



Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (June 27–July 3, 2022), Part 1

July 5, 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 Legal Sidebar (Part 1) discusses Supreme Court activity during the week of June 27 to July 3, 2022, while a [companion Legal Sidebar](#) (Part 2) addresses decisions of the U.S. courts of appeals from that period.

Decisions of the Supreme Court

On June 30, 2022, the Supreme Court issued its final opinions of the October 2021 term. That same day, Justice Stephen Breyer retired from regular active service as an Associate Justice of the Supreme Court, and Justice Ketanji Brown Jackson was sworn in to succeed him. The Court’s next term begins on October 3, 2022.

Last week, the Supreme Court issued decisions in several cases for which it heard oral arguments during the October 2021 Term:

- **Criminal Law & Procedure:** Between 2010 and 2018, Congress passed legislation prospectively reducing sentence disparities between certain crack and powder cocaine

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offenses and, in the First Step Act of 2018, gave courts discretion to reduce the sentences of those convicted under prior standards. In a 5-4 decision, the Court held that [§ 404\(b\) of the Act](#) permits a district court reviewing a sentence under these provisions to consider intervening legal and factual developments arising after the defendant's conviction, such as those modifying the penalties associated with the defendant's offense (*Concepcion v. United States*).

- **Criminal Law & Procedure:** Under [21 U.S.C. § 841](#), it is a crime “[e]xcept as authorized . . . [to] knowingly or intentionally . . . manufacture, distribute, or dispense” controlled substances. In consolidated cases, the Court vacated the convictions under § 841 of two doctors who prescribed controlled substances, and who asserted they had acted in the good faith belief that their conduct was permissible. Six Justices joined an opinion holding that once a defendant produces evidence showing that his or her conduct was “authorized,” the government bears the burden under § 841 of showing beyond a reasonable doubt that the defendant acted knowingly or intentionally in an unauthorized manner. The Court remanded the cases so the lower courts could discern whether the jury instructions in the two cases reflected an appropriate understanding of § 841’s scienter requirement (*Ruan v. United States*; *Kahn v. United States*).
- **Environmental Law:** A provision of the Clean Air Act, [42 U.S.C. § 7411\(d\)](#), authorizes the Environmental Protection Agency (EPA) to regulate air emissions of pollutants produced by certain categories of existing stationary sources. The Court ruled 6-3 that Section 7411(d) did not permit EPA to base emissions guidelines for existing coal-fired power plants on a system of emission reduction that shifted electricity production from higher-emitting sources, including coal and gas plants, to lower-emitting sources, including renewables. Holding that the case was reviewable by the Court, and applying the “major questions” doctrine, the Court concluded that agency actions of vast economic and political significance premised on statutory delegations of authority require clear congressional authorization from the cited statute. The Court found no such clear congressional authorization in this case (*West Virginia v. EPA*; *North American Coal Corp. v. EPA*; *Westmoreland Mining Holdings v. EPA*; *North Dakota v. EPA*).
- **Immigration:** By a 5-4 vote, the Court upheld the Department of Homeland Security’s (DHS’s) rescission of the Migrant Protection Protocols (MPP), a policy implemented in 2019 requiring most asylum seekers arriving at the southern border to wait in Mexico while their asylum claims are processed. DHS announced it was terminating the MPP in early 2021, but a district court issued a nationwide injunction directing its continuation. The Court held the injunction was an inappropriate remedy in light of its earlier ruling this term that [8 U.S.C. § 1252\(f\)](#) bars lower courts from entering class-wide injunctions in cases involving certain immigration detention and removal provisions. On the merits, the Court held that the MPP’s statutory authority, [8 U.S.C. § 1225\(b\)\(2\)\(C\)](#), was discretionary in nature, and the government’s alleged noncompliance with other detention obligations did not transform this discretionary authority into a mandatory directive (*Biden v. Texas*).
- **Indian Law:** In a 5-4 decision, the Court held that states have jurisdiction to prosecute crimes committed by non-Indians against Indians in “Indian country,” except where such criminal jurisdiction is expressly preempted by federal law or is inconsistent with tribal self-governance. The decision appears to limit some of the practical consequences of a 2020 decision, *McGirt v. Oklahoma*, which classified the eastern part of Oklahoma as Indian country (*Oklahoma v. Castro-Huerta*).

