

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Mar. 21–Mar. 27, 2022), Part 2

March 28, 2022

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 of the 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 Sidebar [Part 2] discusses activity by the U.S. courts of appeals during the week of March 21 to March 27, 2022, while a companion Sidebar, [Part 1](#), addresses Supreme Court decisions 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.

Civil Rights: A divided, en banc First Circuit affirmed a district court’s denial of a preliminary injunction in a case brought by the Minority Leader of the New Hampshire House of Representatives against the New Hampshire Speaker of the House, in which the plaintiff argued that the denial of remote voting privileges to lawmakers at risk of Coronavirus Disease 2019 violated federal and state disability laws. Disagreeing with an earlier three-judge panel, the en banc majority ruled that the district court did not err

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in deciding that the Speaker's assertion of legislative immunity prevented the plaintiff from obtaining the injunctive relief (*Cushing v. Packard*).

Criminal Law & Procedure: Joining the Tenth Circuit, the Third Circuit held that in federal habeas corpus cases brought by state prisoners, the deferential standard applied to a state trial court's factual findings when assessing the merits of a habeas claim also applies when the petitioner seeks a certificate of appealability from the circuit court to review the denial of the habeas petition (*Becker v. Secretary Pa. Dep't of Corrections*).

Criminal Law & Procedure: The Ninth Circuit ruled that the Juvenile Delinquency Act, which establishes a procedural mechanism for the treatment of persons under the age of eighteen who commit federal crimes, did not preclude the prosecution of the criminal defendant as an adult for a continuing conspiracy that included both pre- and post-majority conduct (*United States v. Mendez*).

Criminal Law & Procedure: The Eleventh Circuit held that a criminal defendant's successive prosecutions under two different provisions of 18 U.S.C. § 2251, which criminalizes sexual exploitation of a minor, did not give rise to double jeopardy claims because each provision required proof of an act that the other did not. The court provided various examples of conduct that would violate § 2251(a), involving the coercion or inducement of a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction, that would not violate § 2251(d), which proscribes printing, publishing, or making notices seeking or offering to receive child pornography (*United States v. Lee*).

Ethics: The D.C. Circuit dismissed an appeal requesting the court vacate appellant's referral to the lower court's Committee on Grievances for potential attorney discipline. The lower court made the referral based on its identification of errors in law and procedure in appellant's suit to prevent the counting of state electoral votes in the 2020 presidential election. Because the referral did not represent a "final decision" of a district court, the circuit court lacked jurisdiction (*Wisconsin Voters Alliance v. Harris*).

International Law: The Seventh Circuit affirmed a district court's decision to dismiss a civil suit brought by a Mexican government agency against a U.S. corporation alleged to have bribed Mexican officials. The district court dismissed the case after determining that the Mexican courts were a more appropriate forum. The circuit court held that the United Nations Convention Against Corruption did not foreclose the district court's application of *forum non conveniens*. The circuit court also ruled that the district court did not abuse its discretion in concluding that the Mexican courts offered an available and adequate forum, and that the balance of interests favored adjudication in Mexico. The Sixth Circuit issued [a similar ruling last week](#) in a different case brought by the Mexican agency, which is discussed in last week's *Congressional Court Watcher* (*Instituto Mexicano del Seguro v. Zimmer Biomet Holdings, Inc.*).

Religion: The Fourth Circuit affirmed a lower court ruling in favor of defendant-county in a matter where a religious institution disputed restrictions as to sewer access and development rights for parcels of land that it purchased, alleging the restrictions violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment’s Free Exercise Clause. The court found that the facts clearly demonstrated that the religious institution was aware of the property restrictions when it agreed to purchase the land, and that this self-imposed hardship could not demonstrate that the *government* substantially burdened the group’s religious exercise. The court further determined that the institution failed to show it had been treated on unequal terms with nonreligious institutions because of the history, without exception, of the restrictions on the property. The court also ruled that the plaintiff’s First Amendment free exercise claim failed because the land-use restrictions were facially neutral and generally applicable (*Canaan Christian Church v. Montgomery County*).

