



Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Oct. 10–Oct. 16, 2022)

October 17, 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 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 did not issue any opinions or agree to hear any new cases, but summarily [disposed](#) of hundreds of cases. Among them, the Court declined former President Donald Trump’s request to stay an Eleventh Circuit ruling that enabled the Department of Justice to begin reviewing documents marked as classified that were seized from his Mar-a-Lago property. These proceedings are discussed in a prior *Congressional Court Watcher* edition (*Trump v. United States*).

Decisions of the U.S. Courts of Appeals

Topic headings marked with an asterisk (*) indicate cases in which 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:** Affirming the judgment of the bankruptcy court, a divided Fifth Circuit held that a formerly insolvent petroleum company that declared bankruptcy, but became

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LSB10843

solvent during the bankruptcy due to a spike in natural gas prices, was compelled to pay its creditors the present value of the interest payments they would have received but for the bankruptcy. The majority held that the Bankruptcy Code did not displace the centuries-old, common law “solvent-debtor exception,” which requires a solvent debtor to repay contractual debts. While recognizing that the Bankruptcy Code’s plain text, which [generally disallows](#) claims of unmatured interest by a creditor, appeared to bar the creditors from receiving restitution here, the majority held that the “solvent-debtor exception” entitled the creditors to payment (*In re Ultra Petroleum Corp.*).

- **Communications:** A divided Ninth Circuit held that plaintiffs satisfied constitutional and statutory standing requirements to bring suit under the [Telephone Consumer Protection Act](#) against the defendants, who were alleged to have called cell phone numbers placed on the national do-not-call registry. The majority rejected arguments that certain plaintiffs could not bring suit alleging the phone calls violated the Act’s do-not-call provisions, which apply to “residential” phone numbers. Noting that Federal Communications Commission orders and regulations treat cell phone numbers on the do-not-call list as presumptively residential, the majority concluded that plaintiffs’ dual use of their cell phones for personal and business use did not prevent their cell phone numbers from being treated as “residential.” The majority held that defendants could overcome that presumption by showing that plaintiffs used their cell phones for business purposes to such an extent as to be considered nonresidential (*Chennette v. Porch.com*).
- **Criminal Law & Procedure:** The Fifth Circuit largely upheld a criminal defendant’s convictions for multiple child pornography convictions, including for pornographic drawings of minors who did not exist. The court held that the plain text of [18 U.S.C. § 1466A\(a\)\(1\)](#), criminalizing the obscene visual depiction of a minor, does not require that the image depict a real minor, concluding the statute’s lack of this requirement did not pose a constitutional infirmity. The panel distinguished § 1466A(a)(1) from a similar statute [struck down by the Supreme Court](#) that criminalized depictions of actual or virtual children engaged in sexual conduct because § 1466A(a)(1) also required the depiction to be obscene, meaning that it would not be protected under the First Amendment (*United States v. Arthur*).
- **Immigration:** The First Circuit affirmed a lower court’s preliminary injunction of a Maine statute that sought to prevent Canadian truck drivers from hauling logs within the state under the auspices of the [federal H-2A visa program](#) for temporary agricultural workers. The panel agreed with the lower court that plaintiffs were likely to succeed in their argument that federal immigration law preempted the state statute (*Maine Forest Prod. Counsel v. Cormier*).

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