- **Religion/Speech:** In a 6-3 ruling, the Court held that a public high school football coach's practice of praying on the football field immediately after games was protected by the First Amendment's Free Speech and Free Exercise Clauses. In an analysis likely to have significant implications for future church-and-state cases, the Court "abandoned" the mode of analysis that had been the primary (but not sole) basis for Establishment Clause decisions over several decades. Rather than looking to whether a government action has the purpose or effect of supporting or endorsing religion, the Court said courts should interpret the Establishment Clause by reference to historical practices, focusing on "original meaning and history." Under this historical-tradition analysis, the Court concluded that the coach's prayer practice was not impermissibly coercive. Further, the Court held that the school could not require educators to eschew any visible religious expression because that would impermissibly preference secular activity (*Kennedy v. Bremerton School District*).
- **Veterans:** The [Uniformed Services Employment and Reemployment Rights Act of 1994](#) bars adverse employment actions against workers based on their military service, and a state employer may be sued under the Act for monetary damages in state court. The Supreme Court ruled 5-4 that the doctrine of sovereign immunity does not render the Act's state-suit provision invalid against nonconsenting states. The Court held that Congress may authorize such suits pursuant to its constitutional war powers, because when states joined the Union, they implicitly agreed that their sovereignty would yield to the federal policy to raise and maintain a military (*Torres v. Texas Dep't of Public Safety*).

The Supreme Court also granted certiorari in four cases for the October 2022 Term:

- **Bankruptcy:** The Court agreed to hear a case from the Second Circuit regarding the meaning of a Bankruptcy Code provision concerning bankruptcy court sale orders, [11 U.S.C. § 363\(m\)](#). The Court is asked to consider whether that provision deprives appellate courts of jurisdiction over the appeal of a lease assignment order deemed integral to the bankruptcy court's sale order (*MOAC Mall Holdings LLC v. Transform Holdco LLC*).
- **Criminal Law & Procedure:** The Court agreed to review a case from the Second Circuit on whether a private citizen, who does not hold elected office or government employment, can be convicted of honest-services fraud based on an alleged fiduciary duty owed to the public on account of his informal influence on government decision making (*Percoco v. United States*).
- **Criminal Law & Procedure:** The Court granted certiorari in another Second Circuit case to consider whether a conviction under the federal wire-fraud statute, 18 U.S.C. § 1343, can be sustained under a "right to control" theory of fraud, which treats the deprivation of complete and accurate information bearing on an economic decision as a type of property fraud (*Ciminelli v. United States*).
- **Election Law:** The Court agreed to review a case from the North Carolina Supreme Court, which had struck down a congressional redistricting plan adopted by the statute legislature, and had ordered a lower court to approve a new map. The trial court ultimately approved a map drawn by three court-appointed experts. The Court is asked whether a state court is constitutionally permitted to nullify a redistricting map established by a state legislature and replace it with one of the court's own devising. In February, the U.S. Supreme Court [denied](#) an application for an emergency stay in the case, and it seems likely that a Court decision will not be rendered until after the November 2022 election (*Moore v. Harper*).

The Court also took action on an application for emergency action:

- **Election Law:** In an unsigned order issued over the dissent of three Justices, the Court permitted Louisiana to move forward with its congressional redistricting plan pending the Court's consideration of a similar challenge brought against Alabama's redistricting plan (*Merrill v. Milligan*; *Merrill v. Caster*). In the Louisiana case, a federal district court had instructed the state legislature to enact a new redistricting plan that included an additional majority-Black congressional district, after concluding that the current plan impermissibly dilutes the votes of Black Louisianans in violation of the Voting Rights Act. In staying the lower court's preliminary injunction and granting certiorari, the Supreme Court did not address the merits of plaintiffs' arguments. Instead, the case will be held in abeyance until further action by the Court or until the Court issues its decision in the Alabama cases. Because the Court will not hear arguments in those cases until the October 2022 Term, it seems likely that the legal disputes over both states' congressional redistricting plans will not be resolved until after the November 2022 congressional elections (*Ardoin v. Robinson*).

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