Religion: In a lawsuit by a religious institution against a city government under RLUIPA, the Ninth Circuit affirmed the district court’s ruling that the religious institution failed to prove that the zoning restrictions imposed a substantial burden on its religious exercise. However, the appeals court reversed and remanded the lower court’s summary judgment as to the church’s other RLUIPA claim, holding that the city failed to show that it treats religious assemblies on equal terms with nonreligious assemblies that are similarly situated with respect to a lawful zoning criterion (*New Harvest Christian Fellowship v. City of Salinas*).

Securities: In a case where Twitter shared personal user data with advertisers without the users’ permission and then announced revenue shortfalls due to advertising bugs, the Ninth Circuit affirmed the district court’s dismissal of the plaintiffs’ securities fraud lawsuit. The court described Twitter’s statements—which discussed Twitter’s progress towards developing a commercially important advertising program—as qualified and factually true, and it explained that securities laws do not require real-time business updates or complete disclosure of all material information. The court also held that some of Twitter’s statements were shielded by a statutory safe harbor for forward-looking statements (*Weston Family Partnership v. Twitter*).

Securities: In a per curiam opinion, the D.C. Circuit held that the Securities and Exchange Commission (SEC) permissibly denied two applications for whistleblower awards related to a successful SEC enforcement action. The per curiam majority concluded that the denial of the award applications was reasonable and consistent with the agency’s longstanding interpretation of the governing regulation. The regulation set forth three factual patterns allowing for the issuance of a whistleblower award, which the agency construed as exclusive, and which did not encompass the additional scenario proposed by the petitioners (*Doe v. SEC*).

Tax: The Fifth Circuit affirmed a lower court’s denial of partial summary judgment in a statutory-interpretation question of first impression regarding whether butane is a “liquefied petroleum gas” (LPG). The court concluded that butane is not an LPG, despite the common understanding of LPG, because the statute precludes a taxable fuel from also qualifying as an alternative fuel and because the statute places butane within the scope of a taxable fuel (*Vitol v. United States*).

Tax: A divided Fifth Circuit panel affirmed a district court’s ruling that 26 U.S.C. § 4611(b), which assesses a “tax” on domestic crude oil “used in or exported from the United States,” is unconstitutional in light of the Export Clause’s categorical ban on Congress imposing taxes on exports. The lead opinion concluded that the money paid by the plaintiff oil exporter under § 4611 could not be characterized as a constitutionally permissible “user fee” because the charges paid on exports financed “a broad range of initiatives” that were not services provided to the charged exporters. Because one judge on the panel only concurred with the judgment of the lead opinion and another judge dissented, the opinion is not controlling precedent for the Fifth Circuit (*Trafigura Trading LLC v. United States*).

Tax: A divided Ninth Circuit held that a letter issued by an Internal Revenue Service (IRS) agent, warning a taxpayer to take remedial action within 30 days or be assessed a penalty, did not require written supervisory approval. While § 6751(b) of the Internal Revenue Code requires written approval before the assessment of a penalty, the panel held that the warning letter was not itself an assessment, and the supervisor retained discretion to withhold approval of the penalty even after the letter was sent (*Laidlaw's Harley Davidson Sales, Inc. v. Commissioner of Internal Revenue*).

Telecommunications: The Eighth Circuit held that an automated marketing system, which sends texts to phone numbers randomly selected from a consumer database, is not an automated telephone dial-in system prohibited under the Telephone Consumer Protection Act (*Beal v. Outfield Brew House, LLC*).

Veterans: The Federal Circuit largely upheld Department of Veterans Affairs (VA) regulations governing a family caregiving assistance program for eligible veterans, concluding that most of the challenged provisions were based on the agency's reasonable interpretation of the governing statutory framework. The court did, however, conclude that one challenged provision impermissibly merged two distinct statutory avenues by which a veteran may be deemed "in need of personal care services" (*Veteran Warriors, Inc. v. Secretary of Veterans Affairs*).

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