpayers from including expenses counted toward the orphan drug credit to also be counted toward the research credit for that taxable year, but expenses counted for "orphan drug credit" for prior years must be taken into account in determining base period research expenses for the purpose of applying the "research credit" (which credits increases in research investment) to subsequent tax years. The court reasoned that the plain meaning of "base period research expenses" in the statutory text compels this conclusion (*United Therapeutics Corp. v. Comm'r of Internal Revenue*).
- **Tax:** The Ninth Circuit held that the two-year limitations period for the government to sue to recover an erroneous tax refund under 26 U.S.C. § 7405 starts on the date the erroneous refund check clears the Federal Reserve and payment to the taxpayer is authorized by the Treasury, rather than the date on which the taxpayer received the check. The limitations period, set out in 26 U.S.C. § 6532(b), is triggered by the "making of such refund." The court reasoned that a refund is "made" when it is paid, which is best reflected by the check-clearing date (*United States v. Page*).

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